

A.Nos.4095 and 4096 of 2018
in C.S.No.566 of 2015

M.SUNDAR,J.

This common order will govern both these applications.

2. There are two plaintiffs and four defendants in the main suit. Plaintiffs 1 and 2 in the main suit are applicants 1 and 2 respectively in both the instant applications. Defendants 1 to 4 in the main suit are respondents 1 to 4 respectively in both the instant applications.

3. Both these applications have been taken out, primarily, under Clause 13 of Letters Patent, with a prayer to remove and transfer two suits in the City Civil Court, Chennai to be tried and determined along with the main suit herein i.e., C.S.No.566 of 2015.

4. The two suits sought to be transferred from the City Civil Court are O.S.No.5998 of 2015 on the file of XVIII Assistant City Civil Court, Chennai, which is subject matter of transfer Application No.4096 of 2018 and O.S.No.418 of 2017 on the file of V Assistant City Civil Court, Chennai which is subject matter of transfer application No.4095 of 2018.

5. I have heard Mr.M.Balasubramanian, learned counsel on record on behalf of plaintiffs and Mr.S.Nambi Arooran, learned counsel on record on behalf of defendants.

6. The entire gamut of these two applications turns on a very narrow compass.

7. A perusal of the plaint in the instant suit reveals that the central theme, pertaining to the litigation, is a partnership firm, which goes by the name 'Ambika Appalam Depot'. There have been certain dissensions and disagreement between the partners, which has led to these litigations.

8. The main suit herein has been filed in this Court *inter alia* with a prayer for declaration that dissolution of the aforesaid partnership firm (hereinafter referred to as 'said partnership firm' for brevity and clarity), comes into effect on and from a particular date. There are also other prayers including a prayer for declaration that deed of retirement is not binding. To be noted, there is also a prayer pertaining to a property, which according to the plaintiffs, belongs to the second plaintiff.

9. A perusal of the two suits in the City Civil Court, which are now sought to be transferred, reveals that in both the suits, the central theme is the said partnership firm. In the first of the two suits i.e., O.S.No.5998 of 2015 on the file of XVIII Assistant Judge's Court, City Civil Court, the said partnership firm is the plaintiff and plaintiffs 1 and 2 herein are defendants 1 and 2 respectively. Defendant No.3 is an official respondents i.e., jurisdictional Sub Registrar pertaining to registration of a document. More importantly, the prayer is for a declaration that Settlement Deed dated 17.11.2011 is null and void. As alluded to supra, primary and pivotal ground on which, this suit has been filed is that the suit property, which is subject matter of the aforesaid Settlement Deed dated 17.11.2011, belongs to the said partnership firm. This Commercial Division is informed that proceedings in this suit in City Civil Court have now been stayed vide order dated 10.01.2017 made in I.A.No.882 of 2016 in the said suit by the learned Assistant Judge of the City Civil Court, Chennai. To be noted, this is an order made in an application under Section 10 of 'The Code of Civil Procedure, 1908' ('C.P.C.' for brevity) Therefore, there is no disagreement that this suit is pending.

10. Turning to the next suit, which is sought to be transferred, i.e., O.S.No.418 of 2017 (on the file of V Assistant Judge's Court, City Civil Court), a perusal of the plaint in the said suit also reveals that the central theme is the

said partnership firm. Relevant averments are contained in paragraph 3 of the plaint, which reads as follows:

'3. The plaintiff submits that the defendant is the younger son of the plaintiff. The plaintiff herein established "Ambika Appalam Depot" in the year 1948 at Mylapore, Madras along with his wife Mrs.Thangam. The trade mark "Ambika Appalam" was registered in the year 1963 with the Trade mark Registry by the plaintiff under clause 30 and thereafter under clause 29 and 35 of the Trade mark. Later on the plaintiff along with the defendant and his elder brother K.V.Sukumaran were running the partnership business. The plaintiff herein acquired the Dr.Nair Road, T.Nagar property of an extent of six grounds in the year 1976 as Kartha of the joint family in the name of the partnership firm 'Ambika Appalam company' by a registered sale deed dated 05.05.1976. At the relevant point of time, the plaintiff's elder son was only 20 years old and the defendant was only 19 years old. Taking into consideration of the hard work, reputation and goodwill created for the firm, the plaintiff's elder son and the defendant handed over half share in the Dr.Nair Road property, T.Nagar, Chennai to the plaintiff by duly executed Dissolution of partnership 'Ambika Appalam company' on 01.04.1992 by a written instrument, the plaintiff, the defendant and his brother duly signed in the presence of witnesses and a Notary public.'

