

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P.Nos.42 to 44 of 2017

and C.M.P.Nos.931 to 933 of 2017

Narayanan

... Petitioner in all
the 3 Tr.CMPs.

Vs.

- 1.Jayalakshmi
- 2.Lakshmi
- 3.Shagunthala
- 4.Deivamani
- 5.Balamurugan
- 6.Senthilvel
- 7.Shanmugavel
- 8.Shanthi
- 9.Sankaralingam
- 10.Aadhilingam
- 11.Boomilingam
- 12.Jambulingam
- 13.Sundaram
- 14.Ganesan

... Respondents
in Tr.C.M.P.No.42 of 2017

- 1.Aadhilingam
- 2.Boomilingam
- 3.Sankaralingam
- 4.Jambulingam

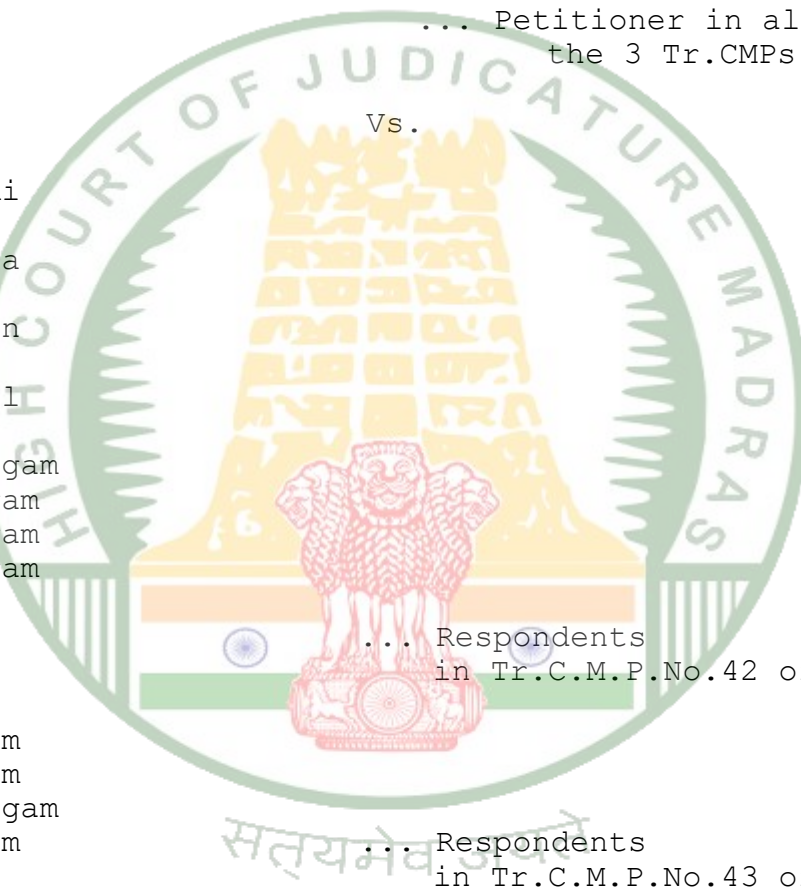
... Respondents
in Tr.C.M.P.No.43 of 2017

Mahalingam (died)

- 1.Aadhilingam
- 2.Boomilingam
- 3.Sankaralingam
- 4.Jambulingam

Muthulakshmi (died)

- 5.Jayalakshmi
- 6.Lakshmi



WEB COPY

7.Sundaram
8.Sakunthala

... Respondents
in Tr.C.M.P.No.44 of 2017

Prayer in Tr.C.M.P.No.42 of 2017 :- Petition is filed under Section 24 of C.P.C., to withdraw O.S.No.30 of 2014 pending on the file of the Principal District Court, Villupuram and transfer the same to the file of the Additional District Court, Tindivanam and try along with O.S.No.171 of 2013 and E.P.No.278 of 2011 in O.S.No.102 of 1994 pending on the file of the Principal Subordinate Court, Tindivanam.

