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A.No.1694 of 2023 in

TOS.No.12 of 2015

R.N.MANJULA,J.

The applicant is the plaintiff in TOS.No.12 of 2015. This application has been filed to withdraw and transfer O.S.No.1938 of 2015 on the file of the learned XVII Assistant City Civil Court, Chennai, to try the same along with TOS.No.12 of 2015 on the file of this Court for joint trial.

2. The applicant / plaintiff has claimed that her mother Ramathilagam has executed a Will in respect of the lease hold right over the suit property on 12.03.2001. The plaintiff filed an original petition for grant of Letters of Administration. Since the respondents objected the same and filed caveat, the original petition filed in O.P.No.424 of 2014 was converted into TOS No.12 of 2015.

3. The first defendant is said to have filed a suit in O.S.No.1938 of 2015 on the file of XVII Assistant City Civil Court, Chennai for mandatory injunction directing the HR & CE authorities to transfer the tenancy in her favour in respect of the land measuring an extent of 2583



Sq.ft comprised in R.S.No.1517/A at Door No.41, Sundaram (Pillai) Street, Purasaiwalkam, Chennai – 600 007 and also for permanent injunction.

4. The applicant has claimed that the suit property in O.S.No.1938 of 2015 is a larger extent and any transfer of tenancy in the name of the first defendant would have consequences upon the pending TOS.No.12 of 2015 and hence, the applicant / plaintiff prays to withdraw and transfer O.S.No.1938 of 2015 on the file of the learned XVII Assistant City Civil Court, Chennai to this Court and try it along with TOS No.12 of 2015.

5. The respondents / defendants filed counter, wherein, it is stated that the original lease holder by name Ramathilagam is the mother-in-law of the first defendant and she executed a Will in respect of the said right on 13.09.2000 in favour of her husband J.Govindarajulu. However, the husband of the first defendant predeceased his mother. After the death of Ramathilagam, the first defendant had filed O.P.No.659 of 2016 for granting Letters of Administration in respect of the suit property and the same was also allowed. Since the first defendant has been examined as



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P.W.1 and she was also cross-examined in the year 2019 and the suit is part heard, the suit cannot be withdrawn and transferred to the file of this Court. The issues framed in both suits and the nature of the property in O.S.No.1938 of 2015 are different and hence, the application should be dismissed.

6. On perusal of the plaint in TOS.No.12 of 2015 and the plaint in O.S.No.1938 of 2015, it is found that the dispute is between the same parties. The suit property is the lease hold right enjoyed by the deceased Ramathilagam over the suit properties in both the suits and the Will alleged to have been executed by her in favour of her son and also her daughter. The first defendant who is the daughter-in-law of Ramathilagam has obtained Letters of Administration in respect of the property involved in the Will executed by Ramathilagam in favour of her husband. Subsequently, she filed a suit in O.S.No.1938 of 2015 for seeking mandatory injunction against the authorities of HR & CE to transfer the tenancy in her name. However, the daughter of Late Ramathilagam who is the applicant herein has also come out with an



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another Will said to have been executed in her favour in respect of the same lease hold right by her mother.

7. The learned counsel for the respondents submitted that the trial in O.S.No.1938 of 2015 is also commenced and P.W.1 has been cross-examined and at this stage, transferring the proceedings in O.S.No.1938 of 2015 is not possible. The learned counsel clarified that the suit for seeking the relief of mandatory injunction has been filed even before the Letters of Administration has been granted in her favour on 02.05.2017 in O.P.No.659 of 2016.

8. The rightful course that is open to the applicant / plaintiff is to seek joint trial of both TOS No.12 of 2015 and O.P.No.659 of 2016. But it is strange to see that the applicant / plaintiff has not filed caveat in O.P.No.659 of 2016 to get the benefit of converting it into TOS. Having failed to do so, she has now filed this application to transfer O.S.No.1938 of 2015 to be tried along with TOS No.12 of 2015. It is to be noted that the trial in O.S.No.1938 of 2015 has already been commenced and cross-



examination of P.W.1 is also over. Since the proceedings in O.S.No.1938 of 2015 is part heard and the trial in TOS.No.12 of 2015 is said to have commenced, it is not possible to order for transferring the suit on the file of XVII Assistant City Civil Court, Chennai, to this Court to be tried along with TOS.No.12 of 2015.

9. In the result, the Application filed to withdraw and transfer O.S.No.1938 of 2015 on the file of XVII Assistant City Civil Court, Chennai to this Court to be tried along with TOS.No.12 of 2015, is dismissed.

10. List the matter on 01.06.2023 before the Additional Master – IV for continuation of recording evidence. The parties are directed to appear before the Additional Master - IV on the said date.

27.04.2023

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