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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.09.2020

Pronounced on : 09 .10.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

Tr.C.M.P. (MD) No.484 of 2019

and C.M.P(MD)Nos. 11330 and 11331 of 2019

and 4474 of 2020

1.S.Padmavathy

2.Muthulakshmi

... Petitioners

-vs-

1.G.Sakthi Saravanan

2.G.Sivasankar

3.G.Gandhimathi

...Respondents

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure to withdraw the suit in O.S.No.381 of 2012 from the file of III Additional Sub Court, Madurai and to transfer the same to the file of the I Additional Sub Court, Erode, to be tried simultaneously along with O.S.No.480 of 2013 on the file of the I Additional Sub Court, Erode.

For Petitioners : Mr.J.Barathan

For Respondents : Mr.S.Srinivasa Raghavan
For Mr.S.Venkatesh

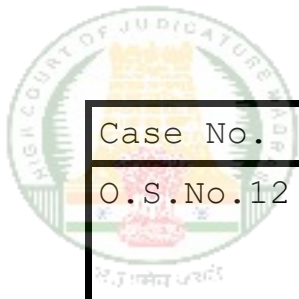
O R D E R

The present petition is laid with a prayer seeking transfer of O.S.No.381 of 2012 pending on the file of the III Additional Sub Court, Madurai to the file of I Additional Sub Court, Erode.

2.1.To understand the backdrop few facts may have to be stated.

1.A certain Arukkaniammal and Arumugam have begotten Padmavathy, Muthulakshmi and Gandhimathi as their daughters. Arumugam died sometime in 2010. Gandhimathi has two sons namely, Sakthi Saravanan and Sivasankar.

2.Arumugam had left certain property and this came to be partitioned between his widow Arukkaniammal and three daughters on 07.03.2011. Thereafter, three suits came to be laid. The details are given below:

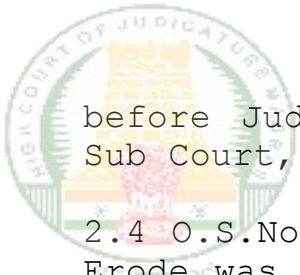


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Case No.	Parties	Prayer	Court
O.S.No.12 of 2012	Sivaprakash (P) Gandhimathi (D1) Arukaniammal (D2) Padmavathy (D3) Muthulakshmi (D4)	Specific Performance	II Additional District Court, Erode
O.S.No.381 of 2012	Sakthisaravanan (P) Arukaniammal (D1) Padmavathy (D2) Muthulakshmi (D3) Gandhimathi (D4)	For recovery of a sum of Rs.9,00,000/-	III Additional Sub Court, Madurai.
O.S.No.480 of 2013	Sivasankar (P) Arukaniammal (D1) Padmavathy (D2) Muthulakshmi (D3) Gandhimathi (D4)	Permanent Injunction	I Additional Sub Court, Erode

2.2 O.S.No.12 of 2012, was instituted by one Sivaprakash before the Additional District Court, Erode for specific performance of a contract against Arukkaniammal and her three daughters on the allegations that Arumugam during his life time that Gandhimathi, one of the daughters of Arukkaniammal had executed a sale agreement was sale of properties covered under partitioned deed referred to above and for declaration that the said partition deed does not bind him.

2.3 O.S.No.381 of 2012 was laid by Sakthisaravanan, son of Gandhimathi. This suit was laid against Arukkaniammal and her three daughters including his mother Gandhimathi for recovery of a sum of Rs.9,00,000/- on the allegations that his grand father Arumugam had borrowed Rs.9,00,000/- from him. He had also filed two Interlocutory Applications in I.A.Nos.309 of 2012 and 310 of 2012 respectively for interim injunction for the suit property shall not be alienated and also for attaching the suit property



before Judgment. This suit is pending before the III Additional Sub Court, Madurai.

