



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2016

CORAM:

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

Tr.C.M.P(MD)No.398 of 2015

and

MP(MD)No.1 of 2015

Cheralathan : Petitioner

Vs.

1.Anna
2.Senguttuvan
3.Sibi
4.K.P.Sakthivel
5.N.Tamilmani
6.N.Elango
7.N.Palkalaiselvam : Respondents

Prayer: This petition is filed under Section 24 of the Civil Procedure Code, to withdraw the case in O.S.No.267 of 2015 pending on the file of the 2nd Additional Subordinate Court, Trichy and transfer the same to the Principal District Court, Madurai and pass such other orders.

For Petitioner : Mr.Subash Babu
for Mr.S.Thaignarajan
For respondents : Mr.C.Sundara Vadivel

O R D E R

This petition has been filed under Section 24 of the Civil Procedure Code to withdraw the case in O.S.No.267 of 2015 on the file of the II Additional Subordinate Judge, Trichy and transfer the same to the Principal District Court, Madurai, for disposal.

2.Mr.Subash Babu, learned counsel appearing for the petitioner would submit that the suit O.S.No.267 of 2015 filed by the first respondent before the Subordinate Judge, Trichy is the off spring of the earlier suit O.S.No.779 of 1989 filed by the petitioners father namely Samivel against the first respondent's father in the year 1989; that the said Samivel instituted the suit for partition and separate possession before the Subordinate Judge, Trichy and at the instance of the first respondent's father, the suit was transferred to the Principal District Judge, Madurai and renumbered as O.S.No.168 of 2007; that the relief sought for in the present suit is based on the



cause of the action of the earlier suit and therefore, for proper appreciation, both the suits have to be tried by the same Judge.

3.The first respondent filed a detailed counter setting out the allegations made in the plaint and further stated that cause of action for both the suits and the prayer and issues involved in both the suits are quite different and in both the suits, evidences have to be recorded separately, according to the issues framed in the suits and the transfer application is filed with an ulterior motive and prayed for the dismissal of the petition.

4.Mr.C.Sundaravadivel, learned counsel appearing for the first respondent made submissions reiterating the contentions made in the counter affidavit.

5.Heard both sides and perused the materials available on record.

6.It is true that the cause of action, issues and prayer in both the suits are different, however, it is seen that the second suit is filed based on the cause of action of the earlier suit. So, in such view of the matter, this court is of the opinion that both the suits have to be tried by the same Judge simultaneously.

7.In the result, this petition is allowed and the petition in O.S.No.267 of 2015 is ordered to be withdrawn from the file of the II Additional Subordinate Judge, Trichy and transferred to the file of the learned Principal District Judge, Madurai for simultaneous trial along with O.S.No.168 of 2007. The transferor Court is ordered to transmit the entire records to the file of transferee Court within a period of two weeks from the date of receipt of a copy of this order and the transferee Court, after obtaining the records on transfer, is directed to dispose of the suits simultaneously on merits and in accordance with laws as expeditiously as possible. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

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To,

1.The II Additional Subordinate Judge, Trichy.

2.The Principal District Judge, Madurai.

+1CC to Mr.S.Thiagarajan, Advocate Sr.No.34432

GJM/ARK/PV/12.7.16-2p-4c

TrCMP (MD) No.398 of 2015

Dated :01.07.2016