

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.48 of 2018  
and C.M.P.No.1214 of 2018

1.S.Varadarajan  
2.S.Murali (Mentally Retarded)  
Mentally ill person represented by his  
guardian S.Varadarajan  
.... Petitioners

Vs.

1.S.Raghuraman  
2.S.Anuradha  
.... Respondents

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw O.S.No.102 of 2016 pending on the file of the Sub Court, Chengalpattu and transfer the same to the Principal District Court, Chengalpattu, where I.A.No.818 of 2016 in O.S.No.232 of 2012 and M.H.O.P.No.9 of 2016 are pending and to direct the Principal District Court, Chengalpattu to club and try all the three cases together.

For Petitioners : Ms.P.Anitha  
for M/s.R.Rangarajan  
For Respondents : Ms.S.Umamaheswari  
for Mr.C.Jagadish

सतयमेव जयते  
O R D E R

The petitioners are defendants and respondents are the plaintiffs in O.S.No.102 of 2016 pending on the file of the Sub Court, Chengalpattu. The petitioners have come out with the present Transfer Civil Miscellaneous Petition to transfer the said suit to the Principal District Court, Chengalpattu to be tried along with I.A.No.818 of 2016 in O.S.No.232 of 2012 and M.H.O.P.No.9 of 2016.

2.According to the petitioners, the second petitioner is mentally retarded person and the first petitioner is only looking after him. The first respondent has filed M.H.O.P.No.9 of 2016 on the file of the Principal District Court, Chengalpattu for appointing him as guardian of the mentally ill

brother S.Murali/second petitioner. The respondents earlier filed O.S.No.232 of 2012 for partition. A preliminary decree was passed on 05.03.2016. The respondents have filed I.A.No.818 of 2016 for passing of final decree and the same is pending before the Principal District Court, Chengalpattu. In O.S.No.232 of 2012 filed by the respondents for partition, the respondents did not seek any mesne profit. They have filed separate suit O.S.No.102 of 2016 on the file of the Additional Sub Court, Chengalpattu. The issue in the M.H.O.P.No.9 of 2016 as well as in the final decree application, I.A.No.818 of 2016 and suit O.S.No.102 of 2016 are interlinked. In the said circumstances, the petitioners have filed the present Transfer Civil Miscellaneous Petition for transfer of O.S.No.102 of 2016 pending on the file of the Sub Court, Chengalpattu to the file of the Principal District Court, Chengalpattu to be tried along with I.A.No.818 of 216 in O.S.No.232 of 2012 and M.H.O.P.No.9 of 2016.

3.The respondents filed counter affidavit. The learned counsel for the respondents contended that the issue in the final decree application in I.A.No.818 of 2016 in O.S.No.232 of 2012 and O.S.No.102 of 2016 are not interlinked. Trial in O.S.No.102 of 2016 is yet to be commenced. Only to drag on the proceedings, the petitioners have come out with the present Transfer Civil Miscellaneous Petition.

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

5.From the materials available on record, it is seen that O.S.No.102 of 2016 filed by the respondents is for mesne profit. The respondents have not claimed mesne profit in earlier suit O.S.No.232 of 2012 filed for partition. In the said suit, a preliminary decree was passed after trial. I.A.No.818 of 2016 filed for passing of final decree is pending. The respondents have to prove by letting in evidence that they are entitled to quantum of mesne profit from the petitioners by separate suit. In such circumstances, O.S.No.102 of 2016 cannot be transferred to the Principal District Court, Chengalpattu to be tried along with I.A.No.818 of 216 in O.S.No.232 of 2012 and M.H.O.P.No.9 of 2016.

6.In the result, the Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge, Chengalpattu.

2.The Principal District Judge,  
Chengalpattu.

+1cc to Mr.C.Jagadish, Advocate, S.R.No.38467

+1cc to Mr.R.Rangarajan, Advocate, S.R.No.38594

Tr.C.M.P. No.48 of 2018  
and C.M.P.No.1214 of 2018

RJ(CO)  
GSP(09/07/2018)



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