

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

Transfer CMP No.623 of 2012 and
MP.No.1 of 2012

1.M.Ammasiappan
2.A.Visalakshi
3.A.Kandasamy

...Petitioners

versus

1.Pushpavathi
2.K.M.Sathya
3.K.M.Sathyaraj @ Sureshraj
4.K.P.Subramaniam
5.Shanmugasundaram
6.Gandhimathi

...Respondents

PRAYER: Tr.C.M.P. filed under Section 24 of C.P.C., to withdraw the suit in O.S.No.15 of 2008 on the file of Subordinate Judge, Tharapuram and transfer the same to the file of I Additional District Judge, Erode for joint trial along with I.A.No.698 of 2006 in O.S.No.170 of 2006.

For Petitioner : Mr.M.Sriram
For Respondents : Mr.N.Manokaran

O R D E R

The predecessor-in-interest of respondents 1 to 3 filed a suit for partition in O.S.No.271 of 1997 before the I Additional Sub-Court, Erode. The Trial Court passed a preliminary decree on 10.09.1993. Thereafter, the respondents 1 to 3 filed a final decree application in I.A.No.698 of 2006 before the I Additional District Court, Erode. During the currency of the final decree application, the petitioners filed a suit for declaration in O.S.No.15 of 2008 before the Sub-Court, Tharapuram. The suit is for a declaration that the Sale Deed executed in their favour is valid and as such, respondents 1 to 3 are not entitled to partition with respect to the properties covered by those documents.

2. The petitioners have come up with this Petition to transfer the proceedings in O.S.No.15 of 2008 to the file of I Additional District Court, Erode for joint trial along with the final decree application in I.A.No.698 of 2006.

3. The learned counsel for the petitioners contended that the petitioners are now made parties to the proceedings in I.A.No.698 of 2006. According to the learned counsel, in case, the suit in O.S.No.15 of 2008 is transferred to the file of I Additional District Court, Erode, the Court would be in a position to dispose of both the matters.

4. The learned counsel for respondents 1 to 3 contended that preliminary decree was passed on 10.09.1993 and as such, there is no need for directing joint trial of a subsequently initiated civil suit.

5. The factual matrix indicates that the Trial Court passed a preliminary decree on 10.09.1993. The predecessor-in-interest of the petitioners purchased the property by document dated 11.12.1991. Thereafter, the petitioners purchased the property by document dated 14.03.2007. The petitioners are subsequent purchasers. The right should be declared separately in O.S.No.15 of 2008. The petitioners are now parties to the final decree application in I.A.No.698 of 2006. The final decree application is in an advanced stage. There is no question of directing the parties in the final decree application to await the disposal of the suit in O.S.No.15 of 2008. Even if a final decree is passed in I.A.No.698 of 2006, still the suit in O.S.No.15 of 2008 could be decided on merits. I am therefore of the view that there is no question of transferring the suit in O.S.No.15 of 2008 for disposal along with I.A.No.698 of 2006 pending before I Additional District Court, Erode.

6. The learned I Additional District Judge, Erode is directed to dispose of the final decree application in I.A.No.698 of 2006 as expeditiously as possible.

7. The Transfer Civil Miscellaneous Petition is dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

svki

To

1.The Sub-Court, Tharapuram.

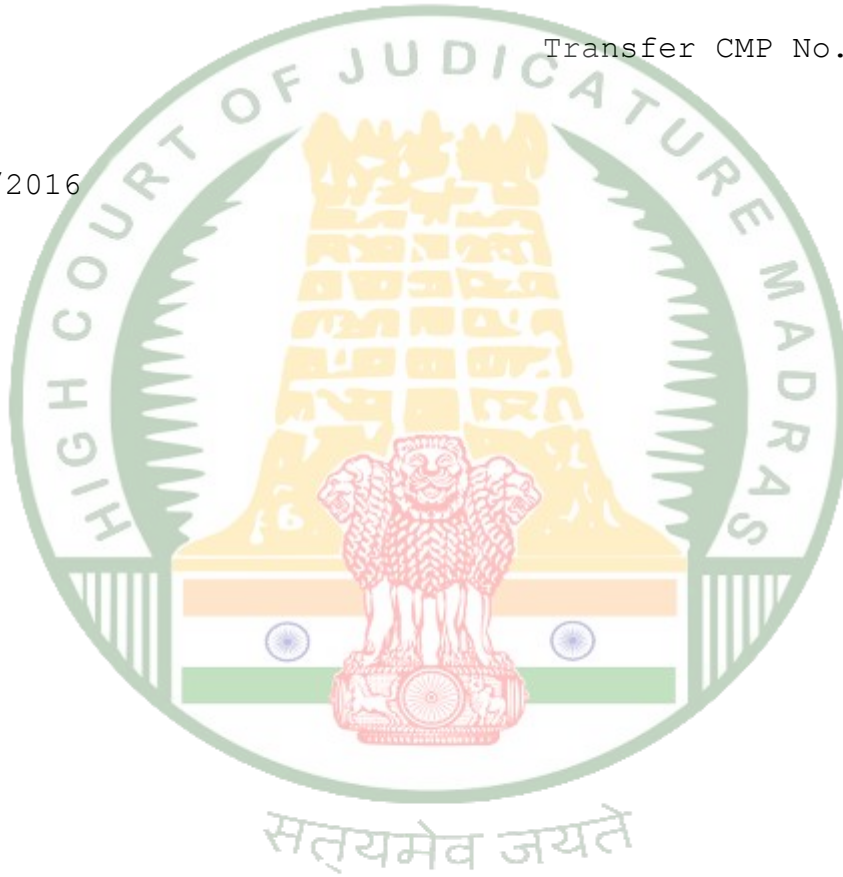
2.The I Additional District Court, Erode.

+lcc to Mr.N.Manokaran, Advocate Sr.68661

+lcc to Mr.M.Sriram, Advocate Sr.68548

Transfer CMP No.623 of 2012

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srg 22/12/2016



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