

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2016

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

Transfer C.M.P.No.200 of 2016

And

C.M.P.No.5581 of 2016

1. P.Kalaiselvi
2. Minoir P.Rithuvarnikha ...Petitioners/Plaintiffs

Versus

1. R.Prabhu
2. P.Ramasamy
3. R.Arukkani
4. The Sub Registrar
Gomangalam Sub Registrar Office
Udumalpet
Tiruppur District ... Respondents/defendants

This Petition filed under Section 24 of C.P.C. praying to withdraw O.S.No. 10 of 2015 on the file of I Additional District Judge, Tiruppur and transfer the same to any other competent Court in the nearby District.

For Petitioners: Mr.N.Manoharan
for Mr.D.Gopal

For Respondents: Mr.T.Chellapandian
for Mr.A.Praveen Kumar

WEB COPY
O R D E R

The petitioners have filed the suit for partition before the First Additional District Judge, Tiruppur in O.S.No. 10 of 2015. In the said suit, the petitioners filed four Interlocutory Applications for various kinds of injunctions. The learned trial Judge dismissed the applications by giving a clear finding that the petitioners have no case on merits. Feeling aggrieved,

the petitioners are before this Court with this petition for transfer on the ground that in case the matter is taken up by the learned I Additional District Judge, Tiruppur, they would not get justice.

2. The learned counsel for the petitioners, by placing reliance on the various observations made by the First Additional District Judge, Tiruppur in the order dated 20.01.2016, contended that no purpose would be served by proceeding with the suit in view of the sweeping observations made by the learned trial Judge.

3. The learned counsel for the respondents on the other hand justified the impugned order and submitted that the findings are all tentative in nature and as such, no prejudice would be caused to the petitioners by facing trial.

4. The petitioners filed the applications for injunctions in I.A.Nos. 89, 90, 894 and 895 of 2015. The petitioners' claim that the properties shown in Schedule 'A' are ancestral in nature. According to the petitioners, the second respondent is having a share in the said properties and as such, being the wife and daughter, they are entitled to a share in the properties.

5. The learned trial Judge virtually granted a decree in favour of the respondents by observing that the petitioners have no right over the suit property. There are certain factual observations made by the learned trial Judge which would go to the root of the matter. During the time of considering the Interlocutory Applications, the learned trial Judge in-fact considered the entire merits of the matter and arrived a clear finding that the petitioners have no right to claim partition of the properties. The learned counsel for the petitioners is therefore perfectly correct in his contention that no purpose would be served by proceeding with the suit before the very same learned trial Judge.

6. There is no dispute that the trial Court is entitled to make certain tentative findings while considering an application for injunction. However, such findings should not go to the root of the matter thereby disentitling the plaintiffs from proving the case.

7. The learned counsel for the petitioners, by placing reliance on a decision of the Hon'ble Supreme Court in Kanaklata Vs. State (NCT of Delhi) & others reported in (2015) 6 SCC 617 submitted that in similar circumstances, the Supreme Court transferred the matter to another Court taking into account the observation made by the trial Court in the earlier interlocutory proceedings.

8. The observations made by the learned trial Judge, as pointed out earlier, would go to the root of the matter. The learned trial Judge virtually dismissed the suit filed by the petitioners. I am therefore of the view that the petitioners are perfectly justified in filing this petition for transfer.

9. In the result, the suit in O.S.No. 10 of 2015 is withdrawn from the file of I Additional District Judge, Tiruppur and is transferred to the file of the Principal District Judge at Tiruppur.

10. The Transfer Civil Miscellaneous Petition is allowed as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The I Additional District Judge, Tiruppur.
2. The Principal District Judge, Tiruppur.

+1cc to Mr.A. Praveenkumar, Advocate, S.R.No.54352

+1cc to M/s. D. Gopal, Advocate, S.R.No.54754

AK(CO)
EU(07/10/2016)

Transfer C.M.P.No.200 of 2016
And
C.M.P.No.5581 of 2016

WEB COPY