2.4 O.S.No.480 of 2013 pending before the I Additional Sub Court, Erode was laid by Sivasankar, one of the other son of Gandhimathi and brother of Sakthisaravanan seeking declaration of title over one of the items of the property dealt with under partition deed. He has alleged that Arumugam had executed a sale bequeathing the property in his name. Here again, the suit was laid against Arukkanniammal and her daughters including his own mother Gandhimathi. In the suit, Sakthisaravanan is said to file necessary petition seeking leave of the Court to prosecute the case as Power of Attorney of Sivasankaranan.

3. Earlier, the petitioner herein who is one of the party defendants in all the three suits has filed Tr.C.M.P.No.211 of 2015 for transfer of O.S.No.381 of 2012 pending on the file of the III Additional Sub Court, Madurai to the file of the I Additional Sub Court, Erode. This was initially dismissed, but in an order passed in C.M.P(MD).No.1419 of 2017 in Review Petition SR.No.4722 of 2017 this Court has granted liberty to the petitioner to file a fresh petition. Accordingly, that petition is allowed.

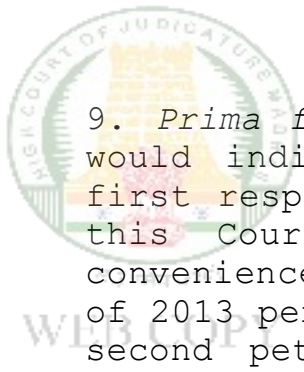
4. This is opposed by Sakthisaravanan, who is arrayed as first respondent on the ground that the cause of action in O.S.No.381 of 2012 which he had laid and the cause of action in other two suits pending in Erode are different and they are in no way connected and therefore, joint trial is not necessary.

5. Heard both sides.

6. The learned counsel for the petitioners submitted that Padmavathy and Muthulakshmi are two elderly women who are litigating as the defendants in at least two suits pending in Erode and that the second petitioner Muthulakshmi has major health issues. He also produced the typed set of medical documents to show her ailments.

7. Per contra, the learned counsel for the respondents would argue that when the cause of action in O.S.No.381 of 2012 is different from those involved in two suits pending in Erode and, there is hardly any need to transfer O.S.No.381 of 2012. He also submitted that the support of certain medical documents which he made available through his typed set of papers that even the first respondent/Sivasankar has major health issues.

8. This Court has paid its careful consideration to the rival submission.



9. *Prima facie* the medical documents produced by the rival sides would indicate that both the second petitioner as well as the first respondent herein have certain health issues. However, what this Court considers as the next relevant point is about convenience of the parties. Here, there **(*)is a suit in O.S.No.480** of 2013 pending before the Court in Erode and given the age of the second petitioner and the facts that she is a woman aged 60 years., tilt the case in favour of the petitioners. Though the first respondent who suffers from certain illness, it is averred in the petition that in O.S.No.480 of 2013, the first respondent himself has filed an application to act as Power of Attorney to prosecute the case which his brother Sivasankar has laid. This implies that the first respondent necessarily has to appear before the I Additional Sub Court, Erode for prosecuting O.S.No.480 of 2013.

10. In view of the above stated facts, this Court finds adequate reasons to allow the petition.

11. Accordingly, O.S.No.381 of 2012 now pending on the file of the III Additional Sub Court, Madurai is directed to be withdrawn from the said court and transferred to the file of the I Additional Sub Court, Erode to be tried along with O.S.No.480 of 2013. **(*)** No costs. Consequently, connected miscellaneous petition is also closed.

12. In fine, this Transfer Civil Miscellaneous Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

**(*)Amended as per order of this
Hon'ble Court dated 19.11.2020**

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

Cm/msa



To:

(*) To be substituted the order already despatched on 21.10.2020

1.The II Additional District Judge
Erode.

2.The I Additional Subordinate Judge
Erode.

3.III Additional Subordinate Judge,
Madurai.

+2 CC to Mr.T.R. JEYAPALAM, Advocate (SR-19814[F] dated
12/10/2020)

Order made in
Tr.C.M.P. (MD) No.484 of 2019
and C.M.P (MD) Nos. 11330 and 11331 of 2019
and 4474 of 2020
09.10.2020

MA (CO)
KM (19.10.2020) 5P 6C
TR (01.12.2020) 5P 6C