

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Transfer C.M.P.Nos.1073 of 2017
and 862 of 2018

Tr.C.M.P. No.1073 of 2017

1.P.Santhamani (Died)
2.R.Indrani ...Petitioners/Defendants
(2nd petr. brought on record as LR of the
deceased sole petitioner vide order of the
court dated 25.3.2019)

vs.

1.K.Varadharajan
2.Bakiyalakshmi
3.V.Parimalam
4.P.Shanmugapriya @ Poorniya ...Respondents/Plaintiffs
(RR2 to 4 brought on record as LR of the
deceased sole petitioner vide order of the
court dated 25.3.2019)

Prayer: Transfer Civil Miscellaneous Petition filed under
Section 24 of C.P.C., to withdraw the suit in O.S. No.33 of 2017
on the file of the learned Principal District Court, Namakkal
and to transfer the same to the file of Fourth Additional
District Court, Bhavani to try along with O.S. No.11 of 2017.

For Petitioner : Mr.N.Manokaran
(In both)
For Respondent : Mr.S.Senthilnathan

Tr.C.M.P. No.862 of 2018

R.Indrani ...Petitioner/2nd Defendant
vs.

1.K.Varadharajan
2.Bakiyalakshmi
3.P.Shanmugapriya @ Poorniya
...Respondents 2 & 3/Defendants 1 & 3

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the suit in O.S. No.97 of 2018 on the file of the learned District Munsif Court, Tiruchengode and to transfer the same to the file of the Fourth Additional District Court, Bhavani to try along with O.S. No.11 of 2017.

For Petitioner : Mr.N.Manokaran
For Respondents : Mr.S.Senthilnathan for R1
Mr.R.Prabakar for R2
Mr.R.Vivekananthan for R3

COMMON ORDER

Two transfer civil miscellaneous petitions have been filed to transfer both suits (i) O.S. No.33 of 2017 from the file of Principal District Court, Namakkal and (ii) O.S. No.97 of 2018 from the file of District Munsif Court, Tiruchengode to the file of Fourth Additional District Court, Bhavani, to be tried along with O.S. No.11 of 2017.

2. According to the petitioner, there are four suits pending against the parties before this court and that suit O.S. No.33/2017 is with regard to specific performance filed by one Varadharajan against his mother-in-law, who passed away recently and the LRs have come on record. O.S. No.11 of 2017 is pending before the learned IV Additional District Judge, Bhavani, for recovery of amount by the said Varadharajan against his mother-in-law. In this case also, legal heirs have come on record, according to the petitioner. It is further stated that O.S. No.97/2018 is pending before the District Munsif Court, Tiruchengode, which is filed by Varadharajan against his sister-in-laws, which is for a declaration that the Will cannot be enforced. O.S. No.322 of 2018 is pending before the Sub Court, Bhavani for partition filed by one of the daughters of deceased Santhamani.

3. According to the petitioner, all the suits can be tried jointly in order to give a quietus to the matter instead of being tried in different courts and the parties are almost common and that it will be easy for the court to arrive at a conclusion based on the common evidence that may be let in for the purpose of giving quietus to the matter. He further stated that there should be a finality of litigation between the parties and that if the matters are transferred to Fourth Additional District Court, Bhavani, it will be conducive for the

parties to appear on a particular date for the purpose of letting in evidence and the issues can be decided at the earliest. Even assuming that a joint trial is not possible, a separate trial could be conducted in the same complex, where different courts are situated for the purpose of convenience of the parties.

