

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.504 of 2018
and
C.M.P.No.12399 of 2018

V.Sarojini ... Petitioner/3rd respondent

Vs.

Rajammal (Deceased)

1.Govindaraj

2.Kanchana

3.Hindusthan Educational and Charitable Trust,
Rep. by its Managing Trustee,
Smt.T.R.K.Sarasuwathi, ... Respondents/2nd plaintiff /
2nd defendant /4th defendant

Prayer:- Petition is filed under Section 24 (b) (ii) of C.P.C., to withdraw O.S.No.228 of 2013 pending on the file of Principal Sub Court, Coimbatore and transfer the same to the file of any other Court at Coimbatore.

For Petitioner : Mr.A.Sivaji

O R D E R

This petition is filed to withdraw O.S.No.228 of 2013 pending on the file of Principal Sub Court, Coimbatore and transfer the same to the file of any other Court at Coimbatore.

2. According to the petitioner, she has filed O.S.No.1354 of 2014 on the file of II Additional Sub Court, Coimbatore, for the relief of declaration declaring that she is the wedded wife of one Venkatesan.

The said Venkatesan filed O.S.No.411 of 2005 on the file of Principal Sub Court, Coimbatore for declaration to declare that and he is a adoptive father of deceased Venkitapathy. The deceased Rajammal filed O.S.No.11 of 2006 pending on the file of Sub Court, Udumalpet, against petitioner's husband for partition and for other reliefs. The suit in O.S.No.11 of 2006 was transferred to Principal Sub Court, Coimbatore and renumbered as O.S.No.228 of 2013 as per the order dated 16.08.2017 in Tr.O.P.No.28 of 2016.

3. According to the petitioner, the learned Principal District Judge, Coimbatore, as per the order dated 16.08.2017 made in Tr.O.P.No.28 of 2016, transferred the suit O.S.No.1354 of 2014 to the Principal Sub Court, Coimbatore for joint trial along with O.S.No.411 of 2005 and O.S.No.228 of 2013.

4. The deceased Rajammal filed two suits in O.S.No.67 of 2014 and O.S.No.241 of 2015 on the file of District Munsif Court, Udumalpet for injunction and declaration respectively against the petitioner. The suit in O.S.No.411 of 2005, O.S.No.228 of 2013 (O.S.No.11 of 2006) and O.S.No.1354 of 2014 are now pending before the Principal Sub Court, Coimbatore, against the petitioner. The petitioner filed two Tr.C.M.P.Nos.971 and 972 of 2017 to transfer O.S.No.67 of 2014 and O.S.No.241 of 2015 respectively from the file of District Munsif Court, Udumalpet to the file of Principal Sub Court, Coimbatore to be tried along with O.S.No.411 of 2005, O.S.No.228 of 2013 and O.S.No.1354 of 2014.

5. Both the Tr.C.M.Ps. and petition for stay are pending for want of service of the respondents. In respect of pendency of the Tr.C.M.Ps., the learned Principal Subordinate Judge, Coimbatore insisted on the counsel for the petitioner to get on with the suit in O.S.No.1354 of 2014 filed by the petitioner. The petitioner filed application for stay of the suit. The said application was neither returned nor numbered. The learned Principal Subordinate Judge, Coimbatore in the open Court said that he is going to dismiss the suits in O.S.No.411 of 2005 and O.S.No.1354 of 2014 filed by the petitioner. Subsequently, the learned Principal Subordinate Judge dismissed the suit filed by the petitioner as well as the suit filed by her husband Venkitapathy and adjourned the case in O.S.No.228 of 2013 filed by the deceased Rajammal to 17.07.2018.

6. When, it was brought to the notice of the learned Principal Subordinate Judge, Coimbatore about the order passed in the Tr.O.P.No.28 of 2016 for transfer of O.S.No.1354 of 2014 to the file of Principal Subordinate Court, Coimbatore, for joint trial along with suits in O.S.No.411 of 2005 and O.S.No.228 of 2013, the learned Principal Subordinate Judge, Coimbatore informed that he knows how to obey the order of the District Judge. In the circumstances, the petitioner has come out with the present Tr.C.M.P. to transfer O.S.No.228 of 2013 from the file of Principal Sub Court, Coimbatore to any other Court at Coimbatore.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. From the perusal of the order passed by the learned Principal District Judge, Coimbatore, it is seen that the learned Principal District Judge, Coimbatore has not ordered the joint trial of all the three suits. The learned Principal District Judge has left the matter to the Principal Subordinate Judge, Coimbatore to decide whether suits in O.S.No.1354 of 2014, O.S.No.411 of 2005 and O.S.No.228 of 2013 are to be tried jointly or simultaneously before commencement of the trial.

9. In view of the above order, the contention of the learned counsel for the petitioner that in respect of the joint trial ordered by the Principal District Judge, Coimbatore, the learned Principal Subordinate Judge, Coimbatore, dismissed the two suits are not correct.

10. For the above reason, the Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

LPP/arr Sd/- Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Coimbatore

+1 CC TO MR.A.SIVAJI Advocate SR.NO. 48371

Tr.C.M.P. No.504 of 2018
and CMP.Nos.12399 of 2018

PVS (CO)

ASK(23/08/2018)