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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 08.12.2021	DELIVERED ON 23.12.2021
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CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIANN

TR.CMP.NOS.663 AND 788 OF 2021

AND

C.M.P.NOS.16632 AND 18363 OF 2021

TR.CMP.NO.663 OF 2021

1. Mrs.Chellam

2. S.Sowmya, Minor
Rep. By Mother and Natural
Guardian Mrs.Chellam

... The Petitioners in this Transfer
Petition and plaintiffs in O.S.No.4545
of 2020 (on the file of XV Assistant
City Civil Judge at Chennai)

.Vs.

1. N.Srinivasan
2. N.Sivakumar
3. Kaveri Ammal

... Respondents 1 to 3 in this Transfer
Petition and the defendants 1 to 3
in O.S.No.4545 of 2020

PRAYER:- Transfer civil miscellaneous petition filed under
Section 24 of the Code of Civil Procedure, seeking to transfer
O.S.No.4545 of 2020 pending on the file of XV Assistant City
Civil Court at Chennai so as to try the same along with HMOP
No.3081 of 2020 filed by the first respondent (N.Srinivasan)
pending on the file of II Additional Family Court, Chennai.

TR.CMP NO.788 OF 2021

Mrs.Chellam

... Petitioner/Defendant

.Vs.

N.Sivakumar

... Respondent/Plaintiff



PRAYER:-

Transfer civil miscellaneous petition filed under Section 24 of the Code of Civil Procedure, seeking to withdraw and transfer O.S.No.4968 of 2020 pending on the file of XV Assistant City Civil Court at Chennai so as to try the same along with HMOP No.3081 of 2020 pending on the file of II Additional Family Court, Chennai.

For Petitioners : Mr.N.Jothi
(in both Petitions) For M/s.C.Samadharma Arasu
and Mr.S.Vinod

For Respondents : Mr.D.Shanmuganathan
(in both Petitions)

C O M M O N O R D E R

Transfer of two suits pending on the file of the XV Assistant City Civil Court, Chennai, namely OS Nos.4545 of 2020 and 4968 of 2020, is sought for in these two Transfer Civil Miscellaneous Petitions.

2. The suit in OS No.4545 of 2020 which is subject matter of the Transfer Civil Miscellaneous Petition No.663 of 2021, was filed by the petitioners in Transfer Civil Miscellaneous Petition No.663 of 2021, seeking a permanent injunction restraining the defendants therein from interfering with the alleged dispossession of the plaintiffs from the suit schedule property except under due process of law and for costs.

3. The defendants in the said suit are the husband of the first petitioner his brother and mother. The case of the plaintiffs is that the first plaintiff is the wife of N.Srinivasan, first defendant in OS No.4545 of 2020 and the second plaintiff is his minor daughter. Claiming that the husband namely the first defendant in OS No.4545 of 2020 has contributed for purchase of the house and the first plaintiff after her marriage dated 25.01.2006 was living in the suit property along with her husband, the plaintiffs sought for the injunctive relief.

4. It is the contention of the plaintiffs that the marital relationship between her and the first defendant in OS No.4545 of 2020 has become strained and in view of the same, the first defendant had attempted to dispossess her. It is also her claim that the family of the husband is attempting to disinherit the



first defendant/her husband in order to deprive them of their due share in the properties. Allegations of cruelty were also made against the third defendant/the mother in law.

5. This suit is resisted by the defendants contending that the first defendant namely husband of the first plaintiff in OS No.4545 of 2020, has nothing to do with the property. According to the defendants, the house was purchased by the father of the first defendant Narayanasamy in the year 1983. It is also stated that the said Narayanasamy, was employed in Tamil Nadu Government Service and he retired as a Joint Secretary. Though the allotment was made by the Housing Board in the year 1983 and the house warming was performed in the year 1983. The Sale Deed was executed in favour of the deceased Narayanasamy on 23.06.1994. Deceased Narayanasamy had executed a registered Settlement Deed in favour of the second defendant in the suit N.Sivakumar, as early as on 14.07.2014, even before the marital relationship between the first plaintiff and the first defendant became strained. Therefore, according to the defendants, the plaintiff has nothing to do with the suit property and the suit for injunction is not maintainable.

6. The second defendant in OS No.4545 of 2020, N.Sivakumar, the settlee under the Settlement Deed dated 14.07.2014 filed a suit in OS No.4968 of 2020 against the first plaintiff in OS No.4545 of 2020 seeking a decree for permanent injunction restraining her from interfering with his peaceful possession of the property. He would claim title under the Settlement Deed dated 14.07.2014 executed by the deceased Narayanasamy.

7. While the above suits are pending before the City Civil Court, Chennai, the first defendant in OS No.4545 of 2020 filed HMOP No.3081 of 2020 on the file of the II Additional Family Court, Chennai seeking divorce on the grounds of cruelty and desertion. The suit in OS No.4968 of 2020 which was pending on the file of the XVI Assistant City Civil Court was transferred to the XV Assistant City Civil Court to be tried along with the suit in OS No.4545 of 2020. It is at this stage, the plaintiffs in OS No.4545 of 2020 have come up with Transfer CMP No.663 of 2021 and the sole defendant in OS No.4698 of 2020 has filed Transfer CMP No.788 of 2021 seeking transfer of both the suits to the Family Court, Chennai to be tried along with HMOP No.3081 of 2020.

