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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.825 of 2018

1. Milap Chand Surana
2. Kanchan Devi Surana
3. Ramesh Kumar Surana
4. Leela Surana
5. Abhishek Surana
6. Dinesh Kumar Surana
7. Susheela Surana
8. Suresh Kumar Surana
9. Pushpa Devi Surana
10. Latha Surana
11. Padam Chand Jain
12. Ahilya Khicha
13. Vimala Khicha
14. Lalith Jain
15. Sunitha Jain

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Petitioners

-vs-

1. Bharat Kumar Surana
2. M/s Gautham Cement Works
rep by Partner Ramesh Kumar Surana
"Surana House", 2nd Floor,
Old No.9 & 10, New No.16
Sivanandam Colony, Korattur
Chennai 600 080

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Respondents

Transfer Civil Miscellaneous Petition filed under Section 24 (b) (ii) of the Code of Civil Procedure to withdraw O.S.No.68 of 2016 from the file of the IV Additional District Court, Ponneri and transfer the same to the file of the II Additional District Court, Poonamallee.

For Petitioners

:: Mr.B.Harikrishnan

For Respondents

:: Mr.V.R.Kamalanathan for R1
R2-given up



ORDER

This transfer civil miscellaneous petition has been filed for transfer of the pending O.S.No.68 of 2016 from the file of the IV Additional District Court, Ponneri to the file of the II Additional District Court, Poonamallee.

2. Learned counsel for the petitioners/defendants submitted that the said suit has been filed by the first respondent/plaintiff, who is none other than the son of the first and second petitioners, before the Principal District Court at Thiruvallur seeking a decree of partition of the suit schedule properties into equal shares among the plaintiff and the defendants 1, 3 and 6 and allot 1/4th exclusive share to the plaintiff after deduction of loans and liabilities and also for permanent injunction against the defendants restraining them not to alienate, encumber or alter the superstructure in any manner. Due to bifurcation, the said suit was transferred to the IV Additional District Court at Ponneri. The first respondent has also filed yet another suit in O.S.No.207 of 2011 before the learned District Munsif, Ambattur for a bare injunction against the defendants therein and the said suit also has been transferred to Ponneri, though the learned counsel is not able to inform the exact Court in which the matter is pending except the place. Due to passage of time, as the petitioners-parents are aged, they are finding it difficult to undertake a long travel of 45 kms., from Korattur to Ponneri. Therefore, if the matter is withdrawn and transferred to Poonamallee, the petitioners would be able to undertake a short travel of less than 20 kms., and no prejudice would be caused to anyone, he pleaded.

3. But this Court, for two reasons, is unable to entertain the prayer for transfer. Firstly, when the suit for partition in O.S.No.68 of 2016 is pending on the file of the IV Additional District Court at Ponneri from 2016 after being transferred from the District Court at Thiruvallur due to bifurcation, the petitioners have thought it fit to move the transfer civil miscellaneous petition after two years. Secondly, one another suit in O.S.No.207 of 2011 filed by the first respondent has been pending from 2011 for a bare injunction at Ponneri. In any event, for the reasons best known to the petitioners, they have not chosen to seek for transfer of the said suit. Therefore, finding the inconsistent stand taken by the petitioners, this Court is not inclined to entertain the prayer for transfer. Hence, the transfer civil miscellaneous petition is dismissed. Consequently, C.M.P.No.20304 of 2018 is also dismissed.



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4. Both the learned counsel for the parties jointly requested this Court to issue a direction to the trial Court concerned to expedite the respective suits for final disposal, as the petitioners 1 & 2 are senior citizens.

5. Taking note of the fact that the suit for bare injunction is pending from 2011 and the suit for partition is pending from 2016 at the Courts at Ponneri, the learned trial Judge concerned is directed to take up the matter and dispose of the same expeditiously, preferably within a period of six months from the date of receipt of a copy of this order, as the petitioners 1 & 2 are senior citizens.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Additional District Judge
Ponneri

2.The II Additional District Judge,
Poonamallee.

+lcc to Mr.B.Harikrishnan, Advocate sr.56031

+lcc to Mr.V.R.Kamalanathan, Advocate sr.55857

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gp(co)

nr 22/08/2019