

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2015

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Tr.C.M.P. No.610 of 2015
and M.P.Nos.1 and 2 of 2015

M.Mohana Sundaram

... Petitioner

Vs.

1.G.Kandasamy
2.K.Rajesh Babu

... Respondent

Prayer:- Petition has been filed under Section 24 of C.P.C., praying to withdraw O.S.No.327 of 2012 pending on the file of the District Munsif Court, Poonamallee and to transfer the same to the Sub-Court, Poonamallee and consequently, direct the Sub-Court, Poonamallee, to take up the matter in O.S.No.252 of 2012 pending on the file of the Sub-Court, Poonamallee along with O.S.No.327 of 2012 for joint trial.

For Petitioner : Mr.M.V.Muralidaran

For Respondents : Mr.P.Srinivasan

O R D E R

The petitioner, who is the defendant in O.S.No.327 of 2012, has filed this petition to transfer the same pending on the file of the District Munsif Court, Poonamallee, to the file of the Sub-Court, Poonamallee and to try along with O.S.No.252 of 2012 pending on its file.

2.Learned counsel for the revision petitioner submits that the first respondent herein has filed a suit in O.S.No.252 of 2012 against the petitioner herein before the Sub-Court, Poonamallee for recovery of possession and also injunction not to make construction in the suit property. The petitioner herein has filed a suit in O.S.No.327 of 2012 against the respondents herein for declaration that the sale deed dated 06.09.2010 executed by the plaintiff's father in favour of the defendant is null and void and also for permanent injunction restraining them from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and directing the defendants to pay the costs of the suit. He further submits that parties to the suits are one and the same and subject matter of the suits

are one and the same. To avoid multiplicity of proceedings and conflicting judgments, both the suits may be tried jointly. Therefore, he prayed that the suit in O.S.No.327 of 2012 may be transferred from the file of the District Munsif Court, Poonamallee to the file of the Sub-Court, Poonamallee and to be tried along with O.S.No.252 of 2012.

3.Resisting the same, learned counsel for the respondents submits that O.S.No.327 of 2012 is not maintainable, so he has filed an application under Order 7 Rule 11 of C.P.C. for rejection of plaint and the same has to be disposed, then only, joint trial may be ordered. Therefore, he prayed for dismissal of the petition.

4.Considered the rival submissions made on both sides and perused the typed set of papers.

5.The petitioner in O.S.No.252 of 2012 has come forward with this petition for transfer the suit in O.S.No.327 of 2012 on the file of District Munsif Court, Poonamallee, to the file of the Sub-Court, Poonamallee.

6.On perusal of plaint in O.S.No.252 of 2012, it reveals that one Munusamy, father of the petitioner herein has purchased the suit property under the sale deed dated 21.06.1983 from whom the first respondent herein has purchased the same and that he is in possession of the property. Since the defendant/petitioner herein entered into the property and attempted to put up construction, the first respondent herein has filed a suit for recovery of possession and injunction restraining the defendant not to put up construction.

7.On perusal of plaint in O.S.No.327 of 2012 shows that father of the petitioner herein has no authority to execute the sale deed and hence, he prayed for declaring the sale deed executed by his father as null and void.

8.Considering the aforesaid circumstances of the case, parties in both the suits and subject matter of both the suits are one and the same. Under such circumstances, to avoid multiplicity of proceedings and conflicting judgments, both the cases to be tried by the same Judge. Since the suit in O.S.No.252 of 2012 is pending on the file of the Sub-Court, Poonamallee, O.S.No.327 of 2012 is ordered to be withdrawn from the District Munsif Court, Poonamallee and transferred to the file of the Sub-Court, Poonamallee.

9.According to the learned counsel for the respondents, the petitioner herein has filed a suit for declaring the sale deed dated 06.09.2010 as null and void. But he had valued the suit only for Rs.1,000/- and on that basis, Court fee has been paid.

Therefore, the respondents herein have filed an application under Order VII Rule 11 C.P.C. for rejection of plaint, which is pending. So it is appropriate on the part of this Court to give a direction to the Sub-Court, Poonamallee to dispose of the application filed by the respondents herein under Order VII Rule 11 C.P.C. within a period of one month from the date of receipt of records from the District Munsif Court, Poonamallee and dispose of the same in accordance with law.

10. With the above direction, this Transfer Civil Miscellaneous petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

kj

s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Sub-Court, Poonamallee.

2. The District Munsif Court, Poonamallee.

+ 1 cc to Mr. M. V. Muralidaran, Advocate SR 66150

+ 1 cc to Mr. P. Srinivasan, Advocate SR 66690

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