

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Tr.C.M.P.No.454 of 2017
and C.M.P.No.9285 of 2017

A.Kunjammal

..

Petitioner

versus

1.T.Francis Raj Kumar
2.M.Srinivasan
3.S.Thangam

...

Respondents

Prayer: Petition is filed under Section 24 of C.P.C., to withdraw O.S.No.243 of 2011 pending on the file of the District Munsif Court, Ambattur, Tiruvallur District and transfer the same to the file of the III Additional District and Sessions Judge, Tiruvallur at Poonamallee, to be tried along with the suit in O.S.No.60 of 2017 pending on its file.

For Petitioner : Mr.K.A.Mariappan

For Respondents : No Appearance

O R D E R

This Transfer Civil Miscellaneous Petition has been filed under Section 24 of the Code of Civil Procedure to withdraw O.S.No.243 of 2011 pending on the file of the District Munsif Court, Ambattur, Tiruvallur District and transfer the same to the file of the III Additional District and Sessions Judge, Tiruvallur at Poonamallee, to be tried along with the suit in O.S.No.60 of 2017 pending on its file.

2. Initially, the petitioner has filed the suit before the City Civil Court, Chennai, for the relief of declaration and permanent injunction. After taking the same on file, the same was pending on the file of the VI Additional Judge, City Civil Court, Chennai in O.S.No.5010 of 2011. Subsequently, based on the orders passed in I.A.No.2336 of 2014, the plaint of the said case was returned on 06.11.2014 with a direction to present before the competent Court and thereafter, the same was represented before the Principal District and Sessions Court, Tiruvallur at Poonamallee.

3. In the meantime, the third respondent has filed a suit before the District Munsif Court, Ambattur, Chennai, for the relief of recovery of possession and damages. The said suit has been filed against the petitioner and as of now, the same is pending in O.S.No.243 of 2011 before the above said Court. Now, the petitioner has approached this Court by way of this petition for the relief as stated in the first paragraph of this order.

4. According to the petitioner, the subject matter of both suits are one and the same. Further, the parties to the proceedings are also one and the same. In the said circumstances, both the cases are tried in different Courts, there will be a chance for coming out the conflicting judgments, which may leads multiplicity of proceedings.

5. In respect to the respondents 1 and 3, they were received the notice as early as on 15.07.2017 and thereafter their names are printed in the cause list, even after printing the name in the cause list, there is no representation on behalf of them either in person or through counsel. In respect to the second respondent, the learned counsel appearing for the petitioner would submit that in the suit itself he remained exparte. So, in the said circumstances, serving the notice to the second respondent is not necessary.

6. Heard the learned counsel appearing for the petitioner and also perused the materials available on record.

7. Now, considering the prayer sought for by the petitioner, it is true that the property pertaining to both suits viz. O.S.No.243 of 2011 and O.S.No.60 of 2017 are one and the same and hence for disposing the both suits ordering for joint trial or simultaneous trial is very much helpful to the parties in participating the court proceedings. That apart, since the property is one and the same in both suits, if the said suits are tried in different courts there may be a chance for coming out the conflicting judgments. Even though the prayer sought for in two suits are different one, that alone has not be taken into account for considering this petition. Further, non appearance of the respondents would show that they are not having any objection to allow this petition.

8. In the light of the above submission, the Transfer Civil Miscellaneous Petition is allowed. Accordingly, the petition in O.S.No.243 of 2011 is ordered to be withdrawn from the file of the District Munsif Court, Ambattur, Tiruvallur District and transferred to the file of the III Additional District and Sessions Judge, Tiruvallur at Poonamallee. It is left open to the III Additional District and Sessions Judge to decide for joint trial or for simultaneous trial. The District Munsif Court, Ambattur, Tiruvallur District, is directed to

transmit all the records pertaining to O.S.No.243 of 2011 to the file of the III Additional District and Sessions Judge, Tiruvallur at Poonamallee, within a period of two weeks from the date of receipt of a copy of this order. On receipt of records, the learned III Additional District and Sessions Judge, Tiruvallur at Poonamallee, is directed to dispose of the case as expeditiously as possible not later than 31.03.2019. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

sri

To

- 1.The District Munsif Court,
Ambattur, Tiruvallur District.
- 2.The III Additional District and
Sessions Judge, Tiruvallur,
Poonamallee.

SSI (CO)
GMY (23/01/2019)

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