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Tr.C.M.P.No.834 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.06.2022

Delivered on : 14.07.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S. KANNAMMAL

Tr.C.M.P.No.834 of 2021 and
C.M.P.Nos.19149 and 19150 of 2021

R.Sivakumar

... Petitioner

Vs.

1. R.Udayakumar
2. R.Murugesan
3. R.Vijayakumar
- 4.P.N.Shanmugam
5. N.Logachandar

... Respondents

This Petition filed under Section 24 of the Code of Civil Procedure, praying to withdraw the suit in O.S.No.372 of 2015 from the file of the District Munsif Court, Sriperumbudur and to transfer the same to the XVII Assistant City Civil Court, Chennai to try along with O.S.No.1630 of 2020 for joint or simultaneous trial.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.B.Arvind Srevatsa

ORDER

This Transfer Civil Miscellaneous petition is filed seeking to transfer of the proceedings in O.S.No.372 of 2015 on the file of the learned District



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Munsif, Sriperumbudur to the file of the learned XVII Assistant Judge, City Civil Court, Chennai to be tried along with O.S.No.1630 of 2020.

2. The petitioner herein is the 2nd defendant in O.S.No.372 of 2015, a suit filed by the 1st respondent herein praying for a preliminary decree of partition and for allotment of 4/5th share in his favour in respect of the suit property. The property measuring an extent of 39 cents which is covered in O.S.No.372 of 2015 is situated in Tharapakkam Village, Sriperumbudur Taluk. The averments in the plaint in O.S.No.372 of 2015 would indicate that the property covered thereunder, was purchased by the father of the plaintiff and the defendants 1 to 3 viz., T.K.Ramachandra Mudhaliar. The defendants in O.S.No.372 of 2015 are the brothers and the legal heirs of their sister namely sister's husband and her son. The main grievance projected in O.S.No.372 of 2015 is that after the death of T.K.Ramachandra Mudhaliar and also his wife, the succession opened, with the result as one of the legal heirs, the plaintiff claims that he is entitled to a share in the property. However, the defendants therein unceremoniously refused to partition the property amicably. Therefore he has filed the suit in O.S.No.372 of 2015.



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3. The 2nd defendant in O.S.No.372 of 2015 who is the petitioner in

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before the XVII Assistant Judge, City Civil Court, Chennai, claiming various reliefs in respect of the suit property covered in the suit which is situated in Nungambakkam, Chennai. Admittedly, this property was also purchased by T.K.Ramachandra Mudaliar. In the present suit, the legal heirs of Ramachandra Mudaliar have entered into a settlement deed and an exchange deed etc., which according to the petitioner herein, are invalid, improper and have come into existence by reason of fraud and misrepresentation. This is the sum and substances of the subsequent suit in O.S.No.1630 of 2020.

4. In the subsequent suit in O.S.No.1630 of 2020 and in the former suit in O.S.No.372 of 2015, the plaintiff as well as the defendants are parties. That apart, the official defendants were also arrayed as parties in the latter suit in O.S.No.1630 of 2020.

5. The learned counsel for the petitioner would mainly contend that even though the suit in O.S.No.1630 of 2020 filed by him is subsequent, it is a comprehensive suit, in which various reliefs were sought for and the defendants in the former suit were also arrayed as parties in the latter suit. The



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other main contention is that there are common questions of law and facts in both proceedings and that the right to relief claimed in them are in respect of or arise out of series of transaction. Therefore, it is his fervent plea that proper and effective adjudication of all the dispute among the parties and to avoid conflicting decrees, it is just and necessary that the suit in O.S.No.372 of 2015 has to be transferred to the file of XVII Assistant Judge, City Civil Court, Chennai to be tried along with O.S.No.1630 of 2020 filed by him.

6. Though notice has been issued in the Transfer Civil Miscellaneous Petition, the contesting first respondent herein, who is the plaintiff in O.S.No.372 of 2015 has entered appearance.

7. The learned counsel for the 1st respondent would submit that the suit in O.S.No.372 of 2015 was filed by him in earlier point of time and the petitioner herein has filed the latter suit in O.S.No.1630 of 2020, five years after filing of the former suit. Therefore, the learned counsel would submit that the Transfer of the suit is not desirable and therefore he prayed for dismissal of the present Transfer Civil Miscellaneous petition.

8. Heard the learned counsel appearing on either side and perused the materials available on record.



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9. It is well settled that this Court can exercise the jurisdiction conferred under Section 24 of the Code of Civil Procedure to render substantial justice of the parties. Such powers can be exercised on the application of any one of the parties and after hearing the parties who are likely to be aggrieved. Section 24 of C.P.C., thus confers the supervisory jurisdiction on the High Court to withdraw or transfer any suit by taking note of the evidence of the parties.

10. In the present case, even though the latter suit is filed by the petitioner herein in O.S.No.1630 of 2020, admittedly, the suit is comprehensive in nature, when compared to the suit filed in O.S.No.372 of 2015. Further the properties covered in both the suits are the properties of late T.K.Ramachandra Mudhaliar and his legal heirs have filed both the suits. The defendants in the former suit in O.S.No.372 of 2015 are also arrayed as the defendants in the latter suit in O.S.No.1630 of 2020. When that be so, if both the suits are tried separately, definitely it will result in conflict of Judgments. Therefore in order to avoid the same, it is just and proper to transfer the former suit in O.S.No.372 of 2015 from the file of the learned District Munsif, Sriperumbudur to the file of the learned XVII Assistant Judge, City Civil



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Court, Chennai to be tried along with O.S.No.1630 of 2020 filed by the petitioner herein.

11. In the result, the Transfer Civil Miscellaneous Petition is allowed. The proceedings in O.S.No.372 of 2015 on the file of the learned District Munsif, Sriperumbudur is ordered to be withdrawn and transferred to the file of the learned XVII Assistant Judge, City Civil Court, Chennai to be tried and disposed of along with O.S.No.1630 of 2020. The learned District Munsif, Sriperumbudur is directed to transmit the records in O.S.No.372 of 2015 to the file of the learned XVII Assistant Judge, City Civil Court, Chennai forthwith. No costs. Consequently, connected miscellaneous petitions are closed.

14.07.2022

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Index:Yes/No

Speaking Order / Non Speaking Order

To

1. The District Munsif,
Sriperumbudur.
2. The XVII Assistant Judge,
City Civil Court, Chennai.



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S.KANNAMMAL, J.

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Pre delivery Order in
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