



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.03.2023

PRONOUNCED ON : 30.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

**Application Nos.809 & 810 of 2023
in C.S.No.313 of 2012**

1.S.Bahiratha Marthandan
2.V.Vaggiravelu

...

Applicants / Plaintiffs
[in both Applications]

versus

1.Vasanth
2.P.Munusamy
3.Valli
4.Vijaya
Ramu (Deceased)
5.Sekar
6.N.Subramanian
7.S.Premalatha
8.Parvathi Sankari
9.K.Veeraragavan
10.Chandra Bai

...

Respondents/Defendants
[in both Applications]

PRAYER in Application No.809 of 2023: Application filed under Order XIV Rule 8 of the O.S. Rules read with Section 24 of CPC, praying to withdraw and transfer the suit in O.S.No.8417 of 2011 pending on the file of



the learned VII Assistant Judge, City Civil Court, Chennai to the file of this Court to be heard and tried along with C.S.No.313 of 2012 pending on the file of this Court.

PRAYER in Application No.810 of 2023: Application filed under Order XIV Rule 8 of the O.S. Rules read with Section 151 of CPC, praying to stay all further proceedings in O.S.No.8417 of 2011 pending on the file of the learned VII Assistant Judge, City Civil Court, Chennai pending disposal of the Transfer Application.

For Applicants	: Mr.R.C.Paul Kanagaraj
[in both Applications]	
For Respondent Nos.1 to 3	: Mr.K.J.Parthasarathy
[in both Applications]	
For Respondent Nos.4 to 6	: M/s.Srividhya Aravindan
[in both Applications]	
For Respondent No.9	: Mr.D.Nellaiappan
[in both Applications]	

COMMON ORDER

Application No.809 of 2023 has been filed to withdraw and transfer the suit in O.S.No.8417 of 2011 pending on the file of the learned VII Assistant Judge, City Civil Court, Chennai to the file of this Court to be heard and tried along with C.S.No.313 of 2012 pending on the file of this Court. Application No.810 of 2023 has been filed to stay all further proceedings in O.S.No.8417 of 2011 pending on the file of the learned VII



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Assistant Judge, City Civil Court, Chennai pending disposal of the Transfer Application.

2. Heard the learned counsels for the applicants / plaintiffs and the respondents / defendants and perused the materials available on record.

3. The applicants are the plaintiffs. The plaintiffs had filed a suit in C.S.No.313 of 2012 against the respondents / defendants for seeking declaration that they are the owners of the suit properties and also to declare the settlement deeds dated 11.04.1985, 28.04.2004 and 17.06.2004 in Document Nos.936 to 939/1985, 2634/2004 and 3569/2004 as null and void and for recovery of possession along with the relief of permanent injunction restraining the defendants from alienating or conveying the suit properties and directing them to pay a sum of Rs.2,80,000/- towards past mesne profits along with future mesne profits.



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4. The second respondent / second defendant has filed a suit in O.S.No.8417 of 2011 on the file of the learned VII Assistant Judge, City Civil Court, Chennai, for the relief of permanent injunction restraining the plaintiffs from interfering with the peaceful possession and enjoyment of the suit properties. Since both the suits pertain to the same properties, it would have been convenient if the suit in O.S.No.8417 of 2011 pending on the file of the learned VII Assistant Judge, City Civil Court, Chennai is transferred to the file of this Court and be heard and tried along with C.S.No.313 of 2012.

5. Earlier application in A.No.6156 of 2016 to transfer O.S.No.8417 of 2011 was filed by the applicants before this Court. Subsequently, the said suit was decreed *ex parte* on 09.12.2016. Hence the above transfer application got disposed. However, the applicants / plaintiffs had filed I.A.No.5352 of 2017 to set aside the *ex parte* decree and that was allowed on 08.07.2019 and the suit in O.S.No.8417 of 2011 was restored on 29.09.2019.



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6. No prejudice will be caused to the second defendant if O.S.No.8417 of 2011 is transferred to be heard along with C.S.No.313 of 2012. If the said O.S.No.8417 of 2011 is not transferred to the file of this Court, the applicants will be put to serious loss, damage and injury which cannot be compensated in terms of money and it will also lead to multiplicity of proceedings and conflict of judgments. Hence the transfer application and the application to stay all further proceedings pending disposal of the application should be allowed.

7. Except the plaintiffs and the second defendant, none of the other defendants of this suit are parties to the suit in O.S.No.8417 of 2011. Hence the parties are not the same in both the suits. After the suit was restored on the application filed by the applicants, the trial has commenced and the case was posted for cross examination of P.W.1 from August 2019. P.W.1's cross examination started from January 2020 and it was completed only on 05.04.2022. Now the case is posted for defendants' side evidence. The applicants had suppressed the material facts and filed this application



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just to delay the suit in part heard stage. The applicants filed I.A.No.1 of 2022 in O.S.No.8417 of 2011 and that was also dismissed for default by an order dated 25.01.2023. Now the applicants filed another application in I.A.No.2 of 2023 in O.S.No.8417 of 2011 to restore the application in I.A.No.1 of 2022. So the applicants without proceeding further have been protracting the proceedings under one pretext or the other. Since the applicants have not made out any case both the applications are liable to be dismissed.

8. The applicants have filed a suit in C.S.No.313 of 2013 seeking various reliefs ranging from the declaration that the plaintiffs are the owners of the suit properties and also to vacate the defendants from the suit properties. So even according to the applicants, the second defendant in O.S.No.8417 of 2011 is in possession and enjoyment of the suit properties. The legal entitlement of the second defendant and the entitlement of the plaintiffs to claim ownership can be decided in C.S.No.313 of 2012. Even though the second defendant is granted with the decree for permanent



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injunction, that will not deprive the plaintiffs from proceeding C.S.No.313 of 2012 and prove how he is entitled to the suit properties. Since the suit in C.S.No.313 of 2012 also includes the relief of recovery of possession, any decree that might be passed in O.S.No.8417 of 2011 in favour of the second defendant could be subjected to the reliefs that might be obtained by the plaintiffs in the present suit in C.S.No.313 of 2012.

9. Even though the suit properties involved in both the suits are in the same stage, the proceedings were not stayed. While the suit filed by the second defendant in C.S.No.313 of 2012 has been posted for defendants' side evidence, trial has not been commenced in the suit filed by the applicants. Since the second defendant has filed the suit only for permanent injunction and not for title, the question of title can be decided in the present suit filed by the applicants and the judgment that might be passed in C.S.No.313 of 2012 cannot have any conflict of interest, unless the question of title has also been incidentally dealt by the Court. Admittedly, the second defendant in O.S.No.8417 of 2011 is not claiming any relief of declaration



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and the applicants also admit the present position of the defendants in the suit properties and only in view of that they have also sought the relief of recovery of possession.

10. In view of the above stated facts and also considering the circumstances of the various stages in which both suits are pending, to withdraw the proceedings in O.S.No.8417 of 2011 from the file of the learned VII Assistant Judge, City Civil Court, Chennai and transfer it to the file of this Court to be heard along with C.S.No.313 of 2012 is not possible. And that will only delay the proceedings.

11. In view of the above stated reasons, these two applications are dismissed.

30.03.2023

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

The VII Assistant Judge, City Civil Court, Chennai

Application Nos.809 & 810 of
in C.S.No.313 of





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Application Nos.809 & 810 of 2023
in C.S.No.313 of 2012



R.N.MANJULA, J.

sri

Pre-Delivery Common Order made in
Application Nos.809 & 810 of 2023
in C.S.No.313 of 2012

30.03.2023