4. In support of the contention, the learned counsel for the petitioner, has referred to the decision of the Apex Court in State Bank of India vs. Ranjan Chemicals Ltd. and Another reported in (2007) 1 SCC 97 and the relevant paragraphs are extracted below:

"10. A joint trial can be ordered by the court if it appears to it that some common question of law or fact arises in both proceedings or that the right to relief claimed in them are in respect of or arise out of the same transaction or series of transactions or that for some other reason it is desirable to make an order for joint trial. Where the plaintiff in one action is the same person as the defendant in another action, if one action can be ordered to stand as a counterclaim in the consolidated action, a joint trial can be ordered. An order for joint trial is considered to be useful in that, it will save the expenses of two attendances by the counsel and witnesses and the trial Judge will be enabled to try the two actions at the same time and take common evidence in respect of both the claims. If therefore the claim made by the Company can be tried as a counterclaim by the Debt Recovery Tribunal, the court can order joint trial on the basis of the above considerations. It does not appear to be necessary that all the questions or issues that arise should be common to both actions before a joint trial can be ordered. It will be sufficient if some of the issues are common and some of the evidence to be let in is also common, especially when the two actions arise out of the same transaction or series of transactions.

11. A joint trial is ordered when a court finds that the ordering of such a trial, would avoid separate overlapping evidence being taken in the two causes put in suit and it will be more convenient to try them together in the interests of the parties and in the interests of an effective trial of the causes. This power inheres in the court as an inherent power. It is not possible to

accept the argument that every time the court transfers a suit to another court or orders a joint trial, it has to have the consent of the parties. A court has the power in an appropriate case to transfer a suit for being tried with another if that the claim of the company in the suit could be considered to be a claim for set-off and a counterclaim within the meaning of Section 19 of the Act, the only question is whether in the interests of justice, convenience of parties and avoidance of multiplicity of proceedings, the suit should be transferred to the Debt Recovery Tribunal for being tried jointly with the application filed by the Bank as a cross-suit. Obviously, the proceedings before the Debt Recovery Tribunal could not be transferred to the civil court since that is a proceeding before a Tribunal specially constituted by the Act and the same has to be tried only in the manner provided by that Act and by the Tribunal created by that Act. Therefore, the only alternative would be to transfer the suit to the Tribunal in case that is found warranted or justified."

5. The contesting first respondent in both the transfer civil miscellaneous petitions would submit that O.S. No.33 of 2017 cannot be transferred to a different court on account of pecuniary jurisdiction and that Principal District Judge alone can hear the matter. He further submitted that in case of any adverse order passed by the District Munsif Court, he has got a right of appeal before the District Court and thereafter, to this court by way of a second appeal. The right of appeal cannot be deprived, more particularly, all the four suits are of different nature and merely because the parties are common, it cannot be directed to be tried by a particular Judge, when the courts lack jurisdiction. Hence he submitted that the relief sought for in Tr.C.M.P. No.1073 of 2017, has got to be dismissed and submitted that the decision quoted by the petitioner referred to supra, may not be applicable to the facts of this case.

5. Heard both parties and perused the materials available on record.

6. The facts mentioned supra are not disputed. There are four different cases pending before two different forums, one is pending before the Principal District Court, Namakkal and the second one is before District Munsif and Sub Court, Bhavani. The

family members may be common but the reliefs sought for are completely different. There can be a joint trial, provided all falls within the jurisdiction, more particularly, pecuniary jurisdiction for the court to entertain and try and render a finding/judgment/decreed.

7. In the present case on hand, there cannot be any joint trial. At the most, there can be a simultaneous trial in different courts, provided all the courts are situated in one complex. The decision quoted by the learned counsel for the petitioner, namely State Bank of India vs. Ranjan Chemicals Ltd. and Another reported in (2007) 1 SCC 97 may not be applicable to the facts of this case. That case arose under Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The court, while considering the relief sought for by the parties, held that there should be a joint trial and that the parties should not be put to hardship and a composite order would enable the parties to give a quietus to the case on hand. Such is not the issue herein. The relief sought for is one for specific performance, one for recovery of money, the other is for a declaration of the Will as bad and other one is for partition. Though the parties may be one and the same, joint trial is not permissible, hence the decision quoted and the reference to that are extracted supra, cannot be applicable to the facts of this case, as there is a District Court, Sub Court and District Munsif Court at Bhavani, no prejudice is going to be caused to the parties, if the matters are transferred to the District Court, which is competent to deal with the matter that are situated at Bhavani.

