



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Tr.C.M.P(MD)No.589 of 2016

G.Senthamil Selvi

... Petitioner/Defendant

Vs.

N.Soundararajan

... Respondent/Plaintiff

Prayer: Petition filed under Section 24 of Civil Procedure Code to withdraw the suit in O.S.No.486 of 2016 on the file of the Sub Court, Palani and to transfer the same to the Sub Court, Uthamapalayam for conducting joint trial along with the suit in O.S.No.126 of 2016.

For Petitioner : Mr.R.Suriyanarayanan

For Respondent : Mr.M.O.Thevankumar

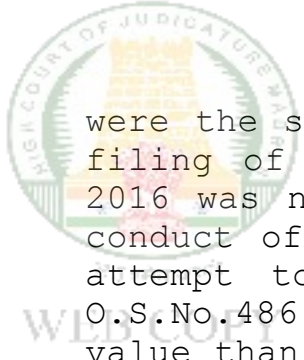
* * * * *

O R D E R

This Transfer Civil Miscellaneous Petition has been filed by the plaintiff in O.S.No.126 of 2016 pending on the file of the District Munsif Court, Uthamapalayam, seeking transfer of another suit filed by the second defendant in O.S.No.126 of 2016, namely O.S.No.486 of 2016 on the file of the Sub Court, Palani.

2. Brief facts are as follows:

2.1. The petitioner herein had filed O.S.No.126 of 2016 for partition and separate possession of her 1/3rd share in the suit properties against her father - Nachimuthu Gounder and her brother - Soundararajan. The said Soundararajan who is the second defendant in the said suit filed Tr.C.M.P.No.436 of 2016 seeking transfer of the suit in O.S.No.126 of 2016 to the file of the District Munsif Court, Oddanchatram, contending that the majority of the properties are situate at Oddanchatram and only one property is situate at Uthamapalayam. The said Tr.C.M.P(MD)No.436 of 2016 came to be dismissed by this Court on 18.10.2016. The said order has not been challenged. Ingeniously, the said Soundararajan, petitioner in Tr.C.M.P(MD)No.436 of 2016 filed another suit in O.S.No.486 of 2016 on the file of the Sub Court, Palani, within three days from the date of dismissal of Tr.C.M.P(MD)No.436 of 2016 by this Court, seeking declaration of title and permanent injunction in respect of two items of properties which



were the subject matter of the suit in O.S.No.126 of 2016. Either filing of O.S.No.126 of 2016 or filing of Tr.C.M.P(MD)No.436 of 2016 was not disclosed in the plaint in O.S.No.486 of 2016. This conduct of the plaintiff in O.S.No.486 of 2016 is nothing but an attempt to hoodwink the Court. Calculatedly, the plaintiff in O.S.No.486 of 2016 has chosen to value the properties at higher value than the value given in the partition suit and had filed the suit before the Sub Court, Palani.

3. In these circumstances, the plaintiff in O.S.No.126 of 2016 is before this Court seeking transfer of O.S.No.486 of 2016 to the file of the Sub Court, Uthamapalayam.

4. The prayer in this petition reads as follows:

"Therefore, it is humbly prayed that this Honourable Court may be pleased to withdraw the suit in O.S.No.486/2016 on the file of the Sub Judge, Palani and to transfer the same to Sub Judge, Uthamapalayam, for conducting the joint trial along with the suit in O.S.No.126/2016 on its file and thus render justice."

5. Since O.S.No.126 of 2016 is pending on the file of the District Munsif Court, Uthamapalayam, there cannot be a joint trial without transferring O.S.No.126 of 2016 also to the file of the Sub Court, Uthamapalayam. However, taking note of the conduct of the plaintiff in O.S.No.486 of 2016, I deem it fit to withdraw O.S.No.486 of 2016 from the file of the Sub Court, Palani and transfer the same to the Sub Court, Uthamapalayam. The suit in O.S.No.126 of 2016 is a suit for partition and O.S.No.486 of 2016 is a suit for declaration of title and injunction. The properties which are the subject matter of O.S.No.486 of 2016, are also the subject matter of O.S.No.126 of 2016. If these suits are allowed to go on in different Courts, there is a possibility of conflicting judgments. Therefore, exercising my jurisdiction under Article 227 of the Constitution of India, O.S.No.126 of 2016 is withdrawn from the file of the District Munsif Court, Uthamapalayam and transferred to the file of the Sub Court, Uthamapalayam, to be tried along with O.S.No.486 of 2016 which has been transferred to the file of the Sub Court, Uthamapalayam, from the file of the Sub Court, Palani.

6. Accordingly, this Transfer Civil Miscellaneous Petition is allowed as above. The Sub Court, Palani, is directed to despatch the papers in O.S.No.486 of 2016 to the file of the Sub Court, Uthamapalayam within a period of two weeks from the date of receipt of a copy of this order. The District Munsif Court, Uthamapalayam, is directed to despatch the papers in O.S.No.126 of 2016 to the file of the Sub Court, Uthamapalayam, within a period of two weeks from the date of receipt of a copy of this order.



7. Registry is directed to communicate a copy of this order to all the three Courts, namely, Sub Court, Palani; Sub Court, Uthamapalayam and District Munsif Court, Uthamapalayam. The Sub Court, Uthamapalayam, shall issue notice to the parties and proceed with the same without being influenced by any of the observations made in this order.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The Sub Court, Palani.

2.The Sub Court, Uthamapalayam.

3.The District Munsif Court, Uthamapalayam.

+1cc to Mr.R.Suriyanarayanan, Advocate Sr.No.61153

RSB

VB/MR/SAR1/30.06.2017/3P/5C

Tr.C.M.P(MD)No.589 of 2016
20.06.2017