

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.1040 of 2017
and C.M.P.No.21173 of 2017

1.E.Rani
2.M.Jayachithra
3.E.Jawahar

... Petitioners

Vs.

1.E.Kuber
2.E.Gajendran

... Respondents

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw the suit in O.S.No.192 of 2013 pending on the file of Additional Sub Court, Tindivanam and transfer the same to the file of II Additional City Civil Court, Chennai, to be tried along with suit in O.S.No.5074 of 2013 pending on its file.

For Petitioners : Mr.P.Satheesh Kumar

For Respondents : Ms.Srividhya Aravindan
for Mr.M.Aravindan

O R D E R

This petition is filed to withdraw the suit in O.S.No.192 of 2013 pending on the file of Additional Sub Court, Tindivanam and transfer the same to the file of II Additional City Civil Court, Chennai, to be tried along with suit in O.S.No.5074 of 2013 pending on its file.

2.The petitioners are defendants 1, 2 and 4, first respondent is the plaintiff and second respondent is third defendant in O.S.No.192 of 2013 on the file of the Additional Sub Court, Tindivanam. The first respondent filed the said suit for partition and separate possession of two properties situated in Tindivanam Town. The petitioners filed written statement and are contesting the suit. Trial commenced. The evidence on behalf of the first respondent is completed and suit is posted for petitioners' side evidence. The second respondent was set

exparte in the suit. The first respondent also filed another suit, O.S.No.5074 of 2013 on the file of the II Additional City Civil Court, Chennai for partition and separate possession of two properties situated in Chennai. The petitioners filed written statement and are contesting the suit. The suit is posted for further evidence on behalf of the first respondent. The first respondent filed both the suits, claiming that the suit properties belong to his father.

3. According to the learned counsel for the petitioners, the issue involved in both the cases are one and the same. Evidence to be let in is also the same. All the parties are residing in Chennai. The first respondent is 70 years old and it will be difficult for him to attend the Court at Tindivanam. For convenience of the parties and to avoid multiplicity of proceedings, the petitioners have come out with the present Transfer Civil Miscellaneous Petition to withdraw the suit in O.S.No.192 of 2013 pending on the file of Additional Sub Court, Tindivanam and transfer the same to the file of II Additional City Civil Court, Chennai, to be tried along with Suit in O.S.No.5074 of 2013 pending on its file.

4. The learned counsel for the first respondent filed counter affidavit and contended that evidence has been completed in O.S.No.192 of 2013. The suit O.S.No.5074 of 2013 is posted for further evidence of the first respondent. The petitioners have come out with the present Transfer Civil Miscellaneous Petition only to drag on the proceedings and prayed for dismissal of the Transfer Civil Miscellaneous Petition. The learned counsel for the respondent also submitted that second respondent remained exparte in both the suits and hence, notice to the second respondent is dispensed with.

5. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

6. It is not in dispute that first respondent filed both the suits viz., O.S.Nos.192 and 5074 of 2013 for partition in respect of the properties situated in Tindivanam and Chennai respectively, claiming that all the properties belong to his father and he is entitled for a share. The contention of the learned counsel for the petitioners that issue and evidence to be let in in both the suits is common and all the parties are residing in Chennai and therefore, the suit in O.S.No.192 of 2013 pending on the file of the Additional Sub Court, Tindivanam, must be transferred to II Additional City Civil Court, Chennai, to be tried along with O.S.No.5074 of 2013, has considerable force. The objection of the learned counsel for the first respondent that petitioners have come out with the present application belatedly and only to drag on the proceedings is not

a valid ground for rejecting the Transfer Civil Miscellaneous Petition.

7.Taking into consideration both the suits are for partition of the properties belonging to the father of the first respondent and in order to avoid conflicting judgments and multiplicity of proceedings, in the interest of justice, the suit in O.S.No.192 of 2013 is ordered to be withdrawn from the file of the Additional Sub Court, Tindivanam and transferred to the file of the II Additional City Civil Court, Chennai, to be tried along with O.S.No.5074 of 2013 pending on its file. The learned Additional Subordinate Judge, Tindivanam is directed to transmit all the records pertaining to O.S.No.192 of 2013 to the file of the II Additional City Civil Court, Chennai within a period of two weeks from the date of receipt of a copy of this order.

8.Accordingly, this Transfer Civil Miscellaneous Petition is ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Additional Subordinate Judge, Tindivanam.

2.The Judge,
II Additional City Civil Court,
Chennai.

+1cc to Mr.P.Satheesh Kumar, Advocate, S.R.No.52059

+1cc to Mr.M.Aravindan, Advocate, S.R.No.51645

+1cc to Mr.M.Aravindan, Advocate, S.R.No.51645(27/09/2018)

Tr.C.M.P. No.1040 of 2017
and C.M.P.No.21173 of 2017

RK(CO)
GSP(10/09/2018)