

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(TESTAMENTARY AND INTESTATE JURISDICTION)

FRIDAY, THE 02ND DAY OF JULY 2021

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A.No.1106 of 2021

in

TOS. No.16 of 2020

In the matter of the Indian
Succession Act XXXIX of, 1925,
and
In the matter of Last Will and
Testament of S.R.Jagannathan
(Deceased)

MALINI MADHAN,
W/o.S.Madhan,
No.99, St. Mary's Road,
Vidhya Theetha Nagar,
R.A.Puram, Chennai-600 018

..Petitioner/Plaintiff

-Vs-

1. VIJAYALAKSHMI JAGANNATHAN,
W/o.Late S.R.Jagannathan,
Old No.7, New No.9, Ground Floor,
Manohar Avenue,
Casa Major Road,
Chennai-600 008

2. J.PARTHASARATHY
S/o.Late S.R.Jagannathan,
Ground Floor, Old No.7,
New No.9, Manohar Avenue,
Casa Major Road,
Chennai-600 008

..Caveators/1,3rd Respondents/Defendants

A.No.1106 of 2021:

1. J.VIJAYALAKSHMI JAGANNATHAN,
W/o.Late Mr.S.R.Jagannathan,
Residing at Old No.7, New No.9,
Manohar Avenue,
Casa Major Road,
Chennai-600 008

2. J.PARTHASARATHY
S/o.Late Mr.S.R.Jaganathan,
Residing at Old No.7,
New No.9, Manohar Avenue,
Casa Major Road,
Chennai-600 008

.Applicants/Defendants

-Vs-

MALINI MADAN,
W/o.S.Madan,
No.99, St. Mary's Road,
Vidhya Theertha Nagar,
R.A.Puram, Chennai-600 018

..Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to direct to withdraw and transfer the appeal suit A.S.No.67 of 2020 from the file of the XVII Addl.City Civil Court, Chennai to this Hon'ble Court to try along with the above TOS.No.16 of 2021.

This application coming on this day before this court for hearing, the court made the following order:

This application has been filed seeking to withdraw and transfer the appeal suit in A.S.No.67 of 2020 on the file of the XVII – Additional City Civil Court, Chennai to this Court to be tried along with TOS.No.16 of

2020.

2.Heard Mr.S.Umapathy, learned counsel appearing for the applicants and Ms.R.V.Gayatri, learned counsel appearing for the sole respondent.

3.The dispute relates to the estate of one S.R.Jagannathan. The respondent herein as plaintiff had filed a suit in O.S.No.3357 of 2016 seeking a relief of permanent injunction restraining the defendant namely, the applicant herein and her sister from interfering with her possession of the suit 'B' schedule property, restraining the first defendant from altering the physical features of the suit 'A' schedule property and for a permanent injunction restraining the first defendant from creating any encumbrance and or third party rights over the suit 'A' schedule property.

4.It is seen that the suit has been decreed on 28.11.2018. Aggrieved, the first defendant in the suit namely, the applicant herein has filed an appeal before the Appellate Court, which is said to be pending as A.S.No.67 of 2020. In the meanwhile, the respondent herein filed an original petition in O.P.No.631 of 2019 seeking probate for the Will dated

13.09.2013.

5. Upon caveats being filed, the original petition was covered into a Testamentary Original Suit and numbered as above. Claiming that the issues that arise in both these matters namely in A.S.No.67 of 2020 and TOS.No.16 of 2020 are one and the same and they will have to be heard together, this transfer petition has been filed. It is opposed mainly on the ground that there is no commonality either in the issues or the reliefs asked for in these proceedings. While Testamentary Original Suit is concerned with the genuineness or otherwise of the Will said to have been executed by the deceased, S.R.Jagannathan, the original suit, being a suit for injunction simplicitor is confined only to the question of possession and the rights in the 'A' schedule property. Therefore, there is no necessity for transfer of the appeal from the file of the XVII – Additional City Civil Court to this Court.

6. I have heard the rival submissions.

7. I am inclined to agree with the contentions of the respondent. As rightly pointed out by the learned counsel appearing for the respondent, the suit, being one for injunction is confined only to the question of possession of the property and the right of the first defendant over the suit 'A' schedule property, whereas in the Testamentary Original Suit, the one and only question that is to be decided is the validity of the Will said to

have been executed by the deceased, S.R.Jagannathan. Therefore, I do not see any common issues arising in both these proceedings. There is no chance of any conflicting judgment being rendered, since the question of title or the genuineness of the Will will not be gone into by the Appellate Court while deciding A.S.No.67 of 2020.

8.Further more, the stage at which, the proceedings are pending also needs to be borne in mind. The injunction suit has already been decreed and only an appeal is pending, whereas the Testamentary Original Suit is pending as original proceeding. I do not see any justification in the request for transfer. This application is therefore, dismissed.

Sd/-R.S.M.J.
02.07.2021

//Certified to be a true copy//

Dated this the day of 2021

SU/08.07.2021 COURT OFFICER(O.S.)

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.