IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2019

CORAM
THE HONOURABLE MR.JUSTICE T.RAJA

Tr. C.M.P. No.394 of 2019
and C.M.P. No.10743 of 2019

Sri Kaliyammal Educational and
Charitable Trust,
Rep by its Secretary,
V.Ravi Kumar,
S/o.N.Venkatapathy,
No.5/513, 10th Main Road,
New Otteri, Vandaloor Post,
Chennai - 600 048. ... Petitioner

-vs-

Rural Aid Society Rep by its
President Mr.K.Varadarajan,
S/o Drishnappa Gowndar,
Mr.Krishnappa Gowndar,
Mangalapuram Village, Mathur Post,
Cheyyar Taluk, T.V.Malai District,
Tamillnadu. ... Respondent

Prayer: Petition filed under Section 24 of C.P.C to withdraw O.S.No.195 of 2015 on the file of the learned Additional District Munsif, Cheyyar and transfer the same to the file of such other Court.

For Petitioner : Mr.Perumbulavil Radhakrishnan

For Respondent : Mr.A.Selvendran for
Mr.K.G.Senthilkumar

O R D E R

This Tr.C.M.P. has been filed by Sri Kaliyammal Educational and Charitable Trust, represented by its Secretary, V.Ravi Kumar, seeking withdrawal of the pending O.S.No.No.195 of 2015 on the file of the learned Additional District Munsif, Cheyyar, and transfer the same to the file of such other Court.

2. Mr.Perumbalivil Radhakrishnan, learned counsel for the Petitioner submitted that when the Petitioner has filed the suit in O.S.No.190 of 2015 for bare injunction; the respondent has

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filed a suit in O.S.No.195 of 2015 for accounts on the file of learned Additional District Court, Cheyyar. The petitioner was advised to file a petition for rejection of the Plaint in O.S.No.195 of 2015. After enquiry and after hearing both the parties, the said petition in I.A.No.477/2018 has been dismissed by the trial court, by order dated 31.07.2018. As against the said dismissal order, the petitioner has filed C.M.A.No.3 of 2018 before the learned Subordinate Judge, Cheyyar. The Petitioner also states that they have has also filed a petition under Section 10 of CPC before trial court and that was not considered by trial court and the same was also rejected. When the suit filed for bare injunction by the Petitioner was prior to the suit filed by the respondent for accounts, he is entitled to invoke Section 10 of CPC but this was overlooked, therefore, the petitioner has also filed CRP.No.198 of 2019 along with CMP.No.1618 of 2019 seeking stay of the further proceedings. When the above said CRP and CMP are pending, the learned trial court in a way proceeded with trial and making the Petitioner to get along with the trial in O.S.No.190 of 2015 and forced to undergo cross examination. The respondent herein at that time sought for related documents of the suit in O.S.190 of 2015 and that was found to be missing and hence applied for certified copies, as a result, he was unable to proceed with the cross examination. The matter was further proceeded by the trial court. Although on two occasions, the matter was adjourned by the learned Additional District Munsif, Cheyyar, without considering the pending CMA.3 of 2018, the learned Judge insisted upon the Petitioner herein to complete the trial. In the mean while, the Petitioner also suffered with infected tooth and was having severe pain and he was unable to give his oral evidence and sought for adjournment, but the learned Judge without taking into consideration the above vital aspects had overlooked the same. The Petitioner thus sought for withdrawal of O.S.No.195 of 2015 on the file of Additional District Munsif Court at Cheyyar and transfer the same to the file of other court.

3. In reply, learned counsel appearing for the respondent/Plaintiff in O.S.No.195 of 2015 submitted that I.A.No.477 of 2018 filed for rejection of the Plaint in O.S.No.195 of 2015 was strongly opposed on merits. Taking note of the weak and feeble grounds found in I.A.No.477 of 2018, the learned trial court has rejected the same, as against which, the petitioner also filed CMA.No.3 of 2018 in the month of August 2018. Finally, after rejection of I.A, and the request made by the Petitioner for invoking section 10 of CPC, has been overlooked, thereafter, the Petitioner filed CMA.No.3 of 2018 on 02.01.2019.

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4. Taking into consideration the submissions made by counsel appearing for both sides and the averments raised, it is apparent that both suits filed by the Petitioner and the respondent viz., one for bare injunction and another for accounts, are pending endlessly since 2015. The learned Additional District Munsif, Cheyyar, has clubbed both matters together and posted the same for joint trial and examination of evidence. After completion of the chief examination, cross examination was also started and only at this stage, the present Tr.CMP., has been filed which is neither good for the Plaintiff in O.S.No.190 of 2015/Petitioner herein nor benefit the respondent/Plaintiff in O.S.No.195 of 2015. Further, as the chief examination was over in both the suits and are clubbed together for joint trial, the contention put forth by the Petitioner for transfer and for invocation of Section 10 of CPC, is wholly meritless. On the other hand, when the joint trial is proceeded and the matter is posted for cross examination and at this stage, transfer of suit to some other court will be wastage of time to the courts. Therefore, the Tr.CMP fails and the same is dismissed. No costs. Consequently, C.M.P. No.10743 of 2019 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

The Additional District Munsif,
Cheyyar.

+1cc to Mr.K.G.Senthilkumar, Advocate, S.R.No.49297
+1cc to Mr.Perumbulavil Radhakrishnan, S.R.No.49855

Tr. C.M.P. No.394 of 2019
and C.M.P. No.10743 of 2019

MP(CO)

RRS(02/08/2019)

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