

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 26.02.2019	Delivered on 28.02.2019
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Application Nos.1302 and 1303 of 2019
in TOS No.1 of 2018

Smt. Akila Vijayakumar ... Applicant in both the Petitions

Vs

1. Smt. Saraswathy Bhuvarahan

2. Smt. Uma Ravi

3. Smt. T.Srilatha

4. Smt. Srisudha Ghanaprakasam

5. Sucharita Vijayakumar

6. Vikram Vijayakumar ... Respondents in both the Petitions

Prayer: Applications are filed under Order XIV Rule 8 of the Original Side Rules and read with Section 24 of the Civil Procedure Code read with Clause 13 of Letters Patent and read with Section 151 of Civil Procedure Code, praying to

(i) pass an order to withdraw and transfer the cases of OS No.4120 of 2014, OS No.5455 of 2014 and 5047 of 2015 on the file of XIII Assistant City

Civil Court, Chennai to this Court in order to try along with the above Testamentary Original Suit No. 1 of 2018.

(ii) pass an order of interim stay of all further proceedings in the above TOS No.1 of 2018 and OS Nos.4120 of 2014, 5455 of 2014 and 5047 of 2015 on the file of the learned XIII Assistant City Civil Court, Chennai until the withdrawal and transfer the said cases from the file of XIII Assistant City Civil Court, Chennai to this Court in order to try along with the above Testamentary Original Suit No.1 of 2018 pending disposal of the above transfer application may be granted.

For Applicant : Mr.T.R.Rajagopalan, SC
for Mr.K.Azhaguraman

For Respondents : Mr.T.V.Ramanujam, SC
for M/s. N.Dorai Kannan

COMMON ORDER

Application No.1302 of 2019 has been taken out by the plaintiff in TOS No.1 of 2018, seeking transfer of the suits in OS Nos.4120 of 2014, 5455 of 2014 and 5047 of 2015, from the file of the XIII Assistant City Civil Judge, to this Court to be tried along with TOS No.1 of 2018. TOS No.1 of 2018 has been filed by the plaintiff seeking Letters of Administration with a copy of the Will annexed, for Will executed by late G.Bhuvarahan, on

27.11.2007 at Chennai. According to the plaintiff, she is the beneficiary under the Will and as such she is entitled to Letters of Administration with a will annexed.

2. OS No.4120 of 2014, the suit filed by the plaintiff in TOS No.1 of 2018, seeking a declaration that the settlement deed alleged to have been executed by the deceased G.Bhuvaraman on 10.01.2008 in favour of the defendants 2 to 4 in respect of the suit schedule property is null and void and for a permanent injunction restraining the defendants 2 to 4 from in any manner alienating or encumbering the property.

3. OS No.5455 of 2014 has been filed by the defendants 1 to 4 in TOS No.1 of 2018 seeking a decree for permanent injunction restraining the plaintiff in TOS No.1 of 2018 from interfering with their possession and enjoyment of the suit schedule property.

4. OS No. 5047 of 2015 is the another suit filed by the defendants in TOS No.1 of 2018 against the plaintiff in TOS No.1 of 2018 and her children seeking a declaration that the settlement deed executed by the plaintiff in TOS No.1 of 2018 on 29.12.2014 as illegal and invalid and for permanent injunction restraining the defendants from fabricating and registering any

document of any kind either alienating or encumbering the suit schedule property.

5. The subject matter of all these proceedings is one and the same. It is a dwelling house that belonged to late G.Bhuvarahan, who died on 23.02.2014. The transfer is sought for mainly on the ground that if the suits are tried by different Courts, there is a possibility of conflicting judgments being rendered.

6. The application for transfer is resisted by the defendants in TOS No.1 of 2018 primarily contending that there is no scope for any conflicting judgments, if the suits are tried separately. The suit in OS No.4120 of 2014 having been filed for the relief of declaration that the settlement deed executed by the deceased G.Bhuvarahan, is null and void, is independent of the existence or otherwise of the Will dated 27.11.2007. Even in the absence of the Will, the plaintiff in OS No.4120 of 2014 as a Class-I heir of the deceased G.Bhuvarahan, is entitled to maintain the suit and she will have to establish that the settlement deed dated 10.01.2008 is vitiated or that it is a sham document.

7. It is the further contention of the defendants/respondents that the

Testamentary Original Suit in TOS No.1 of 2018 is already part heard and it is in the stage of cross-examination of P.W.1, therefore, according to them, if the suits pending before the City Civil Court are transferred to be tried along with TOS No.1 of 2018, the same will lead to the proceedings in TOS No.1 of 2018 being further delayed.

