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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

T.R.C.M.P. (MD) No.81 of 2019

and

C.M.P. (MD) No.1907 of 2019

S.Mohammed Bilal
represented by his Father/Power Agent
A.Sheik Dawood : Petitioner

vs.

1.R.Vijayalakshmi
2.Minor R.Sanjai
3.Minor Mythili : Respondents

(Minor Respondents 2 and 3 are represented by
their Mother, the 1st respondent)

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure, to withdraw the suit in O.S.No.50 of 2018 from the file of the Subordinate Court, Thuraiyur and transfer the same to the file of Sessions Judge, Mahaleer Neethimandram, Tiruchirapalli, to be tried along with O.S.No.8 of 2018.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.R.G.Shankar Ganesh

ORDER

This petition is filed by the plaintiff in the suit in O.S.No.50 of 2018 on the file of the Subordinate Court, Thuraiyur, to withdraw the said suit from the Subordinate Court, Thuraiyur and to transfer the same to the District Sessions Court (Mahaleer Neethimandram) Trichy, to be tried along with O.S.No.8 of 2018.

2.The petitioner has purchased a property from one of the parties to the suit in O.S.No.8 of 2018 on the file of the District Sessions Court (Mahaleer Neethimandram), which was filed for the relief of partition and separate possession by some of the co-owners.



3.The case of the petitioner is that the petitioner, who has purchased the property from the mother-in-law of the first respondent, has filed the suit in O.S.No.50 of 2018 for recovery of possession. The first defendant in the said suit is the mother-in-law and other defendants are her children. It is not in dispute that the suit property in O.S.No.50 of 2018 is also a subject matter of the suit for partition in O.S.No.8 of 2018.

4.It is also stated by the petitioner that the first respondent, who is contesting the transfer application, has joined with the mother-in-law by attesting the document, namely, the sale agreement executed by her mother-in-law in favour of the petitioner. Though the learned Counsel for the respondents submitted that one of the respondents has filed a Civil Revision Petition before this Court to strike off the pleadings under Order 7 Rule 11 CPC, it is seen from the papers that the said Civil Revision Petition is filed only on the ground that the suit property is under valued and that therefore, the plaint is liable to be rejected on the ground of under valuation.

5.The suit for recovery of possession in O.S.No.50 of 2018 has been filed by valuing the suit property at Rs.3,56,000/-. The suit property in O.S.No.50 of 2018 is only a portion of the suit property purchased by the petitioner. Hence, the value has to be done only for the portion of the property. In other words, the suit is filed only in respect of portion of property purchased by the petitioner. Any way, this issue need not be gone into in this proceeding.

6.Having regard to the specific issues that arise for consideration in the suit in O.S.No.50 of 2018 and O.S.No.8 of 2018, this Court is of the view that join trial of both suits will save time and it is appropriate to ensure join trial without further delay, subject to the outcome of the Civil Revision Petition pending.

7.Considering the facts and circumstances of the case above narrated, this Court is inclined to allow this petition. Accordingly, this petition is allowed and the suit in O.S.No.50 of 2018 on the file of the Subordinate Court, Thuraiyur is withdrawn and transferred to District Sessions Court (Mahaleer Neethimandram), Trichy, for joint trial along with O.S.No.8 of 2018. The learned Subordinate Judge, Thuraiyur, is directed to transmit the papers in O.S.No.50 of 2018 to the District Sessions Court (Mahaleer Neethimandram), Trichy, forthwith. In case the revision petition to reject the plaint is allowed, this order in the Civil Revision Petition will not stand in the way of O.S.No.8 of 2018 being proceeded with.

8.The learned District Sessions Judge (Mahaleer Neethimandram) Trichy, is directed to dispose of both suits in O.S.No.08 of 2018 and O.S.No.50 of 2018 (which is now transferred from Subordinate



Court, Thuraiyur) as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Subordinate Court, Thuraiyur.

2.The District Sessions Judge,
Mahaleer Neethimandram,
Tiruchirapalli.

+1 CC to M/s.R.G.SHANKAR GANESH, Advocate in SR-69823

+1 CC to M/s.R.SUBRAMANIAN, Advocate in SR-69973

T.R.C.M.P. (MD) No.81 of 2019
19.06.2019

cmr

PK/10.07.2019 : 3P/5C