

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.206 of 2018

- 1.J.Nirmaladevi
- 2.Atul Shivakar Tambi
- 3.Anupam Anand Tambi
- 4.S.V.K.Thampi

... Petitioners

Vs.

- 1.A.Abhay Kumar
- 2.Akul Vivek Jayachandran
- 3.Akul Vikram Jayachandran alias Vikram Naidu

4.The Sub-Registrar
Anna nagar Sub-Registrar's Office
No.60, TNHB Building
J.J. Complex, 2nd floor
Jawaharlal Nehru road
Thirumangalam, Chennai-40.

5.Selvakumar
Inspector of Police (Crime)
K-4 Anna nagar police station
No.21, 6th main road
3rd Avenue Extension
Anna nagar East, Chennai-600 102.

... Respondents

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw O.S.No.582 of 2018 pending on the file of XVI Assistant City Civil Court, Chennai and transfer to the file of III Assistant City Civil Court, Chennai, to try along with O.S.No.4795 of 2017 pending on its file.

For Petitioner : Mr.T.V.Vineeth Kumar for
Mr.N.P.Jayakumar

For R1 : No appearance

For R3 : No appearance

For R2,R4,R5 : No appearance

O R D E R

This petition is filed to withdraw O.S.No.582 of 2018 pending on the file of XVI Assistant City Civil Court, Chennai and transfer to the file of III Assistant City Civil Court, Chennai, to try along with O.S.No.4795 of 2017 pending on its file.

2.The petitioners are defendants 1 to 4, first respondent is the plaintiff and respondents 2 to 5 are the defendants 5 to 8 in O.S.No.582 of 2018 on the file of XVI Assistant City Civil Court, Chennai. The petitioners 1 to 3 are defendants 1 to 3, first respondent is the plaintiff and respondents 2 & 3 are the defendants 4 & 5 in O.S.No.4795 of 2017 on the file of III Assistant City Civil Court, Chennai.

3.According to the petitioners, one Brig.Akul Jayachandran and his wife A.Suneethi Jayachandran were owners of each 2405 sq.ft. of lands situate at Plot No.4487, Door No.104, 5th street, Y-block, Anna nagar, Chennai-40. Akul Jayachandran died leaving his wife and sons/respondents 2 and 3 as his legal heirs. They jointly inherited the property of Brig.Akul Jayachandran. Suneethi Jayachandran settled her 2405 sq.ft. of land on the second respondent together with 801.66 sq.ft. of undivided share out of 2405 sq.ft. of land left behind by his father. Respondents 2 & 3 and their mother entered into a joint venture agreement for construction of four independent flats in 4810 sq.ft. As per the said agreement, builder is entitled to have two flats measuring 1202.5 sq.ft. of undivided share in the land. Suneethi Jayachandran and respondents 2 & 3 are entitled to have 1200 sq.ft. undivided share. The second respondent is entitled to have 1202.5 sq.ft. of land out of 2405 sq.ft. of land obtained by him by way of settlement from his mother. Suneethi Jayachandran and respondents 2 & 3 sold Flat-A and divided the amounts. Suneethi Jayachandran settled the flat allotted on the second respondent to Anisha, daughter of third respondent. The second respondent filed suit O.S.No.5402 of 2011 on the file of XIV Assistant City Civil Court, Chennai, against Suneethi Jayachandran and Anisha and obtained decree that he is the absolute owner of Flat-B. After the death of Suneethi Jayachandran, the petitioners entered into an agreement of sale with respondents 2 and 3. First respondent claimed share in the flat belonging to the second respondent and filed O.S.No.4795 of 2017 for bare injunction on the file of III Assistant City Civil Court, Chennai against the petitioners 1 to 3 and respondents 2 & 3 claiming 1/12th share in Flat-B. The petitioners purchased the said property from the second respondent by the sale deed dated 08.12.2017. First respondent filed another suit O.S.No.582 of 2018 on the file of XVI

Assistant City Civil Court, Chennai, for declaration that the sale deed dated 08.12.2017 executed in favour of the petitioners as null and void and for injunction. He also filed I.A.No.1433 of 2017 in O.S.No.582 of 2018 for interim injunction.

