

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.09.2020

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.Nos.6821 & 6822 of 2019
in
C.S.No.142 of 2019

A.Nos.6821 & 6822 of 2019:

1.P.S.M.T.Hameed Nazrutheen

2.K.M.S.B.Fathima Gani

3.Narkish Banu

4.Khaja Nizammudeen

5.Shakila Banu

6.Mohammed Niyas

... Applicants

सत्यमेव जयते
Vs

1.P.S.M.T.Syed Abdul Rahman

2.P.K.M.S.Ameena Beevi

3.Jamila Beevi

4.Sheik Meera

5.Syed Ibrahim

6.Sharmila Banu

7.Mohamed Haja Rizwan

... respondents

Prayer in A.No.6821 of 2019: Judges summons filed under Order XIV Rule 8 of the Original Side Rules read with Order XXIV of the Code of Civil Procedure Order XXIII Rule 1 A to withdraw the suit in O.S.No.6001 of 2018 from the file of the VII Assistant City Civil Court at Chennai and transfer the same to this Court to be tried along with C.S.No.142 of 2019.

Prayer in A.No.6822 of 2019: Judges summons filed under Order XIV Rule 8 of the Original Side Rules read with Section 151 of the Code of Civil Procedure to stay the proceedings in O.S.No.6001 of 2018 from the file of the VII Assistant City Civil Court at Chennai pending disposal of the above application.

For Applicants : Mr.Avinash Wadhwani
For Mr.V.Raghavachari
For Respondents : Mr.T.Velumani

COMMON ORDER

A.No.6821 of 2019:

This application is filed seeking to transfer the suit O.S.No.6001 of 2018 on the file of the VII Assistant City Civil Court, Chennai to be tried along with instant suit. The suit C.S.No.142 of 2019 has been filed by the applicants herein for the following reliefs:

“a) Declaring that the Plaintiffs are entitled to 1/2 share in the properties, more fully described in the Schedule hereunder and to divide the said properties by metes and bounds and allot 1/2 share therein to the Plaintiffs.

b) To restrain by permanent injunction the Defendants herein from in any way interfering with the peaceful possession and enjoyment of the property in the occupation of the Plaintiffs at Plot No. 93 D.No.54, Thiyagaraya Road, T.Nagar, Chennai 600 017 more fully described in Item No.1 in Schedule hereunder.

c) to direct the Defendants herein to render proper and true accounts in respect of business carried on in the name and style of Hotel New Malaysia Inn in the property more fully described in Item No. 4 of Schedule hereunder for the period from December 2015 till date.

d) To direct the Defendants to pay the costs of the Suit; and

e) to pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice."

2. The 1st respondent herein has filed a suit in O.S.No.6001 of 2018 against the 1st, 4th and 6th applicants for a permanent injunction restraining them from interfering with his peaceful possession and enjoyment of suit schedule properties. This property has been described as Item No.4 in the A – Schedule property to the plaint in C.S.No.142 of 2019. In order to avoid conflicting Judgement and multiplicity of proceedings, the applicants have come forward with the above application to transfer the suit in O.S.No.6001 of 2018 pending on the file of the VII Assistant City Civil Court, Chennai, to be tried along with the instant suit.

3. The 1st respondent has filed his counter in which he would submit that he is in possession of the property and the absolute owner having purchased the same under the sale deeds of the year 1994. He would submit that there is no common issues involved in the suit.

4. Heard the learned counsels and perused the records.

5. The contention of the applicants in the instant suit is that all the properties, even those purchased in the individual names are from out of the business which was run by their father along with the 1st plaintiff and the 1st defendant and therefore they partake the character of the joint possession.

6. The property which is the subject matter of the suit O.S.No.6001 of 2018 is also one of the properties in the suit C.S.No.142 of 2019 and the applicants have come forward with the contention that these properties have been purchased from the common business and therefore they are

entitled to a share in the property which would have a direct bearing on the suit pending before the City Civil Court. If the suit is continued in the VII Assistant City Civil Court, there is an every likelihood of conflicting decision coming up and multiplicity of proceedings would also step in.

7. In these circumstances, it would be in the interest of the parties that the suit O.S.No.6001 of 2018 to be withdrawn and transferred from the VII Assistant City Civil Court, Chennai to the file of this Court to be tried along with C.S.No.142 of 2019. The application is ordered as prayed for.

A.No.6822 of 2019:

In the light of the order passed in the application in A.No.6821 of 2019, the application in A.No.6822 of 2019 becomes infructuous.

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Index : Yes/No

Speaking order/non-speaking order

P.T.ASHA, J.,

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