

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.08.2018

PRONOUNCED ON : 21.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Transfer CMP.No. 429 of 2018

and

CMP.No.11074 of 2018

1.E.Hamsa

2.P.haripriya

...Petitioners/Plaintiffs

Vs.

R.Kumar

...Respondent/Defendant

Prayer :- Transfer Civil Miscellaneous Petition has been filed under Section 24 of CPC to withdraw and transfer the original suit in O.S.No.70 of 2016 presently pending on the file of the Additional District Munsiff Court at Alandur to the file of the Hon'ble Principal District Court, Chengalpet.

For Petitioners : Mr.K.Senthilkumar

For Respondent : Mr.J.Franklin

ORDER

The petitioners have levied the suit in O.S.No.70 of 2016 for the relief of permanent injunction against the respondent and the same is pending on the file of the Additional District Munsiff Court, Alandur. Much earlier to the same, it is found that the respondent has preferred a suit for specific performance against the petitioners and others in O.S.No.190 of 2013 and the same is pending on the file of the Principal District Court, Chengalpet.

2. Seeking transfer of the suit pending on the file of the Additional District Munsif Court, Alandur to the Principal District Court, Chengalpet for joint trial along with O.S.No.190 of 2013, the present transfer petition has been levied.

3. According to the petitioners, inasmuch as the subject matter involved in both the suits are one and the same and as common issues are involved in respect of the subject matter between the parties, it is their case that the common adjudication of both the suits would be in the interest of justice and the parties would also not be required to render

separate evidence in respect of the proceedings in different Courts and also it is contended that common adjudication of the two suits would avoid conflict of decisions and therefore, on the above grounds, sought for the transfer.

4.The counsel for the respondent contended that both the suits had been levied on different causes of action, not connected with each other and in such view of the matter, it is his argument that the suits could be tried by the different forums as levied and therefore, there is no need for the joint trial of both the suits and according to him, the issues involved in both the matters are different.

5.Though it is found that as rightly put forth by the respondent that the issues involved in the suit for permanent injunction and the suit for specific performance are different, however, it is found that the suit property involved in both the suits is one and the same. It is the case of the petitioners that the respondent is attempting to interfere with their possession and enjoyment of the suit property on the footing that he had preferred a suit against them for specific performance pending on the file of the Principal District Court, Chengalpet. It is further seen that as per the case of the respondent that the petitioners are not in the possession and enjoyment of the suit property as claimed by them and on the other hand, it is only the respondent, who is in the possession and enjoyment of the suit property pursuant to the sale agreement.

6.Considering the rival contentions put forth by the respective parties, inasmuch as in respect of the same suit property, two suits are pending, though on different causes of action, in my considered opinion, the suit for specific performance being a comprehensive suit, in such view of the matter, considering the scope of the two suits and the issues involved in both the suits are interconnected with each other though not being similar, in such view of the matter, in the interest of justice, common adjudication of the suits would be in the interest of both the parties as the parties would be required to adduce one set of evidence in both the suits, if the suits are jointly tried. That apart, the consolidation of both the suits would avoid the adjudication of both the suits separately and would avoid conflict of decisions one way or the other and in such view, the joint trial of both the suits by one and the same Court would serve the cause of justice. Accordingly, considering the abovesaid facts, I am of the opinion that both the suits should be tried by the same Court and inasmuch as the comprehensive suit is pending on the file of the Principal District Court, Chengalpet, as put forth by the petitioners, the injunction suit pending on the file of the Additional District Munsif, Alandur should be transferred to the Principal District Court, Chengalpet for joint trial along with the suit for specific performance.

7.For the reasons aforesated, the suit in O.S.No.70 of 2016 pending on the file of the Additional District Munsif, Alandur is withdrawn and transferred to the file of the Principal District Court, Chengalpet for being tried with O.S.No.190 of 2013 in accordance with law.

Resultantly, the Transfer Civil Miscellaneous petition is allowed. Consequently, connected CMP.No.11074 of 2018 is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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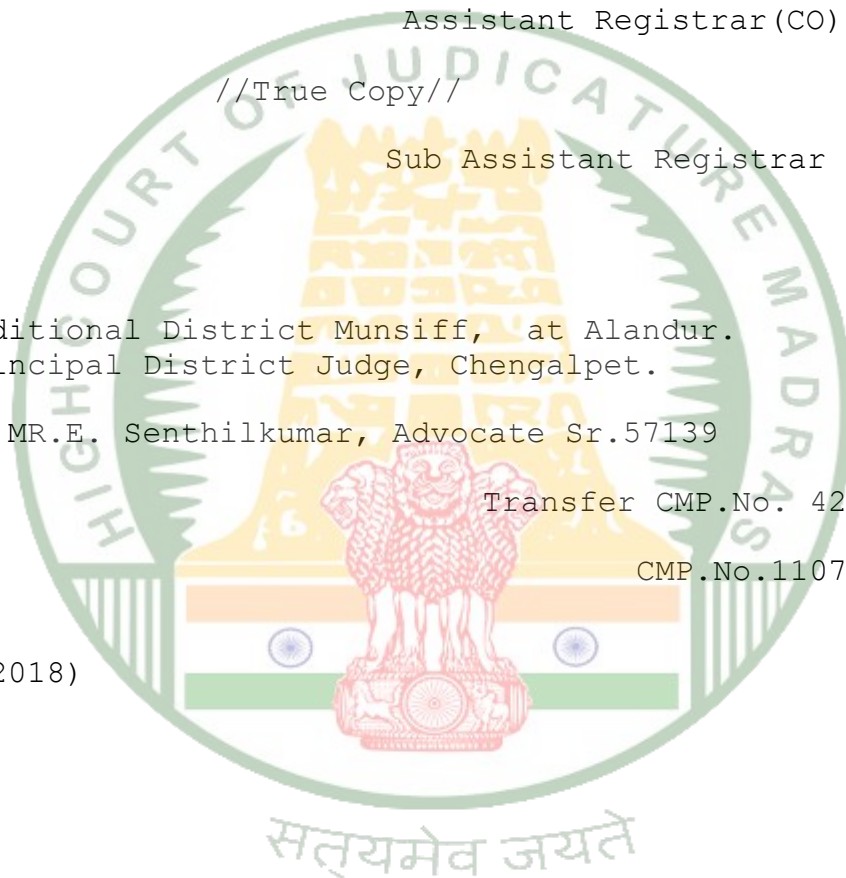
To

1. The Additional District Munsiff, at Alandur.
2. The Principal District Judge, Chengalpet.

+ 1 cc to MR.E. Senthilkumar, Advocate Sr.57139

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(CO)GJII
EU(10/09/2018)



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