11. Further to be noted, the prayer in aforesaid suit is for a declaration that the Settlement Deed dated 07.05.2008 is null and void. This again is

predicated primarily on the ground that the property, which is subject matter of the impugned document (document sought to be declared null and void in the suit), belongs to the said partnership firm. To be noted, plaintiff No.1 in the aforesaid suit is the sole plaintiff in O.S.No.418 of 2017 and first defendant herein is the sole defendant therein.

12. Both learned counsel are also counsel before the two Assistant Judges' Courts in City Civil Court, Chennai and both counsel submit that pleadings are complete in those two suits, in other words, it is pending. This Commercial Division is informed that written statement has been filed and the suit has to proceed further. Most importantly, suit is pending.

13. From the narrative supra, it will be clear that parties to the main suit herein are parties to the aforesaid two suits in City Civil Court in one capacity or the other. More importantly, there is a clear overlap of subject matter as all the three suits i.e., main suit in this Court and the two suits that have now been sought to be transferred, pertain to one central theme i.e., whether some properties belong to said partnership firm or some individuals and the issue of dealing with the same. The instant suit, as mentioned supra, pertains to dissolution of partnership firm and alienation/dealing with some of the properties which touch upon the partnership firm. Under the aforesaid

circumstances, learned counsel for plaintiffs, who has moved these applications, submits that it is not desirable to have the three suits proceed in three different fora, because of the overlap and he submits it will lead to an anomalous situation, which is avoidable. In other words, the avoidable anomalies is inevitable, is his say. In response to this, Mr.S.Nambi Arroran, learned counsel for defendants points out that transfer of the suits from the City Civil Court will cause delay in proceeding with the suits. Learned counsel also submits that suits in the City Civil Court, atleast one of the two suits, which are sought to be transferred, may not qualify to be heard by this Commercial Division.

14. I have considered the objections of the learned counsel for the defendants.

15. The concern of the defendants regarding the trial getting delayed, in my considered opinion is untenable in the light of swift and strict time lines that have now been brought in by the Commercial Courts Act, 2015. Even if the three suits are to be tried by a regular Court in this Court and not Commercial Division possible delay can be no ground to permit conflicting verdicts and anomalies.

16. With regard to the overlap qua subject matter, to be noted, there is no dispute or disagreement.

17. With regard to objection pertaining to the jurisdiction of this Commercial Division, the transfer will be from the City Civil Court to the High Court and thereafter, the jurisdiction of this Commercial Division can be tested with regard to the transferred suits and if necessary, the same can be heard by a regular Court if that be so. That cannot be a ground to resist an application for transfer under Clause 13, when there is a clear admitted overlap of subject matter and when the parties to the litigation are the same in all the three suits.

18. I have no difficulty in accepting the submission of learned counsel for plaintiffs allowing the aforesaid three suits to proceed in three different fora is certainly likely to lead to decisions, which can cause anomalies owing to conflicting verdicts. This is clearly a avoidable predicament and clause 13 provides for elimination of such legal predicaments.

19. Exercising my powers under Clause 13 of Letters Patent, I accede to the prayers in both these applications.

20. In other words, both these applications are ordered as prayed for. The respective Assistant City Civil Court Judges to transfer the entire suit file to this Court within 10 days from today i.e., on or before 17.09.2018, if necessary through a special messenger.

21. List all these three suits before this Commercial Division on 18.09.2018.

vsm

Note: Issue order copy on 17.09.2018

07.09.2018



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