



A.No.5167 of 2022

A.No.5167 of 2022 in
T.O.S.No.2 of 2004

G. CHANDRASEKHARAN, J.

O.P.No.553 of 2003 is filed by the plaintiff N.Sundari and N.Suresh to grant Letters of Administration with a Will annexed to the first plaintiff as the beneficiary under the Will of deceased R.Natarajan. O.S.No.6203 of 1997 was filed by P.Sugantha and Mahalakshmi Ravindran against N.Sundari and N.Suresh and two others seeking the relief of partition. The parties, issue involved in these suits and question of dispute and fact arises for consideration in both the suits are almost similar and common. In the said circumstances, an order of stay was ordered in A.No.4527 of 2003 staying all further proceedings in O.S.No.6203 of 1997 pending on the file of the Fast Track Court No.1, Chennai, until further orders. The applicants must have immediately approached this Court for transfer of the suit in O.S.No.6203 of 1997 to this Court for a joint trial with O.P.No.553 of 2003, now T.O.S.No.2 of 2004. However applicants have not done that. Not only that, despite the stay, they participated in the trial and the trial is over in O.S.No.6203 of 1997. When the case is posted for judgment, they have come out with these applications. Certainly this caused great amount of inconvenience not only to the parties but to the Court as well.



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2.However, when the applicants set up right in the suit property in

O.S.No.6203 of 1997 on the basis of Will, we cannot deny the opportunity to the applicants to prove the Will. The only way is to transfer O.S.No.6203 of 1997 to this Court for trying along with T.O.S.No.2 of 2004 for proving the Will concerned in T.O.S.No.2 of 2004. Only then both the parties will have fullest opportunity of projecting their case for ultimate justice. The learned counsel for the respondent also has no objection for withdrawing the civil suit in C.S.No.6203 of 1997 pending on the file of the VIII Assistant City Civil Court, Chennai to try along with T.O.S.No.2 of 2004. Therefore, O.S.No.6203 of 1997 pending on the file of VIII Assistant City Civil Court, Chennai, is ordered to be transferred to this Court for joint trial.

3.Since the evidence in O.S.No.6203 of 1997 with regard to partition claim is over, the only evidence that is required for the decision making in these cases is the proof of Will said to have been executed by deceased R.Natarajan in favour of N.Sundari and then minor N.Suresh. The concerned learned Master is directed to limit the scope of recording evidence with regard to the proof of aforesaid Will alone. Once the recording of evidence is over in this regard, the matter may be sent back



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to this Court for argument. This Court directs the applicants to pay a costs of Rs.10,000/- for delay in filing of transfer application and causing inconvenience not only to the parties but to the Court. Accordingly, A.No.5167 of 2022 is allowed.

4.Registry is directed to take immediate steps to call for the records in O.S.No.6203 of 1997 pending on the file of VIII Assistant City Civil Court, Chennai for joint trial along with T.O.S.No.2 of 2004 as indicated above. Respondent is directed to file written statement in T.O.S.No.2 of 2004 once the case records is received in this Court. After framing of issues the matter may be sent to learned Master for recording evidence. Recording of evidence should be completed within a period of one month from the date of receipt of records by the learned Master in O.S.No.6203 of 1997.

5.Registry is directed to intimate the order of transfer to learned concerned Judge immediately. Interim stay already granted is made absolute.

29.11.2022

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