8. Insofar as the suit in OS No.5455 of 2014 is concerned the respondents would contend that the simple suit for injunction and therefore, the question of title would take the back seat. As regards the third suit namely OS No.5047 of 2015, the respondents would contend that the plaintiff in TOS No.1 of 2018 had chosen to execute a settlement deed, in respect of the property, in favour of her children on 29.12.2014. The validity of the said settlement deed would depend on the result of TOS No.1 of 2018. If the plaintiff in TOS No.1 of 2018 is able to prove the Will and succeed the settlement deed executed by her would be valid and otherwise not.

9. I have heard Mr.T.R.Rajagopalan, Senior Counsel appearing for M/s.K.Azhaguraman, for the applicant/plaintiff in TOS No.1 of 2018, and Mr.T.V.Ramanujam, learned Senior Counsel appearing for M/s.N.Doraikannan, for respondents 1 to 4 namely the defendants in TOS

No.1 of 2018.

10. Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the applicant would strenuously contend that there is a possibility of conflicting judgments if the suits are to be tried separately. He would also point out that as a matter of convenience, all the suits can be clubbed together and decided in one forum, which will avoid multiplicity of proceedings.

11. Contending contra, Mr.T.V.Ramanujam, learned Senior Counsel appearing for the respondents/defendants in TOS No.1 of 2018 would submit that the relief sought for in OS No.4120 of 2014 and 5455 of 2014 have nothing to do with the grant of Letters of Administration in TOS No.1 of 2018. The validity of the settlement deed executed by the deceased G.Bhuvarahan, does not depend on the result of the Testamentary Original Suit. Even assuming the Will to be true, if the plaintiff is unable to prove that the settlement deed is vitiated by any invalidating factor, she cannot succeed in the suit. Even though, the plaintiff had based her claim on the Will even in the absence of the Will, she would be entitled to attack the settlement deed since she is a Class-I heir of the deceased G.Bhuvarahan, being his daughter. Therefore, according to Mr.T.V.Ramanujam, the proceedings in OS No.4120 of 2014 and OS No.5455 of 2014 are not

dependent on the result of the Testamentary Original Suit in TOS No.1 of 2018 and hence there is no ground to transfer those suits to this Court to be tried along with TOS No.1 of 2018.

12. I have considered the rival submissions.

13. Of course the power under Clause 13 of the Letters Patent is wider than the power under Section 24 of the Code of Civil Procedure. But at the same time unless the applicant is able to show that there is at least an outside chance of there being a conflicting judgments in the Suits and the Testamentary Original proceeding, I do not think that this Court can, in exercise of its power under Clause 13 of the Letters Patent, withdraw the suits pending on the file of the City Civil Court. As already pointed out that the suit in OS No.4120 of 2014 is for a declaration that the settlement deed dated 10.01.2008 executed by the deceased G.Bhuvarahan, is null and void. The said relief sought for does not depend on the result of the Testamentary Original Suit in TOS No.1 of 2008. The Will is dated 27.11.2007, the testator died only on 23.02.2014, he had every right to deal with the property in the interregnum. The settlement deed came to be executed on 10.01.2008. There was no embargo on the testator to execute the settlement deed during the said period. Therefore, the validity of the

settlement deed does not depend on the validity of the Will or otherwise. Even if the Will is assumed to be genuine, it was open to the testator to have dealt with the property during his lifetime. Therefore, unless the plaintiff/applicant is able to establish that the settlement deed is viated by any one or more grounds as alleged in the plaint in OS No.4120 of 2014, she cannot succeed in the suit.

14. As already pointed out that even in the absence of being a legatee under the Will, the applicant has every right to question the settlement deed as a Class I heir of the deceased G.Bhuvarahan. The fact that she had made a claim as a legatee under the Will, will not enable her to seek transfer of the suit filed by her for declaration that the settlement deed dated 10.01.2008 is invalid to this Court to be tried along with the Testamentary Original Suit. The jurisdiction of this Court in the Testamentary Original Suit is limited to the validity or otherwise the Will said to have been executed by the deceased G.Bhuvarahan, on 27.11.2007, and nothing more. This Court sitting in the testamentary jurisdiction, cannot go into the question relating to the validity of an alienation made by the testator during his lifetime. Therefore, the question regarding validity of the settlement deed dated 10.01.2008 cannot come within sweep of TOS No.1 of 2018.

