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A.No.4876 of 2022

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in

TOS.No.37 of 2021

G. CHANDRASEKHARAN, J.

This application is filed to withdraw O.S.No.435 of 2018 pending before the XIX Additional City Civil Court, Chennai and transfer the same to this Court to be tried along with TOS.No.37 of 2021.

2. The learned counsel for the applicants submitted that applications filed in TOS.No.37 of 2021 is to probate the Last Will and Testament of the testator Mr.M.R.Ramachandran, dated 02.01.2004.

3. Original Petition was filed in O.P.No.1178 of 2018 in the year 2018. At the same time, the defendants herein filed a suit in O.S.No.435 of 2018 on the file of the XIX Additional City Civil Court, Chennai against the applications seeking relief of partition. Parties concerned in O.S.No.435 of 2018 and TOS.No.37 of 2021 are same parties. In the written statement filed in O.S.No.435 of 2018, the applicants have specific pleadings about the execution of the Will by the testator Mr.M.R.Ramachandran dated 02.01.2004. Therefore, both the suits have to be tried together.



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4. The learned counsel for the respondents opposed this application on the ground that on 01.08.2022, the learned counsel for the applicants made an endorsement that the defendants have no oral evidence in O.S.No.435 of 2018. Thereafter, defendants side evidence was closed and the case was posted for arguments. Therefore, it is not necessary to transfer O.S.No.435 of 2018 to this Court.

5. In reply to this submission, the learned counsel for the applicants submitted that after the examination of PW1 in brief in O.S.No.435 of 2018, PW1 evidence was closed by the Court for the reason that PW1 was not present. Thereafter, the case was posted for examination of witnesses on the side of the defendants. Since, PW1 was not cross examined, the applicants made an endorsement that they have no oral evidence.

6. Heard the rival submissions and perused the records.

7. The learned counsel for the respondents brought to the notice of this Court in the adjudication dated 01.08.2022, it was recorded that defendants side evidence was closed and the case was posted for arguments. Thereafter, it seems



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that when the matter was pending for plaintiff side argument, there was no representation for the plaintiff. Not only that, the plaintiff has filed applications to reopen and recall PW1. It appears those applications are allowed and now they are pending for further evidence of PW1. PW1 was present on 13.10.2022. At the request of the plaintiff, the matter was adjourned to 19.10.2022 for the cross examining PW1 evidence. On 31.10.2022, it was represented to the learned XIX Additional Judge that Tr.OP was pending in this Court.

8. The sequence of the events shows that though the defendants side evidence was closed at the instance of the respondents, the case was reopened and pending for cross examination of PW1. It is not as if the trial process is completed in O.S.No.435 of 2018.

9. It is seen from the submission of the learned counsel for the parties that the parties in both suits are same parties and that the property involved in both suits is same property. The main issue is Whether the testator Mr.M.R.Ramachandran executed the Will ? In such circumstances, this Court is of the considered view that both the suits in O.S.No.435 of 2018 and TOS.No.37 of 2021 have to be tried jointly for avoiding unnecessary recording of evidence, time and cost and also to avoid conflict findings in both suits.



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WEB COPY 10. In this view of the matter, this application is allowed. O.S.No.435 of 2018 pending on the file of the XIX Additional City Civil Court, Chennai is ordered to be transferred to this Court for joint trial with TOS.No.37 of 2021.

11. The learned concerned Master is directed to record the evidence in O.S.No.435 of 2018 after it is renumbered here.

02.12.2022

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