



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.CMP(MD)No.381 of 2016

and

C.M.P(MD)No.7462 of 2016

S.M.K.Abdul Mathaleep

... Petitioner/Objector

vs.

Beer Mohammed Masthan Sabele
Dharaha Kanthuri Dharma Trust,
through its Trustees,

1.NPM Mohammed Ibrahim
2.NPM Beer Mohammed

3.Tamil Nadu Wakf Board
rep. through its Chief Executive Officer,
I.Japher Siras Road,
Vallal Seethakathi Nagar,
Chennai - 1.

... Respondents/Respondents

Petition filed under Section 24 of the Civil Procedure Code, to withdraw the Trust O.P.No.160 of 2009 from the file of District court, Dindigul and to transfer to the file of Principal Sub Court, Dindigul and to try along with Wakf O.P.No.2 of 2015 pending before the said Court and deliver a common order.

For Petitioner : Mr.PT.S.Narendera Vasan
For Respondent : Mr.R.Vijayakumar for R2
Mr.K.K.Senthil for R3

ORDER

The present petition is filed seeking to transfer the Trust O.P.No.160 of 2009 pending before the District court, Dindigul, to the Principal Sub Court, Dindigul, to try along with Wakf O.P.No.2 of 2015 pending before the same Court.

2.The contention of the petitioner is that he is resident of Natham Town and the respondents 1 and 2 filed Trust O.P.No.160 of 2009 before the District court, Dindigul, seeking permission to alienate the schedule properties said in O.P., as it belongs to a private trust created by the respondents' forefathers and deposit



the sale consideration in a Nationalised Bank and to utilize the interest amount for charitable purpose mentioned in the trust deed.

3. The contention of the respondent is that the proceedings in Wakf O.P.No.2 of 2015 was filed under Wakf Act, which is a special Act and the same is to be tried independently under the provisions of the Wakf Act and there is no possibility of joint trial along with Trust O.P.No.160 of 2009.

4. Further, the learned counsel for the respondents contended that the very prayer sought for in the transfer petition is to transfer the O.P.No.160 of 2009 from the District Court, Dindigul, to Sub-Court, Dindigul, which cannot be done under the provisions of the Code of Civil Procedure, because the transfer is sought for from a higher Court to a Subordinate Court, which is against the provisions of Code of Civil Procedure.

5. This Court considered the arguments of learned counsel both for the petitioner and the respondents and the arguments advanced by the learned counsel for the respondents is sound in law and require consideration, in view of the fact that the transfer petition seeking transfer is sought for from the District Court, to Sub-Court, Dindigul, which cannot be ordered.

6. In view of the facts and circumstances of the case and the ground raised by the respondents, this Court is not inclined to consider the petition filed by the petitioner and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar.

To

1) The District Judge, Dindigul.

2) The Principal Subordinate Judge, Dindigul

+1CC to M/S.R.Vijayakumar, Advocate, SR.No. 62658

+1CC to M/S.K.K.Senthil, Advocate, SR.No. 63027

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