Prayer in Tr.C.M.P.No.43 of 2017 :- Petition is filed under Section 24 of C.P.C., to withdraw O.S.No.171 of 2013 pending on the file of the Principal Subordinate Court, Tindivanam and transfer the same to the file of the Additional District Court, Tindivanam and try along with O.S.No.30 of 2014 pending on the file of the Principal District Court, Villupuram and E.P.No.278 of 2011 in O.S.No.102 of 1994 pending on the file of the Principal Subordinate Court, Tindivanam.

Prayer in Tr.C.M.P.No.44 of 2017 :- Petition is filed under Section 24 of C.P.C., to withdraw E.P.No.278 of 2011 in O.S.No.102 of 1994 pending on the file of the Principal Subordinate Court, Tindivanam and transfer the same to the file of the Additional District Court, Tindivanam and try along with O.S.No.30 of 2014 pending on the file of the Principal District Court, Villupuram and O.S.No.171 of 2013 pending on the file of the Principal Subordinate Court, Tindivanam.

In Tr.CMP.Nos.42 to 44 of 2017
For Petitioners : Mr.D.Ravichander
In Tr.CMP.No.42 of 2017

For R1 to R9, R13
and R14 : Not ready in notice

For R10 to R12 : Mr.A.Arasu Ganesan
Mr.A.Rajeev

In Tr.CMP.No.43 of 2017

For R1, R2 & R4 : Mr.A.Arasu Ganesan
Mr.A.Rajeev

For R3 : Not ready in notice

In Tr.CMP.No.44 of 2017

For R1, R2 & R4 : Mr.A.Arasu Ganesan
For R3, R5 to R8 : Not ready in notice

C O M M O N O R D E R

Tr.C.M.P.No.42 of 2017 is filed to withdraw O.S.No.30 of 2014 pending on the file of the Principal District Court, Villupuram and transfer the same to the file of the Additional District Court, Tindivanam and try along with O.S.No.171 of 2013 and E.P.No.278 of 2011 in O.S.No.102 of 1994 pending on the file of the Principal Subordinate Court, Tindivanam.

Tr.C.M.P.No.43 of 2017 is filed to withdraw O.S.No.171 of 2013 pending on the file of the Principal Subordinate Court, Tindivanam and transfer the same to the file of the Additional District Court, Tindivanam and try along with O.S.No.30 of 2014 pending on the file of the Principal District Court, Villupuram and E.P.No.278 of 2011 in O.S.No.102 of 1994 pending on the file of the Principal Subordinate Court, Tindivanam.

Tr.C.M.P.No.44 of 2017 is filed to withdraw E.P.No.278 of 2011 in O.S.No.102 of 1994 pending on the file of the Principal Subordinate Court, Tindivanam and transfer the same to the file of the Additional District Court, Tindivanam and try along with O.S.No.30 of 2014 pending on the file of the Principal District Court, Villupuram and O.S.No.171 of 2013 pending on the file of the Principal Subordinate Court, Tindivanam.

2. According to the petitioner, he has filed O.S.No.102 of 1994 on the file of the Subordinate Court, Tindivanam against one Mahalingam and the respondents in Tr.C.M.P.No.44 of 2017 for specific performance of agreement of sale. Pending suit, the said Mahalingam died and his legal heirs were impleaded as defendants. After contest, the suit was decreed on 30.03.2007 without cost. Challenging the said judgment and decree dated 30.03.2007, the respondents in Tr.C.M.P.No.44 of 2017 filed A.S.No.28 of 2007 on the file of the Principal District Court, Villupuram. Challenging the portion of the decree dated 30.03.2007 not granting cost to the petitioner, the petitioner filed A.S.No.27 of 2007 on the file of the Principal District Court, Villupuram. The Appellate Court allowed A.S.No.27 of 2007 filed by the petitioner and dismissed A.S.No.28 of 2007 filed by the respondents. The judgment debtors filed S.A.Nos.624 and 625 of 2009 before this Court and both the Second Appeals were dismissed by this Court on 28.09.2011. Challenging the same, S.L.Ps. filed by the respondents in S.L.P.Nos.8109 and 8110 of 2012 were also dismissed and judgment and decree made in O.S.No.102 of 1994 has become final.

