



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
C.R.P. (PD) (MD) .No.2005 of 2016

and

C.M.P. (MD) No.9408 of 2016

Samadhanamani

... Petitioner

Vs.

1.Santha Bai @ Santha

2.Samuel

3.Sam Durairaj

... Respondents

PRAYER : Petition filed under Section 227 of Constitution of India, to set aside the fair and decreetal order dated 04.03.2016 passed in Tr.O.P.No.420 of 2014 on the file of the Principal District Judge, Thoothukudi, and allow the present Civil Revision Petition.

For petitioner : Mr.R.J.Karthick

ORDER

The revision petitioner herein is figuring as the third defendant in O.S.No.171 of 2004 on the file of Sub Court, Thoothukudi. It is a suit for partition. Preliminary decree was passed on 22.11.2005. Final decree application has been taken out in I.A.No.225 of 2006 and it is still pending before the Sub Court, Thoothukudi. In the meanwhile O.S.No.303 of 2014 has been filed before the Sub Court, Thoothukudi, by one Samuel who is the second defendant in O.S.No.171 of 2004. It is also a suit for partition, based on the Will executed by D1, Joyce, who is the first defendant in O.S.No.171 of 2004. Yet another suit in O.S.No.120 of 2014 has been filed by the very same Samuel before the Principal District Munsif Court, Thoothukudi. It is also a suit for partition. The revision petitioner herein filed Tr.O.P.No.420 of 2014 for clubbing all the three suits for a joint trial. By order dated 04.03.2016, the Principal District Judge, Thoothukudi dismissed the said Tr.O.P. Questioning the same, this Civil Revision Petition has been filed.

2.It is not in dispute that parties in all the three suits are substantially one and the same. Since some alienations have taken place during the pendency of the proceedings, the alienees have also come on record. They also trace their rights and interest in the suit through the existing parties. The suit schedule is also common. Therefore, in order to avoid conflicting decisions, it is necessary that O.S.No.120 of 2014 is withdrawn from the file of Principal District Munsif, Thoothukudi and tried along with other two suits. The final decree proceedings in O.S.No.171 of 2004



as well as O.S.No.303 of 2014 are pending before the same Court namely, Sub Court, Thoothukudi. Therefore, all the three cases can be jointly tried.

3. In this view of the matter, the order impugned in this Civil Revision Petition is set aside and this Civil Revision Petition is allowed.

4. Section 24(2) of CPC reads that "where any suit or proceedings has been transferred or withdrawn, the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either re-try it or proceed from the point at which it was transferred or withdrawn".

5. This Court specifically directs that the Sub Court, Thoothukudi shall proceed from the point at which the other two suits have been transferred.

6. With this direction, this Civil Revision Petition is allowed. No cost. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (WRITS)

/True Copy/

Sub Assistant Registrar (CS-I)

To:

1. The Sub Judge, Thoothukudi.

2. The Principal District Judge, Thoothukudi.

+1CC TO MR.R.J.KARTHICK ADVOCATE IN SR,NO.82705.

+1CC TO MR.D.CHRISTEN SON JUGUNU, ADVOCATE IN SR.NO.83037.

PNN

DS SV SAR-1 16.10.2018 2P/5C

ORDER MADE IN
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and
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