8. This request for transfer is being resisted by the respondents contending that these two suits which relate to property of the second defendant in OS No.4545 of 2020/plaintiff in OS No.4698 of 2020, who is not a party to the marriage cannot be tried and disposed of by the Family Court. It is also the contention of the respondents that a transfer to the Family



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Court would deprive them of forum of an appeal as judgment or decree of the Family Court is appealable directly to the High Court, whereas, as against the judgment and decree passed by an Assistant City Civil Court Judge, an Appellate remedy is available before the Additional City Civil Judge and thereafter a further Second Appeal would be available before the High Court.

9. The respondents would contend that the dispute in these two suits will not come within the matters that are enumerated under the Explanation to Section 7 of the Family Courts Act, and therefore, the Family court will not have jurisdiction to try and dispose of these suits. It is also their further contention that there is no commonality in the issues that are likely to arise in these two suits and the Original Petition filed under the Hindu Marriage Act before the Family Court.

10. I have heard Mr.N.Jothi, learned counsel appearing for Mr.C.Samadharm Arasu for the petitioners in both the petitions and Mr.D.Shanmuganathan, learned counsel appearing for the respondents in both the petitions.

11. Mr.N.Jothi, learned counsel appearing for the petitioners would contend that the dispute in the suits would fall within Clause (c) and Clause (d) of the Explanation to Section 7 of the Family Courts Act. According to him, since the plaintiff in OS No.4545 of 2020 has contended that she had contributed towards the development of the property and that her husband has contributed towards the purchase of the property, it would be a dispute between the parties to a marriage with respect to property of the parties or of either of them. According to the learned counsel, even assuming that Clause (c) of the Explanation to Section 7 would not apply, then the dispute would fall into Clause (d) of the Explanation to Section 7, since it is a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship. Therefore, according to the learned counsel, it is the Family Court which would have the exclusive jurisdiction and not the City Civil Court.

12. The learned counsel appearing for the petitioners would also rely upon the judgments of a Division Bench of this Court in Indrabaye v. Doresamy Naiker, reported in (2010) 2 MLJ 323, K.A.Abdul Jaleel v. T.A.Shahida, reported in 2003 (2) CTC 252 (SC) and the judgment in Parvathi v. P.Jayabalakrishnan, reported in 2009 (1) TNCJ 728 (Mad).

13. Contending contra, Mr.D.Shanmuganathan, learned counsel appearing for the respondents would submit that both the suits would not fall either within clause (c) or Clause (d) of the Explanation to Section 7 of the Family Courts Act. Drawing



my attention to the language of clause (c) and Clause (d) of the Explanation, the learned counsel would submit that a dispute, in order to fall within those two clauses, should either be a dispute regarding property of the parties or of either of them or a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship. The property in question admittedly belonged to the father-in-law of the first petitioner, namely Narayanasamy, who died in February 2020. The said Narayanasamy had executed a Settlement Deed in favour of the second respondent herein as early as on 14.07.2014, i.e. even prior to the strain in the relationship between the first petitioner and the first respondent. He would point out that marital relationship will not extend to a relationship of a brother-in-law. Mr.D.Shanmuganathan, learned counsel would rely upon the judgment of this Court in B.Gajendran v. Adhilakshmi, reported in 2013 (2) CTC 871.

14. I have considered the rival submissions.

15. Family Courts are Special Courts constituted under a special enactment to try certain clause of disputes. The jurisdiction of the Family Court cannot be widened or extended beyond what has been conferred on them under the enactment. Section 7 of the Family Courts Act prescribes the jurisdiction of the Court. Unless it is shown that the dispute falls within clauses (a) to (g) of the Explanation to Section 7, the Family Court will not have jurisdiction to try such dispute. The suits that are now pending before the City Civil Court will not fall under Clause (a), (b), (e), (f) and (g). Even according to Mr.N.Jothi, learned counsel appearing for the petitioners, it should either come under clause (c) or clause (d). Clause (c) of the Explanation reads as follows:

"A suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them."

16. Admittedly, the property belonged to the father-in-law and it has been settled on the second respondent. No doubt the plaintiff makes a claim that her husband also contributed to the development of the property. The property was allotted to Narayanasamy in the year 1983 and the husband of the plaintiff would have been only 10 years old at the time when the property was actually purchased by Narayanasamy. Therefore there is no possibility of the husband of the first petitioner having contributed for the purchase. It is not the claim of the plaintiff that Narayanasamy had some ancestral property which was sold and from and out of the funds, this property was purchased. In fact even in the plaint in OS No.4545 of 2020, the plaintiff would admit that she was not residing in the property



and she has taken up a separate residence and the father-in-law was paying the rent till his death in February 2020.

