

A.No.2860 of 2021 in C.S.No.974 of 2005
and TOS.No.6 of 2008

N.SESHASAYEE, J.,

The present suit is laid for partition of estate of certain Ramachandriah and Tulasi Ammal. They were spouses. Ramachandraiah and Tulasi Ammal had 6 children, of who, 5 are daughters who are arrayed as defendants 1 to 5, and their only son is Manohar, who is now deceased, and whose wife is the 1st plaintiff in the present suit. Manohar and the first plaintiff had two sons, who are D6 and D7 in the suit.

2.1 The suit is initially laid for two items of properties, and now at the instance of defendants 4 and 5, the third item of property, the subject matter of the suit, was included to the suit schedule, when a counter claim was raised pertaining to the same.

2.2 In all, there are 3 items of properties, of which, the third item is not part of the plaint, but, is the part of the counter claim in the written statement of the defendants 4 and 5. So far as the subject matter of the counter claim is concerned, it appears that there was an earlier litigation for partition in

O.S.No.1207/1998 before the VII Assistant City Civil Court, Chennai, and a compromise decree came to be passed on 22.07.1998, in which the plaintiff in the present suit is one of the parties. Now, the plaintiff also challenges the compromise decree passed in O.S.No.1207/1998, in the present suit.

2.3 The next part to the litigation pertains to the settlement deed, which the aforesaid plaintiff has executed in favour of their sons D7 and D8, and later, it came to be cancelled. This deed of cancellation is the subject matter in O.S.No.8245/2005 on the file of the XVI Assistant City Civil Court, Chennai. The subject matter of this litigation is Item No.1 & 2 in C.S.No.974 of 2005.

3. So far as Tulasi Ammal's property is concerned, she is stated to have executed some Wills, the last of which is now sought to be probated in TOS.No.6/2008. The estate involved in TOS.No.6/2008 is part of the properties, which is the subject matter of CS.No.974 of 2005, including the counter claim of the fourth and fifth defendants.

4 It is in this circumstances, the sixth defendant seeks leave of this Court to transfer the suit in O.S.No.8245 of 2005 pending before the XVI Assistant

City Civil Court, Chennai, to this Court, to be tried along with C.S.No.974 of 2005, and hence the application in A.No.2860 of 2021 is filed.

5. Resisting the same, the plaintiff has filed her counter, and the core contention is that the cause of action in O.S.No.8245 of 2005 and the present suit in C.S.No.974 of 2005 are different.

6. Heard both sides. Admittedly, the subject matter of the settlement deed is part of the suit property in C.S.No.974 of 2005. Whether the entitlement of the plaintiff to claim a share in those items of properties, now depends largely on the outcome of the suit in O.S.No.8245 of 2005. Necessarily, they have to be tried together. Hence, this Court deems it appropriate to allow this application, and withdraws the suit in O.S.No.8245 of 2005, pending on the file of XVI Assistant City Civil Court, Chennai to the file of this Court for joint trial with C.S.No.974 of 2005.

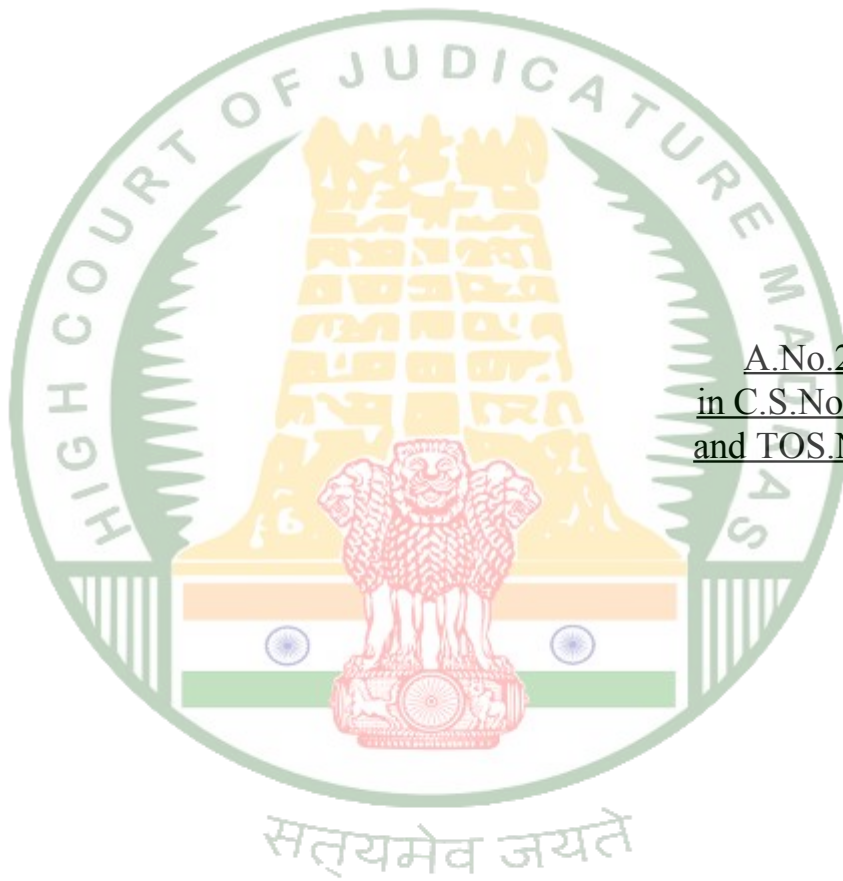
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