

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2019

Coram

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Tr.C.M.P. Nos.795 and 796 of 2015

Mrs. EzhilSelviRevision petitioner in both petitions

Vs.

1.Mrs.E.Padma
2.Mr.E.Chandra sekar
3.Mr.E.Anand
4.Mrs.Punitha
5.Mr.E.Thennarasu

...Respondents in Tr.C.M.P.No.795 of 2015

1. Mrs. E. Padma
2. Mr.E. Thennarasu

...Respondents in Tr.C.M.P.No.796 of 2015

Common Prayer: These Transfer Civil Miscellaneous Petitions have been filed under Section 24 of C.P.C., to withdraw the the proceedings in O.S.No.273 of 2012 and O.S.No.474 of 2004 on the file of the learned Principal District Judge at Chengalpet and transfer the same to this Court.

(For both the petitions)

For petitioner :Mr.S.Thiruvengadam

For Respondent :Mr. Ravibharathi for RR1 to RR3

For Respondent :Mrs. V. Nalini for R5

COMMON ORDER

These Transfer C.M.P.s have been filed by the appellant/revision petitioner, who is the 5th respondent in O.S.No.273 of 2012 and 2nd defendant in O.S.No. 474 of 2004, pending on the file of learned Principal District Judge, at Chengalpet and transfer the same to this Court.

2.The case of the revision petitioner is that O.S.No.273 of 2012 has been filed by the 5th respondent in Tr.C.M.P.No.795 of 2015/E.Thennarasu, and O.S.No.474 of 2012 has been filed by the first respondent in Tr.C.M.P.No.795 of 2015/mother of the revision petitioner. Both the suits were filed before the learned Principal District Judge, at Chengalpet, for partition of the movable and immovable properties belonging to the joint family property, and the same is pending, before the Principal District Judge, at Chengalpet.

3. The learned counsel for the revision petitioner submitted that the revision petitioner has undergone a surgery to remove extra bone growth below the inner tongue and under medication for allergy and she is also suffering from back pain, hence she was unable to travel and attend the Court proceedings at Chengalpattu and prays for transferring the said suit to High Court, Chennai.

4.The learned counsel for the respondents 1 to 3 submitted that recently the revision petitioner travelled abroad to meet her daughter in U.S.A and further more the revision petitioner regularly travel in and around Chennai and prays to dismiss this petition.

5.The learned counsel appearing for the 5th respondent submitted the 5th respondent was seriously ill and a surgery was done to remove a stone from right side kidney and a stent has been kept, due to severe infection of a foreign body which has attacked the lungs, and the gallbladder had got burst inside and the lungs was fully infected with puss and as the infected puss oozed out, the burst out gall bladder has got strucked with the lungs and he struggled for nearly 3 months to recover from those ailment's. He further submitted that this respondent

has a special child, affected by autism who had attained puberty and she needs her mother's assistance to take care of herself. At the same time this respondent cannot go alone to attend the court proceedings without his wife accompanying him and she also has some nephrology problem for a long time and prays to consider these facts and allow this Tr.C.M.P petition by transferring the suit to High Court, Chennai.

6.A counter affidavit was filed by 1st respondent in Tr.C.M.P.No.795 of 2019/E.Padma wherein it was stated that, the 5th respondent herein/E.Thennarasu had already filed a petition in Tr. CMP No.598 of 2013, for the very same relief, which was dismissed for non-prosecution on 12.11.2014.

7.A counter affidavit was filed by the 3rd respondent stating that the Revision petitioner and the 5th respondent/E.Thennarasu in Tr.C.M.P.No.795 of 2015 and the Revision Petitioner colluded together to file one after another application in the suit filed before the Trial Court to drag the proceedings as well as to prevent the Trial Court to decide the suit on merits. It was further stated that an ex-parte preliminary decree was obtained in O.S.A. No.474 of 2004 before the Principal District Court, Chengalpet.

8.A counter affidavit was filed by 5th respondent in Tr.C.M.P.No.795 of 2015/E.Thennarasu in O.S.A. No.474 of 2004 before the Principal District Court, Chengalpet, wherein it was stated even though he and his mother were residing in the suit schedule property since 2000, but he has no knowledge about the ex-parte preliminary decree obtained in O.S.A. No.474 of 2004 before the Principal District Court, Chengalpet and he was shown as 5th respondent in the said O.S.A, in order to set aside the same, he filed I.A.No.767 of 2010 for condonation of delay of 2058 days which was dismissed by the Trial Court and against the said order of dismissal he approached this Court in C.R.P.No.4539 of 2011 and the same was allowed by this Court.

9.It is seen from records that after this Court allowed C.R.P.No.4539 of 2011, 5th respondent in Tr.C.M.P.No.795 of 2015/E.Thennarasu filed I.A.No.405 of 2013 in O.S.No.474 of 2004 to reject the plaint and the same was dismissed by the Trial Court and a direction was given that since common issues are involved, these two suits can be clubbed together and dispose the same within a period of six months.

10. On a perusal of records it was observed that already this Court has dismissed this petition for the non-compliance of paying batta

and not on merits and the averments contended in the said counter affidavit filed by the 5th respondent would go to show he has still not recovered and he has got a special child who is having autism problem and his mother is aged about 72 years and she had filed O.S.No.474 of 2012 for partition of the properties.

11.This Court has allowed the restoration petition on 08.03.2018 and on considering that the Revision petitioner and the defendants are residing in Chennai, it will be convenient for the parties to appear before this Court at Chennai.

12. Considering the above facts and also the revision petitioner is a aged person and not able to travel due to her health condition to prosecute her case, this Court is inclined to allow these transfer Civil Miscellaneous Petitions and accordingly the two suits pending before the Principal District Judge, at Chengalpet is transferred to this Court. These Transfer C.MPs are allowed as prayed for. No costs.

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12.12.2019

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Index:Yes/No

Internet:Yes/No

V.BHAVANI SUBBAROYAN,J.

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To.

The learned Principal District Judge at Chengalpet



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