

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 12.12.2018

CORAM:
THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

O.S.A. No. 56 of 2014

M. Durairaj

...Appellant

Vs.

1. M. Selvam
 2. S. Jayalakshmi
M. Kanniammal (Deceased)
 3. M. Kamal Kumar
-Respondents

Prayer: Appeals under Order XXXVI Rule 9 of O.S. Rules under Clause 15 of Letters Patent against order dated 04.11.2013 made in Application No. 2479 of 2013 in C.S. No. 122 of 2012.

For Appellant : Mr. R. Manickavel

For Respondents : No appearance for R1
R2 & R3 served.

J U D G M E N T
(Delivered by M.M.SUNDRESH, J.)

Heard the learned counsel appearing for the appellant. Despite notice having been served on the Respondents No. 2 and 3, none appears. There is no representation on behalf of Respondent No. 1.

2. This appeal has been preferred against the order of the learned Single Judge, who declined to transfer the suit, being O.S. No. 201 of 2011, pending on the file of City Civil Court at Chennai to be tried along with the suit in C.S.No.122 of 2012 pending on the file of this Court. The suit in O.S.No.201 of 2011 has been filed seeking permanent injunction in which counter claim has also been made by the Respondent No.3 before us. A subsequent suit filed in this Court in C.S. No. 122 of 2012 is one of partition and delivery of possession. The learned Single Judge dismissed the application filed on the ground that earlier suit reached trial stage. Hence the present appeal.

3. We find a considerable force in submission made by the learned counsel appearing for the appellant. Subsequent suit in C.S. No.122 of 2012, filed on 8.11.2011, is a comprehensive suit filed for partition and possession, whereas the earlier suit, i.e., O.S. No. 201 of 2011, was filed few months before, i.e., on 5.01.2011, seeking only a permanent injunction. Both the suits have been filed by the appellant, though in the first suit there is a counter claim filed by the third respondent. In fact, the subsequent suit, being a comprehensive one, we are of the view that no proper adjudication can be done in the earlier suit.

4. In such view of the matter, we are inclined to set aside the order of the learned Single Judge, and accordingly the same is set aside and consequently, Application No.2479 of 2013 is allowed and the suit in O.S. No. 201 of 2011 pending on the file of City Civil Court at Chennai is transferred to this Court to be tried along with C.S.No.122 of 2012.

This appeal is allowed. No costs. Consequently, the M.P. No. 1 of 2014 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

To

1.The Sub Assistant Registrar
Original Side
High Court, Madras.

2.The Registrar,
City Civil Court,
Madras.

+1cc to Mr.R.Manickavel, Advocate, S.R.No.86568

O.S.A. No. 56 of 2014

GP(CO)

rrs 09/01/2019

WEB COPY