



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Tr.C.M.P. (MD) No.411 of 2021

and

C.M.P(MD) Nos.7970 and 7971 of 2021

WEB COPY

1.M.N.Prabhakaran

2.M.N.Ramesh

... Petitioners/Appellants

Vs.

1.Arulmigu Meenakshi Sundareswarar Temple,
Represented by its
Executive Officer / Joint Commissioner,
Madurai.

2.Arulmigu Teppakulam Mariamman Temple,
Represented by its Joint Commissioner,
Kamarajar Salai,
(Ramanathapuram Road), Madurai - 625 009.

3.The Madurai City Municipal Corporation,
Represented by its Commissioner,
Anna Maligai,
Tallakulam,
Madurai.

... Respondents/Respondents

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, withdrawing the Civil Miscellaneous Appeal in C.M.A.No.4 of 2020 from the file of the II Additional Subordinate Court, Madurai and to transfer the same to the file of Principal Subordinate Court, Madurai to be simultaneously heard along with C.M.A.No.2 of 2020.

For Petitioners : Mr.J.Barathan

For 1st and 2nd Respondents : Mr.VR.Shanmuganathan

For 3rd Respondent : Mr.P.Athimoolapandian

O R D E R

The present Transfer Civil Miscellaneous Petition has been filed to withdraw the case in C.M.A.No.4 of 2020 from the file of the II Additional Subordinate Court, Madurai and to transfer the same to the file of the Principal Subordinate Court, Madurai, to be simultaneously heard along with C.M.A.No.2 of 2020.



2.The learned counsel for the petitioners would submit that the petitioners are brothers. They have filed two separate suits against the respondents with the very same prayer seeking for a decree of permanent injunction restraining the defendants 1 and 2 and their men from constructing any wall or putting up fence on the eastern boundary of their properties and thereby obstructing the free ingress and egress to the suit schedule properties. The suit filed by the first petitioner was numbered as O.S.No.591 of 2019 and was taken on the file of the Principal District Munsif Court, Madurai and the suit filed by the second petitioner was numbered as O.S.No.592 of 2019 and was taken on file by the Additional District Munsif Court, Madurai. In O.S.No.591 of 2019, the first petitioner had moved an I.A.No.574 of 2019 seeking for interim injunction and the second petitioner had filed I.A.570 of 2019 in O.S.No.592 of 2019 seeking for interim injunction. Both the injunction petitions were dismissed by the Trial Court. Against which, the first petitioner had preferred C.M.A.No.2 of 2020 and the second petitioner had filed CMA.No.4 of 2020.

3. The learned counsel for the petitioners would further submit that C.M.A.No.3 of 2020 is now listed before the Principal Subordinate Court, Madurai. C.M.A.No.4 of 2020 filed by the second petitioner is now listed before the II Additional Subordinate Court, Madurai. Since the issues involved in both the appeals are one and the same and the parties are also one and the same and in order to avoid conflicting decisions, present petition has been filed seeking to transfer both the C.M.A.s., before either one of the Court so as to avoid conflicting decisions. He would further submit that though the appeals are pending on the file of different Subordinate Courts, within Madurai District, the powers of transfer under Section 24 of the Code of Civil Procedure are concurrent in nature. This Court in Tr.C.M.P.(MD) No.371 of 2017, dated 26.10.2018 has held that there is no bar in applications for transfer being filed either before the Hon'ble High Court or the District Court and thereby, he would seek for transferring of both the cases.

4.The learned counsel for the respondents would submit that though the reliefs sought for by both the petitioners are one and the same, two separate suits have been filed and now they are listed before two separate Subordinate Courts in appeals and the respondent has no objection to transfer the same.

5.Heard the learned counsel on either side and perused the material available on records

6. In Tr.C.M.P(MD) No.371 of 2017, Vanaja and another Vs. V.Sureshkumar and others, a Division Bench of this Court has held that power under Section 24 of the Code of Civil Procedure are concurrent.



7.Perusal of records show that the issues involved in both the suits are one and the same and as the parties involved in the cases are also one and the same, this Court is of the opinion that both the cases can be transferred to one Court so as to avoid conflicting decisions.

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8.Considering the facts and circumstances of the case and also considering the submission made by the learned counsel for the petitioners, C.M.A.No.4 of 2020 is withdrawn from the file of the II Additional Subordinate Court, Madurai and transferred to the file of the Principal Subordinate Court, Madurai for disposal as per law. The II Additional Subordinate Court, Madurai, is directed to transmit the papers to the file of the Principal Subordinate Court, Madurai, forthwith. The learned Principal Subordinate Judge, Madurai, is directed to club the case in C.M.A.No.4 of 2020 along with C.M.A.No.2 of 2020 and dispose of the same on merits and in accordance with law as expeditiously as possible.

9.In the result, this Transfer Civil Miscellaneous Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The II Additional Subordinate Judge,
Madurai.

2.The Principal Subordinate Judge,
Madurai.

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-30815[F] dated
30/09/2021)

Tr.C.M.P. (MD) No.411 of 2021
30.09.2021