

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2017

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.336 of 2017
and C.M.P.Nos.6626 and 9287 of 2017

Sri Patteeswaraswamy Temple
Represented by its Executive Officer
Perur, Coimbatore-641 010.

... Petitioner

Vs.

1.Neelaveni
2.Thirugnanasambandan
3.D.Anuradha
4.D.Chandrasekhar
5.N.Kaliammal
6.G.Sagunthala
7.G.Satish
8.G.Meenakshi
9.N.Varadarajan
10.N.Muralidharan
11.S.Ramanan

12.Coimbatore Property India (P) Ltd.
No.8, Ravakis square
Rahuman sait colony
Opp. to Muthoot finance
Sowripalayam road
Coimbatore-641 045.

... Respondents

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw O.S.No.509 of 2016 pending on the file of the III Additional District Court, Coimbatore and transfer the same to the file of the I Additional District Court, Coimbatore and to try along with O.S.No.574 of 2011 on its file.

For Petitioner : Mrs.Hema Sampath
Senior Counsel for
Ms.R.Meenal

For RR10 to 12 : Mr.AR.L.Sundaresan
Senior Counsel for
Mr.M.Muthappan

O R D E R

This petition is filed to withdraw O.S.No.509 of 2016 pending on the file of the III Additional District Court, Coimbatore and transfer the same to the file of the I Additional District Court, Coimbatore and to try along with O.S.No.574 of 2011 pending on its file.

2. The petitioner is the plaintiff and respondents are the defendants in O.S.No.509 of 2016 on the file of the III Additional District Court, Coimbatore. The petitioner filed suit for declaration that the suit property belongs to the idol of the petitioner's temple and for possession & partition deed, lease deed and Court auction sale are void and for permanent injunction. According to the petitioner, the said property was dedicated absolutely to the temple and there is no provision for the legal heirs of the person, who dedicated the properties to the temple to enjoy excess income from the property for their own. The legal heirs can be in the management of the temple and they do not have any right to alienate or otherwise encumber the suit property. The legal heirs of the person, who dedicated the property are encumbering the property, filing various suits and allowing the suits filed against them to be decided exparte and the properties being sold in Court auction. The respondents 1 to 4, who are the legal heirs of one Dakshinamoorthy have filed O.S.No.574 of 2011 on the file of the I Additional District Court, Coimbatore, against the petitioner and others claiming partition of the suit properties and to allot 4/15th share to them and other reliefs. 11th respondent filed an application to reject the plaint. The said application was dismissed. He filed the civil revision petition challenging the said order of dismissal. This Court by order dated 20.03.2017 at the stage of admission, directed the learned Judge to dispose O.S.No.574 of 2011 within six months from the date of receipt of copy of that order.

3. The learned Senior Counsel appearing for the petitioner submitted that the properties involved in O.S.No.574 of 2011 on the file of the I Additional District Court, Coimbatore and O.S.No.509 of 2016 on the file of the III Additional District Court, Coimbatore, are one and the same and both oral and documentary evidence to be let in are also one and the same.

Only if both the suits are tried together, conflicting judgment being delivered can be avoided and it will avoid multiplicity of proceedings. The suit in O.S.No.509 of 2016 filed by the petitioner is a comprehensive suit and it will also decide the issue in O.S.No.574 of 2011. In the circumstances, the learned Senior Counsel prayed for order of transfer.

4. The learned counsel appearing for the respondents 10 to 12 filed counter affidavit along with vacate stay petition.

5. The learned Senior Counsel appearing for the respondents 10 to 12 submitted that the cause of action for O.S.No.574 of 2011 is different from the cause of action for O.S.No.509 of 2016 and the basis for the relief sought for is also different. O.S.No.574 of 2011 is the earlier suit being filed in the year 2011 and if O.S.No.509 of 2016 is transferred and is to be tried along with the suit in O.S.No.574 of 2011, conclusion of trial will be delayed and the respondents will be prejudiced. The 11th respondent has filed an application to reject the plaint in O.S.No.509 of 2016 and the respondents have advanced arguments and petitioner is taking time and delaying the proceedings. The present civil revision petition is premature, as earlier suit filed by the petitioner for the very same prayer was rejected by the Court on 08.08.2016 in C.R.P.No.4199 of 2015. Hence, he prayed for dismissal of the transfer petition.

