

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

Tr.C.M.P.No.684 of 2016

S.Julie : Petitioner/Petitioner of
structor of 3rd Party

versus

1.Mary Francis &
Blampainlally : 1st Respondent/1st Respondent
Petitioner/Decree Holder

2.Stella : 2nd respondents /2nd Respondents
Respondent/JJudge Deptor.

Transfer Petition filed to transfer E.A.No.135 of 2015 in E.P.No.411 of 2015 pending on the file of XII Judge, Court of Small Causes, Chennai, to be tried along with O.S.No.587 of 2014 and O.S.No.491 of 2015 pending on the file of XI Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.T.Velumani

ORDER

This petition is filed to withdraw the proceedings in E.A.No.135 of 2015 in E.P.No.411 of 2015, on the file of XII Judge, Court of Small Causes, Chennai, and transfer the same to the Court of XI Assistant Judge, City Civil Court, Chennai, for disposal along with two other pending suits in O.S.No.587 of 2014 and O.S.No.491 of 2015.

2. Heard the learned counsel for the petitioner.

3. The petitioner filed a civil suit in O.S.No.587 of 2014 before the XI Assistant City Civil Court, Chennai against the first respondent for permanent injunction restraining her from interfering with the peaceful possession and enjoyment of the suit property.

4. The first respondent filed a suit against the Commissioner, Corporation of Chennai, for a decree cancelling

the birth certificate issued to the petitioner.

5. The first respondent filed R.C.O.P.No.53 of 2015 against the second respondent, invoking Section 10(2)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. The Rent Controller passed an order of eviction. Thereafter, the first respondent filed E.P.No.411 of 2015 to execute the eviction order.

6. Before the Executing court, the petitioner filed E.A.No.135 of 2015, contending that she is in possession of the property and her claim should be decided in the execution petition.

7. The petitioner now seeks withdrawal of the execution proceedings from the Executing Court and transfer the same to the file of XI Assistant Judge, Small Causes Court, Chennai, for disposal along with the pending suits.

8. There is absolutely no merit in the contention taken by the petitioner in the transfer petition. The proceedings in R.C.O.P.No.53 of 2015 was initiated by the first respondent against the second respondent on the ground that she kept the rent in arrears wilfully. The Rent controller has not decided the question of title in R.C.O.P.No.53 of 2015. Even if the order in R.C.O.P. No.53 of 2015 is executed against the second respondent, it would not affect the claim of the petitioner in O.S.No.587 of 2014.

9. There are larger issues to be decided in O.S.No.587 of 2014 and O.S.No.491 of 2015. The first respondent took up a contention that the mother of the petitioner was a servant of her brother and after his death, she manipulated records to make it appear as if the petitioner was born to the master. The first respondent contended that the petitioner, in connivance with the officials of the corporation, got her birth recorded in Chennai Corporation. Her father's name was earlier recorded as S.Suresh. The name of the brother of the first respondent is R.Suresh. The first respondent therefore alleged foul play against the petitioner. In any case, those are all matters to be adjudicated by the Trial Court in O.S.No.587 of 2014 and O.S.No.491 of 2015.

10. There is no question of withdrawing the proceedings initiated by the first respondent to execute the order in RCOP No.53 of 2015 on account of the pendency of two suits pending before the XI Assistant Judge, City Civil Court, Chennai. Even after evicting the second respondent, it would be possible for the petitioner to adjudicate her right in the pending suits in O.S.No.587 of 2014 and O.S.No.491 of 2015.

11. The first respondent filed the Rent Control Original Petition and obtained an order of eviction. She should be permitted to enjoy the fruits of the said order. There is no question of keeping the execution petition pending till the disposal of the suits pending before the XI Assistant Judge, City Civil Court, Chennai. I do not find any reason to entertain this petition for transfer.

12. In the upshot, I dismiss the transfer petition. No costs. Consequently, C.M.P.No.17791 of 2016 is also dismissed.

sd/
Assistant Registrar(CS II)

/true copy/

Sub Assistant Registrar

tar

To

1.The XII Judge, Court of Small Causes, Chennai.

2.XI Assistant Judge,
City Civil Court, Chennai.

+1cc to Mr.A.Abdul Ratiman Advocate, SR.No.66215.

सत्यमेव जयते

Tr.C.M.P.No.684 of 2016

PK(CO)
GN(31/01/2017)

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