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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

Tr.C.M.P.No.96 of 2015

and

M.P.No.1 of 2015

R.Devi .. Petitioner/Plaintiff

Vs

1.R.Srinivasan .. 1st Respondent/1st Defendant
2.R.Shenbagavalli
3.G.Selvaraj .. 2nd & 3rd Respondents/2nd & 3rd Defendants.

Prayer: Civil Revision Petition filed under Section 24 of the Civil Procedure Code, 1908 to withdraw the suit in O.S.No.1260 of 2010 on the file of the II Additional Subordinate Judge, Coimbatore and transfer the same to try jointly with O.S.No.439 of 2014 pending on the file of the Principal Subordinate Judge, Coimbatore.

For Petitioner : Mr.S.Venkatesh
For Respondents: Mr.A.Thiyagarajan (For R1)
Mr.P.Mathivanan (For R3)
No appearance (For R2)

O R D E R

This Transfer Civil Miscellaneous Petition has been filed by the plaintiff in O.S.No.1260 of 2010 pending on the file of the II Additional Subordinate Court, Coimbatore and to transfer the same to the file of the Principal Subordinate Court, Coimbatore for joint trial along with O.S.No.439 of 2014.

2.Learned counsel for the petitioner submitted that the petitioner as a plaintiff filed a suit in O.S.No.1260 of 2010 for specific performance against one Srinivasan and Rangasamy who is the owner of the property. He further submitted that one Shenbagavalli, who is the mother of Srinivasan and Rangasamy filed a suit in O.S.No.439 of 2014 for partition and separate possession. He further submitted Therefore, both the suits has to be tried jointly. Hence, he prayed for an order.



3. Resisting the same, the learned counsel for the first respondent submitted that in the grounds of revision itself he has stated that the subject matter of O.S.Nos.1260 of 2010, 50 of 2014 and 439 of 2014 are one and the same, but he has not filed transfer petition for joint trial for O.S.No.50 of 2014 along with the same. Hence, only with a view to drag on the proceeding, the petitioner has filed this transfer petition. He further submitted that the later suit has to be tried along with the old suit. So, he prayed for dismissal of the transfer petition.

4. The learned counsel for the third respondent filed a detailed counter and submit that the suit in O.S.No.1260 of 2010 is in respect of two sets of property measuring an extent of 8.18 acres in S.Nos.462/2, 462/1, 467/2 i.e. the subject matter of O.S.Nos.1260 of 2010 and 50 of 2014 is the subject matter of O.S.Nos.94 of 2014, 439 of 2014, 28 of 2015 and 425 of 2015. But without rhyme and reason, he want to transfer O.S.No.1260 of 2015 to the file of the Principal Subordinate Court, Coimbatore wherein O.S.No.439 of 2014 is pending which is for declaration of lease deeds dated 05.02.2014 executed by the petitioner herein in favour of the 3rd respondent is void and also for permanent injunction, partition and separate possession of entire property of the family. Hence, he prayed for dismissal of the transfer petition. However, he has submitted that since the subject matter of O.S.No.1260 of 2010 is the subject matter of all other suits, he has no objection for all the suits to be tried jointly in the same Court.

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

6. Considering the facts and circumstances of the case that the suit in O.S.No.1260 of 2010 is in respect of two items of the property. The property originally belong to family of the defendant in O.S.No.1260 of 2010. The petitioner herein filed a suit for specific performance on the basis of the sale agreement dated 28.12.2007, but the subject matter of O.S.No.1260 of 2010 is the subject matter of all other five suits also and the petitioner is also a party to all the suits. Even though the third respondent has no objection for transferring all the suits to the same Court for joint trial, but parties to other suits are not parties to this transfer petition and without their knowledge those suits shall not be transferred. In such circumstances, there is no reason for transferring only O.S.No.1260 of 2010 to the Principal Subordinate Court, Coimbatore for joint trial along with O.S.No.439 of 2014 and no purpose will be served in transferring the suit in O.S.No.1260 of 2010.



7. In the result, the Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

The II Additional Subordinate Judge, Coimbatore.

+ 1 cc to Mr.A.Thiyagarajan, Advocate, SR 68768

+ 1 cc to Mr.P.Mathivanan, Advocate SR 68882

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