

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr. C.M.P. No.128 of 2019
and C.M.P. No.4284 of 2019

Indumathi

... Petitioner

-vs-

1.P.Raja @ Baulraj

2.The Sub Registrar,
Dusi, Thiruvannamalai District.

3.The Tahsildar,
Taluk Office,
Cheyyar.

... Respondents

Prayer: Petition filed under Section 24 of C.P.C to withdraw O.S. No.153 of 2018 pending on the file of District Munsif, Cheyyar and transfer the same to the District Judge II at Kancheepuram to be tried along with O.S. No.53 of 2018.

For Petitioner : Mr.S.Vasudevan

For Respondent : Mr.M.Senthamizh Selvan for R1

Mr.T.M.Pappiah,
Special Government Pleader
for R2 and R3

O R D E R

The Transfer C.M.P. has been filed to transfer the O.S. No.153 of 2018 pending on the file of the District Munsif, Cheyyar to the file of the learned District Judge II at Kancheepuram to be tried along with O.S. No.53 of 2018.

2.Learned counsel appearing for the petitioner would submit that as there was a dispute with regard to the family property, the petitioner has filed a Civil Suit in O.S. No.53 of 2018 against the first respondent for passing decree for partition

before the learned District Judge II at Kancheepuram. After receiving summons, the first respondent, who is the real brother of the petitioner, has filed a Civil Suit seeking a decree for declaration of title and permanent injunction before the District Munsif Court, Cheyyar. Since the schedule of properties in both the suits are one and the same and the parties are same, the suits may be clubbed together before the learned District Judge II, Kancheepuram, otherwise, it would create unnecessary delay in disposing of the matters and would waste the valuable and precious time of both the Courts.

3. Secondly, learned counsel appearing for the petitioner, producing a Form No.IV disability certificate, issued by the Department of Physical Medicine and Rehabilitation, Chengalpattu, would submit that the petitioner is a physically handicapped. As the petitioner finds it difficult to undertake long journey which is about 30 kms from her residence, she has been advised to come to this Court. Therefore, if the O.S. No.153 of 2018 is transferred to the file of the learned District Judge II at Kancheepuram, no prejudice will be caused to the first respondent.

4. Learned counsel appearing for the first respondent submitted that although the petitioner is the sister of the first respondent, she has filed a suit for partition and on receipt of summon, the first respondent, brother of the petitioner has also filed a suit for declaration of title and permanent injunction on the file of the District Munsif Court, Cheyyar. Therefore, 30 kms. distance cannot be accepted as a ground for seeking transfer.

5. A perusal of Form No.IV disability certificate, issued by the Department of Physical Medicine and Rehabilitation, Chengalpattu clearly shows that the petitioner was suffering from 75% permanent physical impairment.

6. This Court is unable to find any justification on the submission made by the learned counsel appearing for the first respondent. When both the petitioner and the first respondent have filed two different suits, namely, one for partition and another for declaration of title and permanent injunction, as the parties to the suits and the subject matter of the property are one and the same, it is fit and proper to try the suits together so that there would not have been any delay in disposing of the matters. Accordingly, the Tr. C.M.P. is allowed and the O.S. No.153 of 2018 pending on the file of the District Munsif Court, Cheyyar is withdrawn and transferred to the file of the learned District Judge II, Kancheepuram.

7.The learned District Judge II, Kancheepuram is directed to take up both the cases and dispose of the same expeditiously in the manner known to law. No costs. Consequently, C.M.P. No.4284 of 2019 is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

vga

To

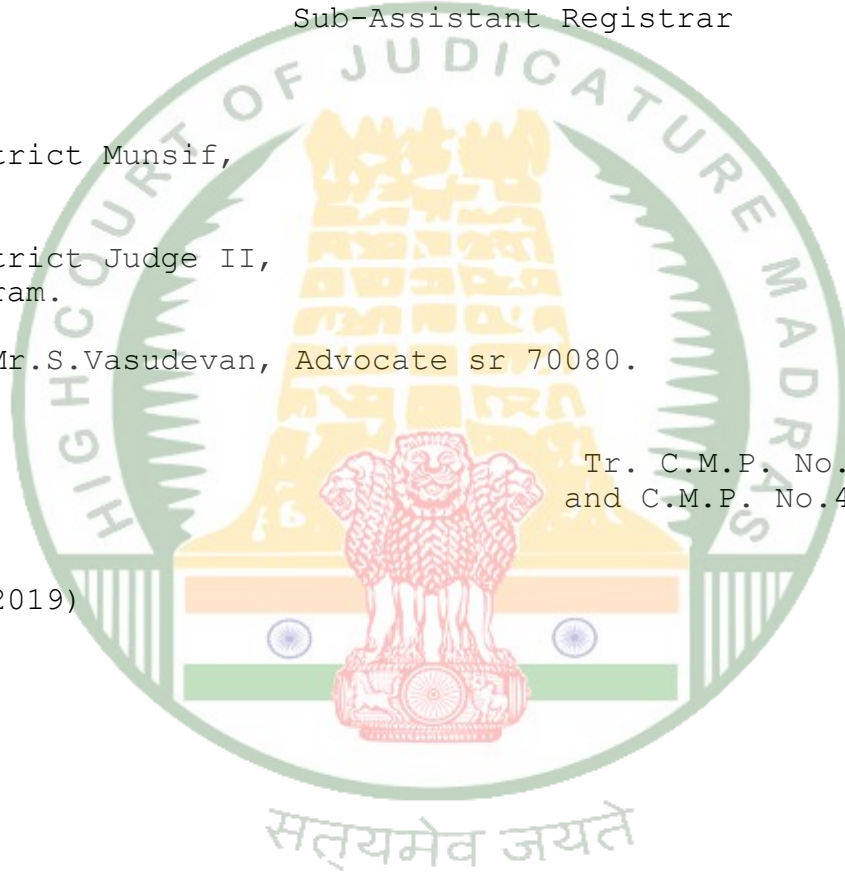
1.The District Munsif,
Cheyyar.

2.The District Judge II,
Kancheepuram.

+1 CC to Mr.S.Vasudevan, Advocate sr 70080.

Tr. C.M.P. No.128 of 2019
and C.M.P. No.4284 of 2019

SAI (CO)
SP(16/09/2019)



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