17. I am therefore unable to accept the submission of Mr.N.Jothi, that this property could be said to be a property of the parties to a marriage or of either of them as provided under Clause (c) of the Explanation to Section 7. The learned counsel in the alternative would attempt to invoke Clause (d) of Explanation to bring the subject matter of the suit as a dispute that would be exclusively tried by a Family Court. Clause (d) reads as follows:

"A suit or proceeding for an order or injunction in circumstances arising out of a marital relationship".

At no stretch of imagination can this suit be said to be a suit arising out of a marital relationship. It is open to the petitioners to seek an order of injunction against the first defendant with reference to his property or with reference to something done by him, but the second and third defendants who are not parties to the marriage cannot be held to be persons related under a marital relationship. They may be related as mother-in-law and brother-in-law, but that relationship would not enable the plaintiff to characterise the dispute as one which would fall within Explanation (d) to Section 7 of the Family Courts Act.

18. Adverting to the decisions relied upon by Mr.N.Jothi, a Division Bench in *Indrabaye v. Doresamy Naiker's case* (supra), had considered the case of a dispute between divorced parties to a marriage. The Division Bench therefore said that this would be covered by clause (c) and the word parties to a marriage would include divorced spouses also. I do not think the law laid down by the Division Bench could be stretched to include disputes between brother-in-law and mother-in-law as a dispute between parties to a marriage. In *K.A.Abdul Jaleel v. T.A.Shahida* (supra), relied upon by the learned counsel the dispute was with relation to properties that were purchased by the husband utilizing the funds of the wife, therefore, the Courts said irrespective of whether marriage is subsisting or not, a dispute relating to properties of the spouses or parties to the marriage can be adjudicated by the Family Court under Clause (c) of the Explanation to Section 7. I do not think this judgment of the Hon'ble Supreme Court would also be of any help to the learned counsel.

19. In *Parvathi v. P.Jayabalakrishnan* (supra), this Court had held that a suit between spouses for an injunction could be tried by the Family Court, there is no difficulty in accepting



the said proposition, inasmuch as, it is directly covered by clause(c) of the Explanation to Section 7 of the Family Courts Act. In *State Bank of India v. Ranjan Chemicals Ltd and another*, reported in (2007) 1 SCC 97, the Hon'ble Supreme Court was concerned with the power of the Court to order joint trial. The Hon'ble Supreme Court had held that to avoid separate overlapping evidence and to avoid conflict of judicial verdicts, the Courts have the power to direct Joint Trial.

20. I am unable to comprehend, as to how, the trial of the suits and HMOP independently would lead to any conflict of judicial verdicts. In both the suits, the plaintiffs seek an injunction claiming that they are in exclusive possession. In the Original Petition filed in HMOP No.3081 of 2020, the husband seeks divorce on the ground of cruelty and desertion. The issues that would arise in these proceedings are completely different, therefore there cannot be any overlapping of evidence or there cannot be any apprehension that there would be conflict of judicial verdicts if these proceedings are tried separately. In *B.Gajendran v. Adhilakshmi*, reported in 2013 (2) CTC 871, this Court had pointed out that in order to come within clause (c) of the Explanation to Section 7, the wife should claim a certain right over the property.

21. In OS No.4545 of 2020, the plaintiffs namely the wife and daughter of the first defendant therein seek a decree for injunction on the ground that the first defendant had paid certain contributions for development of the property, they do not assert any independent title over the property or any limited right over the property. The term marital relationship has not been defined under the Family Courts Act. The Protection Women from Domestic Violence Act, 2005, defines the term domestic relationship and Section 2(f) reads as follows:

(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

22. A reading of the above would show that the same is a much wider term than the term marital relationship used in the Family Courts Act. The Family Courts Act is an enactment brought in specifically to deal with matrimonial issues and disputes relating to property of the spouses or parties to a marriage. Other disputes cannot be brought in within the four corners of the Explanation to Section 7 of the Act, in order to widen the jurisdiction of the Family Court. There is also one



another factor which would militate against widening of the jurisdiction that is prohibition of appearance of lawyers in Family Courts.

23. The claim made by the plaintiff in OS.4545 of 2020, contains whole lot of legal issues and I do not think it will be safe to term the said claim as one arising out of a marital relationship and send it to the Family Court where the parties will not have a legal assistance. To my mind, the dispute in these two suits will not fall either under clause (c) or clause (d) of the Explanation to Section 7 of the Family Courts Act and therefore, the transfer of the above suits to the Family Court which has no jurisdiction to try the suits cannot be ordered.

24. No doubt, Section 24 of the Code of Civil Procedure, enables the High Court to transfer suits to a Court which does not otherwise have jurisdiction also, but the said power cannot be exercised in respect of Courts which are Special Courts created under special enactments to deal with special kind of cases. I therefore do not see any merit in the Transfer Petitions, The Transfer Civil Miscellaneous Petitions therefore fail and they are accordingly dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jv

To

1. The XV Assistant Judge,
City Civil Court, Chennai.
2. The Judge,
The II Additional Family Court,
Chennai.

+4ccs to Mr.S.Vinod, Advocate, S.R.Nos.69402 & 69403

TR.CMP.NOS.663 AND 788 OF 2021 AND
C.M.P.NOS.16632 AND 18363 OF 2021

PVS(CO)
PBS/10/01/2022