

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

TR. CMP NO.401 OF 2015

AND

MP.NO.1 OF 2015

1.R.Thirumurthy
2.R.Thiyagamurthy
3.A.Selvaraj
4.A.Gandhiraj
5.A.Anandhakannan Petitioners

Versus

1.R.Sivasamy
2.R.Kaliappan ... Respondents

PRAYER: Petition filed under Section 24 of the Code of Civil Procedure with a prayer to order transfer of the appeal in CMA No.13 of 2014 on the file of Sub Court, Pollachi, to the file of this Court to be tried along with CRP No.911 of 2015 pending on the file of this Court.

For Petitioners : Mr.K.Sukumaran

For Respondents : Mr.J.V.Mohan Kumar
for M/s.King & Patridge

ORDER

The petitioners filed this transfer petition to withdraw the proceedings in C.M.A.No.13 of 2014 from the file of Sub Court, Pollachi and transfer the same to this Court for disposal along with C.R.P. No.911 of 2015.

2. Heard the learned counsel for the petitioners and the learned counsel appearing on behalf of the respondents.

3. The petitioners instituted a suit in O.S.No.587 of 2004 for partition. The Sub Court, Pollachi, passed an exparte preliminary decree. The respondents filed an application for setting aside the exparte preliminary decree and the same was dismissed. The order was passed on 07.11.2014. In the meantime, the petitioners filed final decree application before the Sub Court, Pollachi. The Sub Court passed a final decree in terms of the preliminary

decree. The said order was challenged by the respondents in C.R.P.No.911 of 2015.

4. According to the petitioners, common questions of fact are involved in both the matters and as such it would be in the interest of parties to transfer the proceedings in C.M.A.No.13 of 2014 for disposal along with C.R.P.No.911 of 2015.

5. There is no question of directing transfer of proceedings in C.M.A.No.13 of 2014 for more than one reason. The issue involved in C.M.A.No.13 of 2014 is totally different inasmuch as the first Appellate Court has to decide as to whether the Trial Court was correct in passing exparte preliminary decree in O.S.No.587 of 2004. The issue to be decided in the Civil Revision Petition is entirely different. This Court has to consider the legality and correctness of the order passed by the Sub Court. I am therefore of the view that the petitioners have not made out a case for transfer of the proceedings in C.M.A.No.13 of 2014.

6. The learned Subordinate Judge, Pollachi is directed to dispose of the appeal in C.M.A.No.13 of 2014, as expeditiously as possible, and in any case, on or before 31 January 2017.

7. The Transfer Civil Miscellaneous Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

TK

To

The Subordinate Judge,
Pollachi.

+1cc to M/s.King & Patridge, Advocate, S.R.No.63461
+1cc to Mr.K.Sukumaran, Advocate, S.R.No.64108

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SSI(CO)
CA(09/12/2016)