

A.No.8495 of 2019
in
TOS.No.12 of 2019

K.KALYANASUNDARAM, J

This application has been filed seeking transfer of OS.No.1152 of 2018 pending on the file of the 19th Additional City Civil Court, Chennai to be tried along with TOS.No.12 of 2019.

2. Heard both sides and perused the materials available on record.

3. The applicants filed a suit in OS.No.1152 of 2018 against the respondents for partition. After institution of the suit, the respondents filed OP.No.841 of 2018 for probate of the Will dated 21.04.1998. Since a Caveat petition was filed in OP.No.841 of 2018, it was converted as TOS.No.12 of 2019 and the same was pending.

4. The learned counsel for the applicants would state that till the filing of the partition suit, there was no whisper about the Will said to have been executed by the applicants' father and the entitlement of the applicants in the partition suit would depend upon the finding to be rendered in the Testamentary Original Suit and hence, both the suits have to be tried together.

5. Per contra, the learned counsel for the respondent would argue that only after filing of the suit for partition, the respondent became aware of the execution of the Will by their father. It is further contended that the suit was filed on the basis that there was no testamentary dispossession, but on the contrary the respondent has claim the right based on the registered Will. Hence, this application is to be dismissed.

6. It is not disputed that the respondent is claiming the right based on the Will. The finding in the Testamentary Original Suit would have bearing on the right of the applicants in the partition suit. Admittedly, the parties to the suit and Testamentary Proceeding and the property are one and the same. Hence, in the interest of justice, the suit filed by the applicants in OS.No.1152 of 2018 shall be transferred to be tried along with TOS.No.12 of 2019.

7. This application is ordered accordingly.

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