

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 12TH DAY OF MARCH 2018

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

A.Nos.1451 and 1452 of 2018
in
C.S.No.992 of 2016

C.S.No.992 of 2016

C.R.Rajkumar
'Meenakshi '
No.7/4,Sir P.S.Sivaswamy Road,
Mylapore, Chennai 600 004. ..Plaintiff

Vs

1.Mrs.Shashikala Vamanan
SARAYU Old No.24, Alagesan
Road Vedachalam Nagar,
Chengalpattu 603 001

2.Mrs.Kamini Kumar,
2,Clairtrell,UPH -1 Toronto
Ontario Canada M2N7H5 ...Defendants

A.Nos.1451 and 1452 of 2018

C.R.Rajkumar
'Meenakshi '
No.7/4,Sir P.S.Sivaswamy Road,
Mylapore, Chennai 600 004. ..Applicant/Petitioner

Vs.

1.Mrs.Shashikala Vamanan
SARAYU Old No.24, Alagesan
Road Vedachalam Nagar,
Chengalpattu 603 001

2.Mrs.Kamini Kumar,
2,Clairtrell,UPH -1 Toronto
Ontario Canada M2N7H5 ...Respondents/Defendants

A.Nos.1451 and 1452 of 2018

Applications praying that this Hon'ble Court be pleased to stay the proceedings in OS.No.92 of 2016 from the file of the Learned District Munsif Kodaikanal pending disposal of this OP for transfer of OS.No.92 of 2016 to be tried along with C.S.No.992 of 2016 pending in this Hon'ble Court.

Applications praying that this Hon'ble Court be pleased to withdraw OS No.92 of 2016 from the file of the Learned District Munsif Kodaikanal and transfer the same to the Original Side of this Hon'ble Court to be tried along with. CS.No.992 of 2016 pending in this Hon'ble Court.

This applications coming on this day before this court for hearing the court made the following order:

A.No.1451 of 2018 has been filed by the Plaintiff in CS.No.992 of 2016, seeking to stay the proceedings in OS.No.92 of 2016 on the file of the District Munsif, Kodaikanal, pending the application to transfer the suit in OS.No.92 of 2016 on the file of the District Munsif Court, Kodaikanal. A.No.1452 of 2018 has been filed by the Plaintiff, seeking to withdraw OS.No.92 of 2016 from the file of the District Munsif, Kodaikanal and transfer the same to the file of this Court to be tried along with CS.No.992 of 2016.

2. CS.No.992 of 2016 had been filed by the Plaintiff, C.R.Rajkumar against the Defendants, Shashikala Vamanan and Kamini Kumar, who are his sisters. The father C.R.Ramakrishnan expired on 11.9.2009 and he was said to have executed three original Wills dated 4.4.2007. These

Wills were the subject matter of CS.No.510 of 2016. Their mother, Sharadha Ramakrishnan was also said to have executed three original Wills, dated 4.4.2007. The Plaintiff claims that he is seriously prejudiced by both the Wills. He had therefore filed CS.No.992 of 2016, seeking the following reliefs:-

- a)for declaration that the alleged Wills dated 4.4.2007 and 31.8.2013 that are said to have been executed by the Plaintiff's late mother Sharadha Ramakrishnan having been brought about under suspicious circumstances and/or under the undue influence of the Defendants, are null and void and unenforceable.
- b)for declaration that the settlement deed, dated 16.04.2013 registered as Document No.1102 of 2013, that is alleged to have been executed by late Sharadha Ramakrishnan in favour of the Defendants having been brought about by undue influence, is illegal, void abinitio and not binding on the Plaintiff.
- c)for mandatory injunction directing the Defendants to produce the originals of the Wills dated 4.4.2007 and 31.8.2013 that are alleged to have been executed by late Sharadha Ramakrishnan.
- d)for direction to the Defendants to render true and proper accounts of the estate of late Sharadha Ramakrishnan from the date of her demise until the date the said estate is actually divided equally between the parties.
- e)for direction to the Defendants to pay costs of the suit.

3. The Schedule of property in CS.No.992 of 2016

had been given as follows:-

"Schedule A:- Unregistered Will dated, 4.4.2007 alleged to have been executed by Sharadha Ramakrishnan, wife of late C.R.Ramakrishnan.

Schedule B:- Registered Will dated 31.08.2013 of Sharadha Ramakrishnan, wife of late

C.R.Ramakrishnan, registered as Document No.96 of 2013 in the Office of the Sub Registrar, Mylapore.

Schedule C:- Settlement deed, dated 16.04.2013, alleged to have been executed by late Sharadha Ramakrishnan, wife of late C.R.Ramakrishnan, in favour of Sashikala Vamanan and Kamini Kumar, registered as Document No.1102 of 2013 in the Office of the Sub Registrar, Mylapore."

4. Simultaneously, the Plaintiff appears to have filed CS.No.92 of 2016 in the District Munsif Court, Kodaikanal, as against the very same Defendants, namely, his sisters. In the said suit, the reliefs which he had asked are as follows:-

- a)for declaration that the settlement deed dated 13.06.2015 registered as Document No.1202 of 2013 alleged to have been executed by the Plaintiff's mother in favour of the 1st Defendant is null and void, illegal and not binding on the Plaintiff.
- b)for declaration that the alleged settlement deed dated 14.06.2013, registered as Document No.1203 of 2013, alleged to have been executed by the Plaintiff's mother in favour of the 2nd Defendant is null and void, illegal and not binding on the Plaintiff.
- c)for permanent injunction, restraining the Defendants and their men from in any manner encumbering or alienating the plaint Schedule properties to any person.
- d)for a direction to the Defendants to pay costs of the suit.

