

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.10.2019

Coram

THE HON'BLE MRS. JUSTICE BHAVANI SUBBAROYAN

Tr.C.M.P.No.648 of 2019

and

C.M.P.No.18685 of 2019

1. Govindasamy
2. Raghavan

...Petitioners

Vs.

1. Manoharan
2. Amsavalli

...Respondents

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of Cr.P.C., to withdraw the suit in OS. No.334 of 2017, on the file of the Sub Court, Thittakudi, Cuddalore District and transfer the same to the Sub Court, Ariyalur, Ariyalur District.

For Petitioner : Mr.S.Kamadevan

For Respondent : Notice served - No appearance
R2 - Given up

O R D E R

This Transfer Civil Miscellaneous Petition has been filed by the petitioner to withdraw the suit in OS. No.334 of 2017, on the file of the Sub Court, Thittakudi, Cuddalore District and transfer the same to the Sub Court, Ariyalur, Ariyalur District.

2. The case of the petitioners are as follows:

The first respondent herein has originally filed the suit in OS. No.151 of 2013 before the Sub Court, Virudhachalam seeking for partition of the schedule mentioned properties and allotting 1/3 share. The petitioners are arrayed as first and second defendants 1 and 2 in the above said suit. The second respondent herein viz., Amsavalli is debtor to the petitioner's family. After the formation of the Sub court, Thittakudi, the suit was transferred there, which was re-numbered as O.S.No.334 of 2017 and the case was posted for trial on 16.09.2019.

3. The petitioners are doing vegetable business and not residing in the suit property. The second petitioner is the youngest son of the first petitioner, aged about 85 years. The

first respondent, by taking into account his old age and ill health, created some documents and settled some of the properties in favour of his minor son Mutharasan on 05.01.2011 and also appointed his wife viz., Amsa as guardian. The properties which is the subject matter of the settlement were allotted to him under the oral family partition, which is alleged said to have taken place in 1987. All the properties are lying within the jurisdiction of the Sub Court, Thittakudi. The first respondent has filed the suit for partition. In respect of the properties which are lying within the jurisdiction of the District Munsif, Sendurai, the first respondent executed the settlement claiming that the same were allotted to him under the oral family partition which took place in the year 1987 and set up his wife to file the suit for permanent injunction against the petitioners. The first respondent's son and his wife originally filed a suit in OS.No.229 of 2013, before the District Munsif, Ariyalur District seeking permanent injunction. After formation of the Court in Sendurai, the same has been transferred to the District Munsif cum Judicial Magistrate, Sendurai and renumbered as OS.No.94 of 2019.

4. Now the petitioner is before this Court by way of this petition seeking transfer of the case in O.S.No.334 of 2013 on the file of the Sub Court, Thittakudi to the file of the Sub Court, Ariyalur District, to avoid multiplicity of proceedings.

5. The learned counsel for the petitioners would submit that the suit filed by the defendants 1 and 2 and the issues are one and the same in both the suits. In order to avoid conflicting views by different Courts in respect of the same claim, the suit filed by the defendants in O.S.No.334 of 2013, on the file of the Sub Court, Thittakudi, has to be transferred to the Sub Court, Ariyalur District. Further, the first respondent and his wife, who are the plaintiffs in both the suit, are living in Sendurai Taluk, Ariyalur District. If the suit is transferred to Sub Court, Ariyalur, no prejudice would be caused to the respondents.

6. This Court has directed the petitioners to serve notice on the respondents and the same was received by them. On 15.10.2019, this Court was directed the Registry to verify as to whether any vakalat has been filed on behalf of the respondents and directed to list the matter on 17.10.2019. On 17.10.2019, there was no appearance for the first respondent either in person or through his counsel. The second respondent has given up the matter and he has made an endorsement to that effect.

7. Heard the learned counsel for the petitioner and also perused the materials available on record.

8. To avoid multiplicity of proceedings, this Court is of the opinion that since both the cases are interconnected, joint trial would meet the ends of justice. Hence, the suit filed by the first respondent herein in OS.No.334 of 2017 pending on the file of Sub Court, Thittakudi is withdrawn and transferred to the file of Sub Court, Ariyalur, to be tried along with O.S.No.94 of 2019.

9. The Transfer Civil Miscellaneous Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

rli

To

1. The Subordinate Judge, Thittakkudi.

2. The Subordinate Judge, Ariyalur.

+1cc to Mr.S.Kamadevan, Advocate SR.No.86776

Tr.C.M.P.No.648 of 2019
and
C.M.P.No.18685 of 2019

SS(CO)
GMY(28/11/2019)