

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.481 of 2019
and C.M.P.No.13534 of 2019

1.M.M.Mohamed Rahumathuma
2.M.S.S.Mohamed Niyaz

.... Petitioners/
Defendants 1 & 2

Vs

1.M.S.S.Zakir Hussain

.. 1st Respondent/Plaintiff

2.Safiya Begum

....2nd Respondent/
3rd Defendant

Prayer :

Petition under Section 24 of C.P.C., to withdraw O.S.No.15 of 2019 pending on the file of Principal District Court, Ramanathapuram and transfer the same to the XI Assistant City Civil Court, Chennai to be tried with O.S.No.1982 of 2016.

For Petitioners : Mr.S.Mohan

For Respondents : Mr.R.Abdul Mubeen - for R1
No appearance - for R2

O R D E R

The petitioners, mother and son, jointly filed this Tr.C.M.P. for withdrawal of the pending suit in O.S.No.15 of 2019 on the file of the Principal District Court, Ramanathapuram to be transferred to the file of the learned XI Assistant City Civil Court, Chennai to be tried along with O.S.No.1982 of 2016.

2. Learned counsel appearing for the petitioners, interestingly stated that the respondents filed a suit in O.S.No.6454 of 2014 on the file of the I Assistant City Civil Court, Chennai on 10.11.2014, seeking declaration of the deed of cancellation dated 20.09.2011 bearing Document No.3215 of 2011 on the file of SRO, Anna Nagar, Chennai, cancelling the settlement deed executed by the first defendant to and in favour of the plaintiffs as null and void with a consequential permanent injunction restraining the defendant from dealing with the schedule property and not to disturb the peaceful possession

and enjoyment of the same. Unnecessarily, they have also filed another suit in O.S.No.1982 of 2016 on the file of the XI Assistant City Civil Court, Chennai praying for the following reliefs.

- i. For declaration of the same settlement deed dated 20.09.2011 bearing Document No.3216 of 2011 executed by the first defendant in favour of the 2nd defendant in respect of 'A' Schedule property .
- ii. For declaration that the settlement deed dated 21.03.2011 bearing Document No.1047 of 2011 executed by the first defendant in favour of the 3rd defendant in respect of 'A' Schedule property as null and void.
- iii. For declaration, declaring that the Settlement Deed dated 21.03.2011 bearing No.1046 of 2011 executed by the first defendant in favour of the 4th defendant in respect of Schedule 'A' mentioned property as null and not valid, and
- iv. For partitioning the Schedule 'A' mentioned property by metes and bounds by dividing the Schedule 'A' property into 3 equal parts and allot 1/3rd share to the plaintiff and put the plaintiff in possession of the same.

3. The 'B' schedule property mentioned in the above suit consists of Item Nos.1,2 and 3 which are as follows,

Item-1: Punja land comprised in Survey No.260/1 as per Patta Survey No.260/1A2 measuring 29 cents in Kanchirangudi Village, Kanchirangudi Kurup, Keezhakarai, Ramanathapuram Taluk and District, situated at Keezhakarai Sub Registration District and Registration District of Ramanathapuram.

Item-2: Punja land comprised in Survey No.259/2 as per Patta Survey No.259/2A measuring 48 cents in Kanchirangudi Village, Kanchirangudi Kurup, Keezhakarai, Ramanathapuram Taluk and District, situated at Keezhakarai Sub Registration District and Registration District of Ramanathapuram.

Item-3: Punja land comprised in Survey No.260/1 as per Patta Survey No.260/1A1 measuring 52 cents in Kanchirangudi Village, Kanchirangudi Kurup, Keezhakarai, Ramanathapuram Taluk and District, situated at Keezhakarai Sub Registration District and Registration District of Ramanathapuram.

4. Ironically, the aforesaid items of properties were also the subject matter of Civil Suit in O.S.No.15 of 2019, pending

on the file of the learned Principal District Judge, Ramanathapuram. The 'B' Schedule, 'C' Schedule and 'D' Schedule are filed along with the typed set of papers. A comparison of the properties in both suits, clearly shows that the respondents have filed the above suits for the same relief in two different places. Learned counsel for the respondents also agreed with the submissions made by the learned counsel for the petitioners and stated that the respondents have no objection for transferring the suit. However, even if they have objection, it cannot be entertained, as they have filed repeated suits, that too litigating and re-litigating against their own mother.

5. As the respondents have filed two different suits in two different places, for the same properties, claiming same relief, this Court, while deprecating the conduct of the respondents, and taking on record the no objection given by the learned counsel for the respondents for transferring the suits, is inclined to allow the prayer in the present Tr.C.M.P. Accordingly, O.S.No.15 of 2019 pending on the file of Principal District Court, Ramanathapuram is withdrawn and transferred to the file XI Assistant City Civil Court, Chennai to be tried along with O.S.No.1982 of 2016. However, the respondents shall pay costs of Rs.50,000/- (Rupees Fifty Thousand only) to each of the petitioners, who are none other than the first respondent's mother and brother, within a period of ten days from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. The learned XI Assistant Judge, City Civil Court, Chennai is directed to ensure compliance of the above order with regard to the payment of costs, before taking up the matter for trial.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

KST

To

1. Principal District Judge, Ramanathapuram
2. XI Assistant Judge, City Civil Court, Chennai.

+1cc to Mr.S.Mohan, Advocate, S.R.No.69585

+1cc to Mr.R.Abdul Mubeen, Advocate, S.R.No.70162

+1cc to Mr.S.Mohan, Advocate, S.R.No.69585 (03.10.2019)

Tr.C.M.P.No.481 of 2019

SS(CO)

CS/01/10/2019