5. In CS.No.92 of 2016, the Schedule of properties had been given as follows:-

"Item 1:- All that piece and parcel of land together with the buildings erected thereon and known as KAVERI situated on Observatory Road Upper Lake Road in the Town of Kodaikanal

Settlement in the Taluk of Kodaikanal in the Collectorate of Dindugal being in the registration District of Dindugal and registration sub District of Kodaikanal, forming part of Survey No.101C, present TS.No.1, Ward B, Block 37 as per Patta, bearing No.FH 258, bounded on the

North by : Observatory Road
 South by : Upper Lake Road
 East by : Observatory Road
 West by : Bungalow 'Fircot' belonging to Mr.C.S.Loganathan.

Containing by admeasurements about 46 cents or 18.5 Ares.

"Item 2:- All that piece and parcel of vacant land, measuring about 27 cents, bearing Plot No.8, comprised in Re.S Ward B, Block No.11, T.S.No.3/1, now sub divided into T.S.No.3/1A situated at Fairy Falls Road, Kodaikanal Town and Taluk, Dindigul District in the lay out commonly known as ENNAR ENCLAVE WITHIN Neela Estate, bearing layout Road, bounded on the

North by : Plot No.7
 South by : Plot No.9
 East by : 23 feet wide layout road
 West by : Block No.10, TS.No.6/13 (Part)

containing by admeasurements about 27 cents, situated within the registration District of Dindigul and registration Sub District of Kodaikanal."

6. Claiming that the parties in both the suits are one and same and the issues will also be the same, these applications have been filed, seeking to transfer CS.No.92 of 2016 to the file of this Court, and pending transfer of the said suit, to stay all further proceedings.

7. A counter affidavit had been filed on behalf of the Defendants. It had been stated that CS.No.992 of 2016 had been filed only after OP.No.802 of 2016 had been filed, seeking Letters of Administration with respect to

the Will of C.R.Ramakrishnan. Subsequently, OP.No.27 of 2018 had also been filed, seeking Letters of Administration with respect to the Will of Sharadha Ramakrishnan. Both the Original Petitions are pending before this Court. It has been stated that both the suits are parallel in nature and the Applicant had chosen to file a separate suit before the District Munsif Court at Kodaikanal in respect of the two properties. The Plaintiff had deliberately filed two separate suits only on the ground that they cannot be clubbed together and thereafter, filing these applications for transfer lacks bona fide. It has been stated that the properties are different and are within the different court jurisdictions. The main issue is with respect to the Wills executed by the parents of the parties. The cause of action for both the suits are totally different. It has been stated that the applications must be dismissed.

8. I have carefully considered the rival arguments.

9. The first relief sought in CS.No.992 of 2016 is with respect to declaration that the Wills said to have been executed by the mother, Sharadha Ramakrishnan had been brought under suspicious circumstances. Unless the Will is brought before this Court to be propounded in a manner known law, the suit seeking declaration of the above nature cannot be maintained. The Defendants in their counter have stated that they have filed the Original Petition, seeking

Letters of Administration. It is for the Plaintiff if he chooses to contest the same.

10. The other relief in the suit is for declaration of a settlement deed dated 16.4.2013 registered as Document No. 1102 of 2013 as null and void. Unfortunately, in the Schedule to the plaint, the properties have not been described. The suit in Kodaikanal is with respect to separate properties and the reliefs sought therein are with respect to entirely different settlement deeds, dated 13.6.2013, registered as Document No. 1202 of 2013 and 14.6.2013, registered as Document No. 1203 of 2013 and to declare the same as null and void.

11. The Plaintiff had verified OS.No.92 of 2016 on 16.12.2016 and he had verified CS.No.992 of 2016 on 7.12.2016. The Plaintiff had consciously chosen to file two separate suits. He thereafter cannot claim innocence and seek indulgence from this Court. Having chosen the forum in which he has to challenge the settlement deeds, the Plaintiff after a considerable period of time cannot turn around and seek a transfer order from this Court. I see no bona fide in the representations made. The Plaintiff has also an opportunity to contest the Letters of Administration in the Original Petition said to have been filed by the Defendants.

12. The nature of proof in the three settlement deeds are totally different. The properties are totally different. The issues would be totally different. The

issues in the Court at Kodaikanal will revolve around the circumstances surrounding the settlement deeds challenged there and the issues before this Court would revolve around the settlement deeds challenged in the said suit. Moreover, the first relief sought in the suit filed in CS.No.992 of 2016 itself is also strangely worded. The Plaintiff could have filed a comprehensive suit, but had chosen to drag the Defendants from place to place.

13. For all these reasons, I find no justification in transferring the suit in the Court at Kodaikanal to the file of this Court and consequently, to stay the proceedings at Kodaikanal. Accordingly, these applications are dismissed. No costs.

Sd/.C.V.K.J
12.03.2018

//Certified to be a true copy//

Dated this the 12th day of March 2018.

TE/13/03/2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.