8. Taking note of the submission of both the parties that even though transfer of the case can be ordered from Principal District Court, Namakkal to Additional District Court, Bhavani, but the competent jurisdictional court alone is empowered to take up the matter and decide the same at Bhavani and directing the Sub Court, which has no jurisdiction to take up the matter, would affect the rights of parties and asking the superior court to take up the matter would put the parties in difficult as one of the parties, who may suffer adverse order, may lose right of appeal. Hence this court directs transfer of O.S. No.33 of 2017 from the file of Principal District Court, Namakkal to the file of Fourth Additional District Court, Bhavani and O.S. No.97 of 2018 from the file of District Munsif Court, Thiruchengode to the file of Principal District Munsif Court, Bhavani.

9. With the above directions, the Transfer Civil Miscellaneous Petitions are disposed of. However, there shall be no order as to cost.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Asr

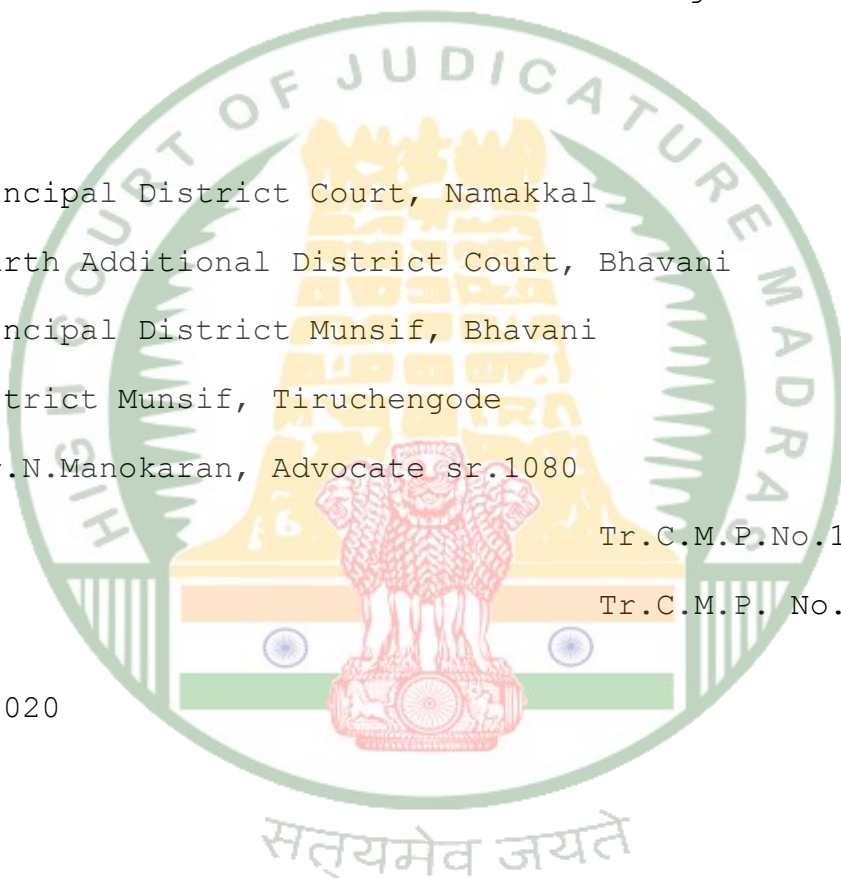
To :

1. The Principal District Court, Namakkal
2. The Fourth Additional District Court, Bhavani
3. The Principal District Munsif, Bhavani
4. The District Munsif, Tiruchengode

+lcc to Mr.N.Manokaran, Advocate sr.1080

Tr.C.M.P.No.1073 of 2017
and
Tr.C.M.P. No.862 of 2018

nr(co)
nr 17/02/2020



WEB COPY