3.The petitioner filed E.P.No.24 of 2009 for execution of the sale deed and the sale deed was executed in his favour. The petitioner filed E.P.No.278 of 2011 on the file of the Principal

Subordinate Court, Tindivanam, for delivery of property. In the said E.P.No.278 of 2011, the legal heirs of the deceased Mahalingam filed E.A.No.268 of 2012 and other legal heirs filed E.A.No.50 of 2016 under Section 47 CPC to declare the judgment made in O.S.No.102 of 1994 as null and void. The petitioner has contested both the E.As. and while the E.As are pending, the respondents viz., Adhilingam and Boomilingam filed O.S.No.171 of 2013 on the file of the Principal Subordinate Court, Tindivanam, to declare the judgment and decree made in O.S.No.102 of 1994 as null and void and for partition claiming 4/9th share in the suit properties. The petitioner was arrayed as first defendant in the said suit and he filed written statement. The respondents 1 to 8 in Tr.C.M.P.No.42 of 2017 filed O.S.No.30 of 2014 on the file of the Principal District Court, Villupuram, for partition claiming 4/9th share in the suit properties.

4. According to the petitioner, the properties and issues involved in all the proceedings are one and the same and joint trial is necessary, in order to avoid conflicting decisions. The petitioner is a senior citizen and he is residing in Chennai and the Court at Tindivanam is nearer. The distance between Villupuram and Tindivanam is more than 40 kilometers and due to his age, he is not in a position to attend the Court at Villupuram and prayed for joint trial of all the proceedings before the Additional District Court, Tindivanam. In the circumstances, the petitioner has come out with the present three transfer petitions to transfer O.S.No.30 of 2014 from the file of the Principal District Court, Villupuram and O.S.No.171 of 2013 & E.P.No.278 of 2011 in O.S.No.102 of 1994 from the file of the Principal Subordinate Court, Tindivanam, to the file of the Additional District Court, Tindivanam.

5. Heard the learned counsel for the petitioner as well as the respondents 10 to 12 in Tr.C.M.P.No.42 of 2017, the respondents 1, 2 and 4 in Tr.C.M.P.Nos.43 and 44 of 2017 and perused the materials available on record.

6. From the materials available on record, it is seen that the issues involved in all the proceedings are with regard to the validity of the judgment and decree passed in O.S.No.102 of 1994. According to the petitioner, the issue in O.S.No.102 of 1994 was taken up to the Hon'ble Apex Court and it was held that the suit property is self acquired property of the deceased Mahalingam. In E.As. and suits, the respondents are claiming shares in the suit properties and challenging the judgment and decree made in O.S.No.102 of 1994.

7.Considering the materials available on record, it will be in the interest of justice, all the suits and E.P. can be heard together and decided by the same Court. The petitioner is seeking transfer of all the cases to the Additional District Court, Tindivanam. No suit or proceedings is pending before the Additional District Court, Tindivanam and O.S.No.30 of 2014 is pending on the file of the Principal District Court, Villupuram. Considering the pendency of O.S.No.30 of 2014 on the file of the Principal District Court, Villupuram, O.S.No.171 of 2013 and E.P.No.278 of 2011 in O.S.No.102 of 1994 along with E.A.No.268 of 2012 in E.P.No.278 of 2011 are ordered to be withdrawn from the file of the Principal Subordinate Court, Tindivanam and transferred to the file of the Principal District Court, Villupuram, to be tried along with O.S.No.30 of 2014 pending on its file. The learned Principal District Judge, Villupuram, is directed to dispose of all the cases as expeditiously as possible in any event not later than six months from the date of receipt of a copy of this order.

8.In the result, Tr.C.M.P.No.42 of 2017 is dismissed and Tr.C.M.P.Nos.43 and 44 of 2017 are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kj/LPP
To

- 1) The Principal District Judge, Villupuram.
- 2) The Principal Subordinate Judge, Tindivanam.
- 3) The Additional District Judge, Tindivanam.

+1cc to Mr.D.Ravichander, Advocate Sr.30943

Tr.C.M.P.Nos.42 to 44 of 2017
and C.M.P.Nos.931 to 933 of 2017

gj[co]
srg 29/05/2018