



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2015

CORAM:

THE HON'BLE MR.JUSTICE T.MATHIVANAN

Tr.C.M.P(MD)No.364 of 2015

and

M.P. (MD)No.1 of 2015

1.J.M.Mohamed Rafeeq
2.Zamruth Begum

: Petitioners

Vs.

1.Munavar Sulthana
2.M.Sameer Ahamed

: Respondents

Prayer: This petition is filed under section 24 of the Civil Procedure Code, to withdraw the suit in O.S.No.267 of 2015 from the file of the XII Assistant Civil Judge, Chennai and to transfer the same to the file of the Additional District Judge (Fast Track Court), Thanjavur to be tried along with the suit in O.S.No.91 of 2014.

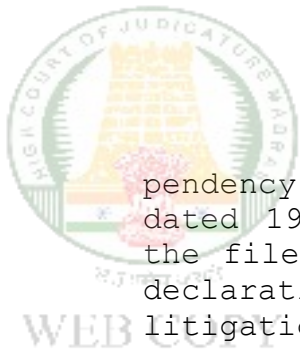
For Petitioners : Mr.V.Chandrasekar
For respondents : No appearance

O R D E R

This petition is filed under section 24 of the Civil Procedure Code by the petitioners, who are the plaintiffs in the suit in O.S.No.267 of 2015 to withdraw the said suit from the file of the XII Assistant Civil Judge, Chennai and to transfer the same to the file of the Additional District Judge (Fast Track Court), Thanjavur to be tried along with the suit in O.S.No.91 of 2014.

2.It is apparent from the records that both the suits have been filed by the petitioners. The earlier suit i.e., O.S.No.91 of 2014 seems to have been filed by the petitioners on the file of the Additional District Judge (Fast Track Court), Thanjavur for partition and another suit in O.S.No.267 of 2015 also filed by them seeking the relief of declaration. Now, both the suits are ripe for trial. Now, the petitioners have approached this court seeking to transfer the suit in O.S.No.267 of 2015 from the file of the XII Assistant Civil Judge, Chennai and to transfer the same to the file of the Additional District Judge (Fast Track Court), Thanjavur to be tried along with O.S.No.91 of 2014.

3.It transpires from the averments of the petition that the suit in O.S.No.91 of 2014 was filed by the petitioners for partition on 09.09.2014 itself and in that suit, they had also obtained an order of injunction as against the respondents herein. During the



pendency of the suit, the respondents had created a settlement deed, dated 19.09.2014 bearing registration No.1199 of 2014 registered on the file of the Sub Registrar Office, Triplicane, by giving a false declaration that the property was free from all encumbrances, litigation, *lispendens* etc.

4.What they have stated is that already a suit in O.S.No.91 of 2014 was filed for partition before the Additional District Judge, Thanjavur and therefore, the impugned settlement deed alleged to have been executed in favour of the 2nd respondent herein by the first respondent is not valid and sustainable in law. Since, the respondents have taken steps to challenge the mutation etc., in their name, they were forced to file another suit in O.S.No.267 of 2015 on the file of the XII Additional Civil Court, Chennai seeking declaration that the said document (settlement deed), dated 19.09.2014 is null and void.

5.In this connection, **Mr.V.Chandrasekar**, learned counsel appearing for the petitioners has submitted that if the above two suits were consolidated and tried together, then it would be easier for the parties to the suit to get a fair relief and it may be also very easier for the Court itself to take a fair decision and hence, the petitioners have approached this court with this petition seeking transfer.

6.It is significant to note here that despite service of notice on the respondents, they have not chosen to appear either in person or through their counsel, when the matter is taken up for hearing today. Therefore, there is no other go for this court excepting to hear Mr.V.Chandrasekar, learned counsel appearing for the petitioners and dispose the matter on merits in the absence of the respondents.

7.This court has considered the submission made by the learned counsel appearing for the petitioners and perused the grounds of the petition along with the other materials available on record.

8.Keeping in view of the above facts, this petition is allowed and the suit in O.S.No.267 of 2015 is ordered to be withdrawn from the file of the XII Assistant Civil Judge, Chennai and transferred to the file of the Additional District Judge (Fast Tract Court), Thanjavur to be tried along with the suit in O.S.No.91 of 2014. The transferor Court is ordered to transmit the entire records to the file of transferee Court within a period of one week from the date of receipt of a copy of this order. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/



To

1.The XII Assistant Civil Judge,
Chennai.

2.The Additional District Judge,
Fast Track Court,
Thanjavur.

+1cc to Mr.V.Chandrasekar, Advocate SR.No.68739

akm/21.01.2016/ 3p- 4c/MP/PM/SAR-II

TrCMP (MD) No.364 of 2015
Dated :01.12.2015