

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. Nos.218 and 225 of 2017
and C.M.P.Nos.3983 and 3990 of 2017

Liyakath Ali Jinnah

... Petitioner in
both Tr.C.M.Ps.

Vs.

1. C.K.Geevar

... 1st Respondent

in Tr.C.M.P.No.218/2017 &

Sole Respondent in Tr.Cmp.225 of 2017

2. M/s.Vamana Auctioneers,
O.S. Building,
Room No.137, 1st Floor,
Old No.17, New No.1,
EK Guru Street, Periamet,
Chennai 600 003.

... 2nd Respondent
in Tr.C.M.P.No.218/2017

COMMON PRAYER:-

Petitions have been filed under Section 24 of C.P.C., to withdraw the suits in O.S.No.6565 of 2005 pending on the file of the XVI Assistant City Civil Court, Chennai and O.S.No.292 of 2010 pending on the file of the District Munsif Court, Poonamallee and transfer the same to the file of the Principal District Court, Tiruvallur to be tried along with the O.S.No.148 of 2014.

For Petitioner : Mr.P.Chandrasekar

For R1 : Mr.T.N.Suresh
(in both C.R.Ps)

For R2 : No appearance
(in Tr.C.M.P.No.218/2017)

C O M M O N O R D E R

These petitions are filed to withdraw the suits in O.S.No.6565 of 2005 pending on the file of the XVI Assistant City Civil Court, Chennai and O.S.No.292 of 2010 pending on the file of the District Munsif Court, Poonamallee and transfer the same to the file of the Principal District Court, Tiruvallur to be tried along with the O.S.No.148 of 2014.

2.The issues and the parties involved in both the Transfer Civil Miscellaneous Petitions are interlinked and therefore, they are disposed of by this common order.

3.The petitioner is the plaintiff and respondents are the defendants in O.S.No.6565 of 2005 on the file of the XVI Assistant City Civil Court, Chennai. The petitioner filed the said suit for injunction restraining the respondents from selling the mortgaged property on the date of auction of 07.10.2005 or any other date in any way selling or dealing with the suit schedule property either by public auction or private sale, by itself or through its appointed or employed agents or servants or other wise pending disposal of the above suit and for a permanent injunction against the respondents herein from bringing the schedule mentioned property to auction. The said suit is pending on the file of the XVI Assistant City Civil Court, Chennai. O.S.No.292 of 2010 has been filed by the petitioner against the first respondent for redemption of mortgage and for permanent injunction restraining the first respondent from in any way interfering with the peaceful possession and enjoyment of the suit schedule property. The same is pending on the file of the District Munsif Court, Poonamallee. The first respondent filed O.S.No.148 of 2014 against the petitioner for recovery of money based on the mortgage. The said suit is pending on the file of the Principal District Court, Tiruvallur.

4.The petitioner has filed present two Transfer Civil Miscellaneous Petitions for transferring the suits in O.S.No.6565 of 2005 pending on the file of the XVI Assistant City Civil Court, Chennai and O.S.No.292 of 2010 pending on the file of the District Munsif Court, Poonamallee to the file of the Principal District Court, Tiruvallur to be tried along with the O.S.No.148 of 2014. The learned counsel for the petitioner contended that property involved in all the three suits is one and the same and to avoid conflicting judgments, all the three suits must be jointly tried.

5.When the matter is taken up for hearing, the learned counsel for the first respondent submitted that in O.S.No.6565 of 2005, already trial commenced and concluded in the year 2009.

In view of the pendency of the Transfer Civil Miscellaneous Petition, the arguments were not heard and judgment was not delivered. He also stated that since trial has been completed in the suit, there cannot be joint trial along with other suits.

6. Heard the learned counsel for the petitioner as well as the first respondent and perused the materials available on record.

7. The learned counsel for the respondent has no objection for transferring all the three suits to be heard by the same Judge. But he contended that already trial commenced and concluded and O.S.No.6565 of 2005 is pending for arguments.