4.The petitioners filed written statement in the suit O.S.No.582 of 2018 and counter in I.A.No.1433 of 2017 and are contesting the same. The pleadings are completed. The property involved in both the suits are one and the same. Except fourth petitioner and respondents 4 & 5, other parties are common in both the suits. No relief is sought against the respondents 4 & 5. The issues, oral and documentary evidence in both the suits are one and the same. Unless both the suits are tried together in the same Court, conflicting decisions will be delivered. In the interest of justice and convenience of the parties, both the suits may be ordered for joint trial in the same Court.

5.Heard the learned counsel for the petitioners and perused the materials available on record. Though respondents 1 and 3 entered appearance through counsel, there is no representation on behalf of them either in person or through counsel. Though notice has been served on the respondents 2, 4 and 5 and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

6.From the copies of the complaints filed in the typed set of papers, it is seen that the properties involved in both the suits are one and the same. The contention of the learned counsel for the petitioners is that except fourth petitioner and respondents 4 & 5, all the parties are one and the same and no relief is sought against the respondents 4 & 5.

7.In view of the above contention made by the learned counsel for the petitioners and in view of the fact that the suit properties, plaintiffs are one and the same, the contention of counsel for the petitioners that both oral and documentary evidence will be one and the same and in order to avoid conflicting decisions being rendered by two different Courts, in the interest of justice and convenience of parties, the suit in O.S.No.582 of 2018 is ordered to be withdrawn pending on the file of XVI Assistant City Civil Court, Chennai and transferred to the file of III Assistant City Civil Court, Chennai, to be tried along with O.S.No.4795 of 2017 pending on its file. The learned XVI Assistant Judge, City Civil Court, Chennai, is directed to transmit all the records pertaining to O.S.No.582 of 2018 to the file of III Assistant City Civil Court, Chennai, within a period of two weeks from the date of receipt of a copy of this order.

8. Accordingly, the Transfer Civil Miscellaneous Petition is ordered. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

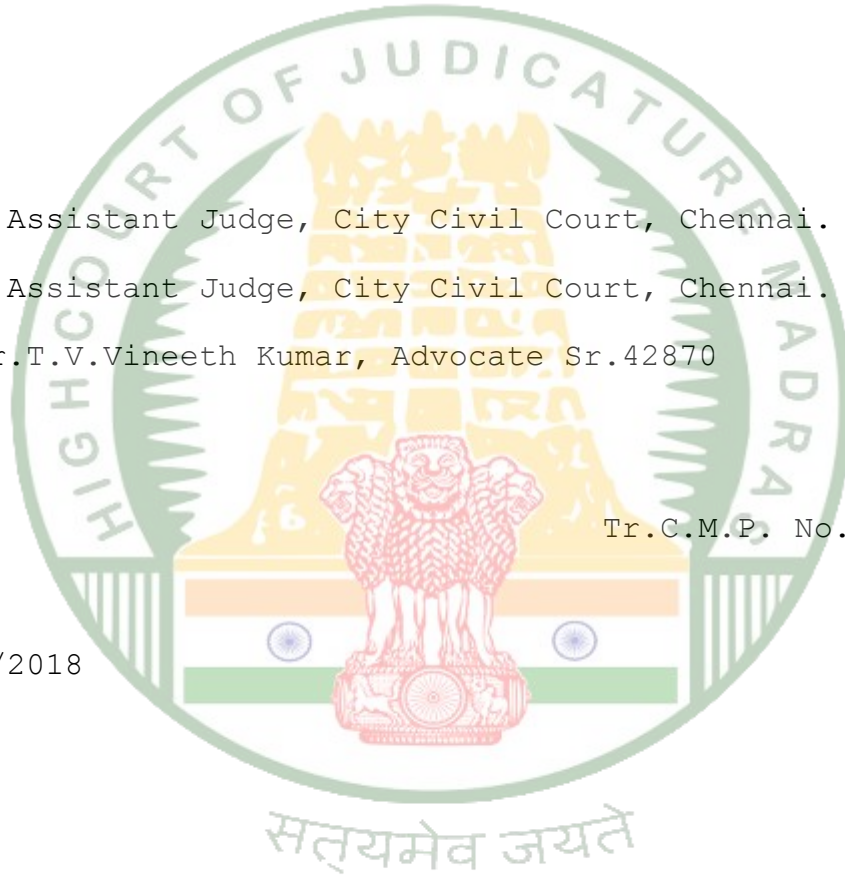
1.The III Assistant Judge, City Civil Court, Chennai.

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

+1cc to Mr.T.V.Vineeth Kumar, Advocate Sr.42870

Tr.C.M.P. No.206 of 2018

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