



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2017
(Reserved on 18.09.2017)

WEB COPY

CORAM :
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR.CMP (MD) No.236 of 2016
and
CMP (MD) No.4584 of 2016

P.Gnanaselvi ... Petitioner

vs.

1) P.C.Vimala
2) P.C.Kamala
3) P.C.Balaji
4) P.C.Bharath

... Respondents

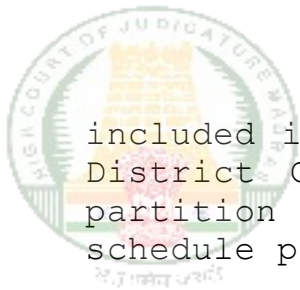
Petition filed under Section 24 of the Civil Procedure Code, to withdraw and transfer O.S.No.338 of 2015 on the file of District Munsif Tambarm and O.S.No.301 of 2015 on the file of District Court Chengalpet to the file of Kanyakumari District Court at Nagercoil and may direct Learned District Judge, Kanyakumari at Nagercoil to try the above suits along with O.S.No.8 of 2016 for the apt adjudication of matters.

For Petitioner : Mr.K.P.Narayanakumar
For R3 : No appearance
For R1, R2 & R4 : No appearance

ORDER

This Transfer Civil Miscellaneous Petition has been filed to withdraw and transfer O.S.No.338 of 2015 on the file of District Munsif, Tambarm and O.S.No.301 of 2015 on the file of District Court, Chengalpet, to the file of District Court, Kanyakumari at Nagercoil and to direct the learned District Judge, Kanyakumari at Nagercoil to try the above suits along with O.S.No.8 of 2016 for the apt adjudication of the matters.

2.Learned counsel for the petitioner would among other things aver that O.S.No.338 of 2015 on the file of District Munsif, Tambarm, has been filed for the relief of permanent injunction restraining the defendants, their men, agents etc., in any manner taking steps to encumber the suit schedule property. O.S.No.301 of 2015 on the file of District Court, Chengalpet, has been filed for partition of plaint schedule properties and also injunction from encumbering the plaint schedule properties. The property in respect of which, the relief is claimed in O.S.No.338 of 2015 is



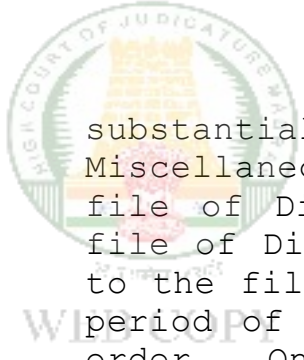
included in O.S.No.301 of 2015. O.S.No.8 of 2016 on the file of District Court, Kanyakumari, has been filed for the relief of partition and separate possession of 2/5th share over the plaint schedule properties and also for permanent injunction.

3.Learned counsel for the petitioner would further submit that the maximum extent of properties scheduled in the plaints in O.S.Nos.301/2015 and 8/2016 are situated in Kanyakumari District and therefore, it is easy to the parties to proceed further, if the Court passes any preliminary decree. It is further contended that in all the suits, the issues and parties are one and the same and therefore, if a joint trial of suits is ordered, it would avoid multiplicity of proceedings and would be convenient for the Court to dispose of the suits at the earliest and also convenient for the parties to give evidence.

4.Heard the learned counsel for the petitioner and perused the materials available on record. Though Mr.I.Prakash Raj filed vakalat for the 3rd respondent, he is not before this Court. Though respondents 1, 2 and 4 were served with notice, there is no appearance on their behalf either in person or through pleader.

5.The plaint in O.S.No.338/2015 reveals that the said suit has been filed for permanent injunction restraining the defendants from encumbering the suit property. The suit property is situated in Saidapet Taluk, Kancheepuram District. Except Item 1 of the suit property which is situated in Saidapet Taluk, Kancheepuram District, items 2 to 4 of the suit property in O.S.No.301/2015 are situated in Agastheeswaram Taluk, Kanyakumari District. In O.S.No.8 of 2016, all the items mentioned in schedule of properties are situated in Agastheeswaram Taluk, Kanyakumari District. Suits in O.S.Nos.301/2015 and 8/2016 are for the relief of partition and permanent injunction and such other reliefs while the suit in O.S.No.338/2015 is for permanent injunction. In the suit for permanent injunction, the plaintiff has to prove his possession by producing documents. However, in the suit for partition, both parties have to appear before the Court and give evidence. Further, the petitioner and the respondents herein are family members. The petitioner is the mother of the respondents. If ultimately in the suits for partition, preliminary decree is passed, it would enable the parties to satisfy the decree since most of the properties are situated in Kanyakumari District. Further, if the suits are tried separately, since the parties and properties are one and the same, that too, two of the suits are for the relief of partition, certainly, it would lead to miscarriage of justice.

6.Therefore, considering the facts and circumstances of the case, this Court is of the view that a joint trial of all the suits has to be ordered to enable the Court below to render



substantial justice. Accordingly, this Transfer Civil Miscellaneous Petition is allowed and O.S.No.338 of 2015 on the file of District Munsif, Tambarm and O.S.No.301 of 2015 on the file of District Court, Chengalpet, are ordered to be transferred to the file of District Court, Kanyakumari at Nagercoil, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the case papers in O.S.Nos.338 and 301 of 2015, the learned District Judge, Kanyakumari at Nagercoil, is directed to conduct a joint trial of suits in O.S.Nos.338 and 301 of 2015 and 8 of 2016 and dispose of the suits by a common order in accordance with law, as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1) The District Munsif,
Tambarm.
- 2) The Principal District Judge,
Chengalpet.
- 3) The Principal District Judge,
Kanyakumari at Nagercoil.

+1cc to Mr.K.P.Narayanakumar, Advocate Sr.No.90919

BALA

VB/SV/MMS/SAR2/11/01/2018/3P/5C

order made in
TR.CMP(MD) No.236 of 2016
04.12.2017