8. From the materials available on record, it is seen that the property involved in all the three suits are one and the same. Except auctioneer, parties are also one and the same. The learned counsel for the respondents is not disputing the fact that parties and properties are one and the same. In view of the above fact, both the Transfer Civil Miscellaneous Petitions are disposed of and O.S.No.6565 of 2005 is ordered to be withdrawn from the file of the XVI Assistant City Civil Court, Chennai and transferred to the file of the Principal District Court, Tiruvallur, to be heard separately. The O.S.No.292 of 2010 is withdrawn from the file of the District Munsif Court, Poonamallee and transferred to the file of the Principal District Court, Tiruvallur to be heard along with O.S.No.148 of 2014. The learned XVI Assistant City Civil Judge, Poonamallee and learned District Munsif, Poonamallee are respectively directed to transmit all the records pertaining to O.S.Nos.6565 of 2005 and 292 of 2010 to the file of the Principal District Court, Tiruvallur within a period of two weeks from the date of receipt of a copy of this order.

9. With the above directions, both the Transfer Civil Miscellaneous Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gsa
To

1. The Judge,
XVI Assistant City Civil Court,
Chennai.

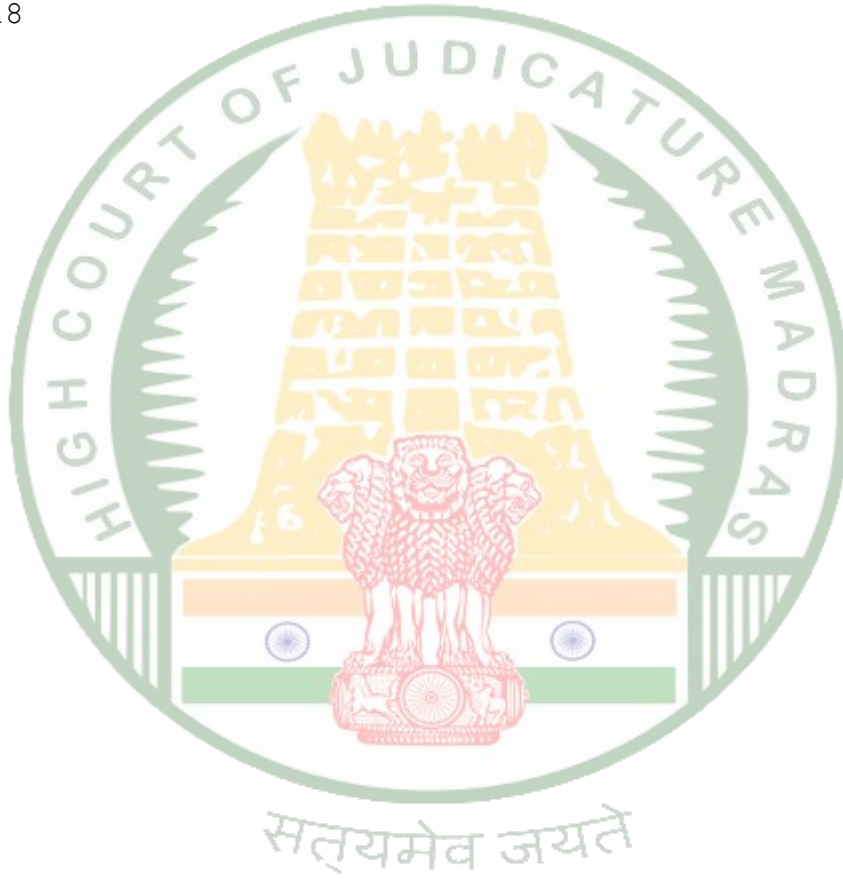
2. The District Munsif,
Poonamallee.

3. The Principal District Judge,
Tiruvallur.

+1cc to Mr.T.N.Suresh, Advocate, S.R.No.26070

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KJ(CO)
CS/11/05/18



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