15. I am unable to agree with the contention of the Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the applicant that the separate trials of these suits will lead to conflicting judgments. The City Civil Court before which the suit in OS No.4120 of 2014 is pending cannot go into the question of validity of the Will. Similarly this Court cannot go into the validity of the settlement deed in the Testamentary Original Suit in TOS No.1 of 2018. In view of the above, I see no reason to transfer the suit in OS No.4120 of 2014 to this Court to be tried along with TOS No.1 of 2018.

16. As regards OS No.5455 of 2014 is concerned, it is the suit for bare injunction filed by the defendants in TOS No.1 of 2018 restraining the plaintiff therein from interfering with their possession of the property. If the plaintiff is able to prove the Will, she would become entitle to the property as a legatee under the Will and it is for her to take appropriate proceedings for recovery of possession of the property.

17. The defendants in TOS No.1 of 2018/respondents herein had sought for an injunction based on title tracing their title to the settlement deed dated 10.01.2008. If the settlement deed dated 10.01.2008 is upheld by the City Civil Court, then the plaintiff in TOS No.1 of 2018 will not be

entitled to the property, even if she is successful in TOS No.1 of 2018. If the applicant succeeds in her suit in OS No.4120 of 2014 and the Court accepts her case that the settlement deed is viated, she would be a co-sharer, if she is unable to prove the Will. Further the suit in OS No.5455 of 2014 is for one bare injunction, the question relating to title need not be gone into the said suit. Therefore, I do not find any reason to transfer the said suit to be tried along with TOS No.1 of 2018.

18. As regards the third suit namely, OS No.5047 of 2015, the same has been filed by the defendants in TOS No.1 of 2018 seeking a declaration that the settlement deed executed by the plaintiff in TOS No.1 of 2018 dated 29.12.2014 in favour of her children is null and void, solely on the ground that the Will dated 27.11.2007 has not been duly probated before this Court. They would also contend that the deceased G.Bhuvarahan, had settled the property in favour of the plaintiffs therein by a registered Settlement Deed dated 10.01.2008 and therefore, they are the owners of the property and the plaintiff in TOS No.1 of 2018 had no right to settle the property.

19. May be the result of TOS No.1 of 2018 will have a bearing on OS No.5047 of 2015, equally, the result of OS No.4120 of 2014 will also have a

bearing on the suit in OS No.5047 of 2015. If the plaintiff in OS No.4120 of 2014 succeeds in the said suit and is able to obtain a declaration that the settlement deed dated 10.01.2008 is invalid, she can justify her act of executing a settlement in favour of her children on 29.12.2014.

20. As already pointed out that the result of TOS No.1 of 2018 will have a direct bearing on the Suit in OS No.5047 of 2015, inasmuch as, if the plaintiff in the Testamentary Original Suit succeeds in proving the Will, she will become entitled to the property subject to her succeeding in OS No.4120 of 2014 also. All the suits were instituted prior to the filing of the Testamentary Original Suit in TOS No.1 of 2018, which was filed as OP No.882 of 2017 on 05.10.2017. Inasmuch as the grant of Letters of Administration or otherwise the Will dated 27.11.2007 will have a bearing on the suit in OS No.5047 of 2015. I am of the considered opinion that the said suit alone could be withdrawn to the file of this Court to be tried simultaneously with TOS No.1 of 2018.

21. In fine, the Transfer Application in Application No.1302 of 2019 is partly allowed withdrawing the suit in OS No.5047 of 2015 from the file of the 13th Assistant City Civil Court, Chennai to this Court to be tried simultaneously with TOS No.1 of 2018. The prayer for transfer of the other

two suits namely, OS No.4120 of 2014 and 5455 of 2014 stands rejected.

22. Taking into account the fact that the TOS No.1 of 2018 is already in a part heard stage, the Registry is directed to call for the records in OS No.5047 of 2015 forthwith and the same shall be posted before the learned Additional Master I, along with TOS No.1 of 2018 on 11.03.2018. The learned Additional Master I, shall ensure that the Testamentary Original Suit No.1 of 2018 and OS No.5047 of 2015 are tried simultaneously and recording the evidence in both the suits are completed by 15.04.2019.

23. In view of the order passed in Application No.1302 of 2014. The Application No.1303 of 2019 is closed, as no further order is necessary. There shall be no order as to costs.

28.02.2019

Index : Yes
Internet: Yes
Speaking order
jv

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R.SUBRAMANIAN,J.

jv



Pre Delivery Order

Application Nos.1302 and 1303 of 2019
in TOS No.1 of 2018

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