



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :15.11.2017

CORAM :

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THE HONOURABLE MR.JUSTICE S.BASKARAN

Tr.CMP.(MD).No.51 of 2017

and

C.M.P.(MD).No.1269 of 2017

1.Vijayarani
2.K.N.Mahitha

... Petitioners/Petitioners

vs.

K.Palanisamy

... Respondent/Respondent

Prayer: Petition filed under Section 24 of C.P.C to withdraw and transfer the suit in O.S.No.35 of 2013 on the file of the Principal District Court, Karur to the Principal District Court, Erode and to try along with O.S.No.194 of 2013, on the file of the Principal District Court, Erode.

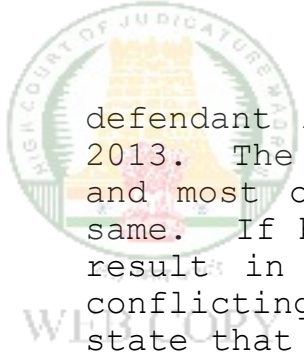
For Petitioner : Mr.A.Arumugam

For Respondent : Mr.C.Prakasam

ORDER

The petitioner has come forward with this petition seeking to transfer O.S.No.35 of 2013, pending on the file of the Principal District Judge, Karur to the file of the Principal District Judge, Erode to try along with O.S.No.194 of 2013, pending therein.

2.The first petitioner is the mother of the second petitioner. The petitioners state that the respondent herein filed O.S.No.35 of 2013 on the file of the Principal District Judge, Karur, seeking recovery of a sum of Rs.12,00,000/- with interest on an equitable mortgage allegedly executed by the petitioners herein. The other suit in O.S.No.194 of 2013 on the file of the Principal District Judge, Erode was filed by the first petitioner herein, her daughter-in-law/wife of late Saravanakumar and the two minor sons of the late Saravanakumar, seeking to set aside the sale deed dated 04.01.2013, executed by the first defendant therein in favour of the second defendant therein and for consequential reliefs. The petitioners further state that the second defendant in O.S.No.194 of 2013 is the son of the plaintiff in O.S.No.35 of 2013. The petitioners also state that the son of the first petitioner Saravana Kumar committed suicide due to the torture exerted by the second



defendant in O.S.No.194 of 2013 and the plaintiff in O.S.No.35 of 2013. The petitioners state that both the suits were interconnected and most of the the witnesses in both the cases are one and the same. If both the suits are tried in two different courts, it will result in miscarriage of justice and there is a possibility of conflicting judgment being pronounced. Further, the petitioners state that the first petitioner being a 64 years old lady, she finds it difficult to travel to the Principal District Court, Karur. Hence, the petitioners seek transfer.

3.On the other hand, opposing the petition, the learned counsel for the respondent contends that the parties in both the suits are different and there is no interconnection between the suits, as alleged by the petitioners herein and the contention of the petitioners is untenable. The learned counsel for the respondent also pointed out that he is not a party in the other suit filed by the petitioners herein, pending on the file of the Principal District Judge, Erode. It is further pointed out that the defendants in O.S.No.194 of 2013 and also the other 3 plaintiffs in the said suit, who are the daughter-in-law and grand children of the 1st petitioner herein are not parties before this court in this petition. The learned counsel for the respondent also pointed out that without impleading them, the plea of the petitioners cannot be entertained. Further, the learned counsel for the respondent also contended that he has filed O.S.No.35 of 2013 on the file of the Principal District Judge, Karur for recovery of loan amount, advanced to the first petitioner herein, on the basis of mortgage executed by her and the respondent also states that the first petitioner herein has executed a promisory note in favour of the respondent herein. It is therefore clear that the suit filed by the respondent herein is based on mortgage created by the deposit of title deed and it is purely based on the mortgage for recovery of money. On the other hand, the suit filed by the petitioners herein on the file of Principal District Judge, Erode in O.S.No.194 of 2013 relates to another property and the relief sought for is to set aside the sale deed executed by the power of attorney of deceased Saravana Kumar, son of the first petitioner in favour of the 2nd defendant in the said suit and for consequential relief of injunction against the defendants in the said suit. It is stated that the second defendant in the said suit is the son of the respondent herein and they are all money lenders and they have created false document to harass the petitioners herein. Admittedly, the parties in both the suits are different persons and the cause of action alleged in both the suits are totally distinct and different and it arose on different dates.

4.In such circumstances, the contention of the petitioners that the suits are interconnected and the evidence to be let in in both the suits is going to be similar and the witnesses to be examined are one and the same cannot be accepted. Further, as rightly contended by the respondent, the parties to the other suit in O.S.No.194 of 2013 are not made parties in the present petition.



On that ground also, the plea of the petitioners cannot be entertained. As stated above, as the suits are filed on different cause of action and for totally different reliefs against different persons, the relief sought for by the petitioners cannot be entertained and this petition has to fail.

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5. In the result, this Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Judge, Karur
2. The Principal District Judge, Erode.

+ 1 CC TO Mr. C. PRAKASAM, ADVOCATE IN SR No. 87500

VS

TE/SV-MMS/SAR-2 : 28/11/2017 : 3P/4C

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