6. Heard the learned Senior Counsels appearing for the petitioner and respondents and perused the materials on record.

7. It is not in dispute that the properties in both the suits are one and the same. In O.S.No.574 of 2011, the plaintiffs are claiming partition, whereas in O.S.No.509 of 2016, the petitioner is claiming decree of declaration and possession. Whether the property is dedicated absolutely to the petitioner and whether the property is the absolute property of family members of original owner are the issues to be decided in both the suits. In order to avoid multiplicity of proceedings and conflicting judgments being delivered by two different Courts, I hold that O.S.No.509 of 2016 on the file of the III Additional District Court, Coimbatore, is to be withdrawn and transferred to the file of I Additional District Court, Coimbatore, to be tried along with O.S.No.574 of 2011.

8. In the result, the Transfer Civil Miscellaneous Petition is allowed. It is made clear that on such transfer, the I Additional District Court, Coimbatore, is directed to take up the application in I.A.No.399 of 2017 filed by the 11th respondent for rejection of plaint and to dispose the said I.A.No.399 of 2017 in O.S.No.509 of 2016 at first and pass orders on merits and in accordance with law, within a period of

two months from the date of receipt of the case bundle. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1.I Additional District Court,
Coimbatore.

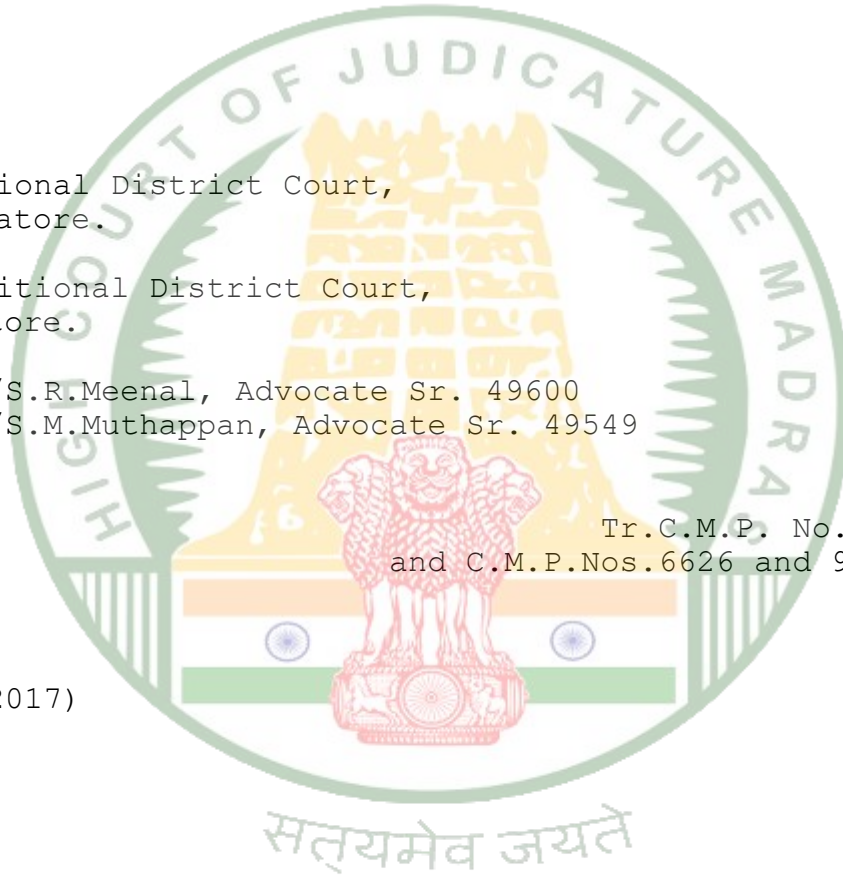
2.III Additional District Court,
Coimbatore.

+1cc to M/S.R.Meenal, Advocate Sr. 49600

+1cc to M/S.M.Muthappan, Advocate Sr. 49549

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