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Application No.2536 of
in T.O.S.No.20 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.06.2023

PRONOUNCED ON : 23.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Application No.2536 of 2023
in T.O.S.No.20 of 2022

N.Jaishankar ... Applicant / Plaintiff

versus

G.Anbarasi ... Respondent / Defendant

PRAYER: Application filed under Order XIV Rule 8 of O.S. Rules read with Section 24 of the Civil Procedure Code, praying to withdraw O.S.No.4260 of 2019 on the file of XVII Additional City Civil Court at Chennai and transfer the same to this Court to try along with the above T.O.S.No.20 of 2022.

For Applicant : M/s.H.Adaikala Arockiaraj

For Respondent : M/s.Amar D.Pandian

ORDER

This application has been filed to withdraw O.S.No.4260 of 2019 on the file of the learned XVII Additional Judge, City Civil Court, Chennai and transfer the same to this Court to be tried along with T.O.S.No.20 of 2022.



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2. Heard the learned counsels for the applicant / plaintiff and the respondent / defendant and perused the materials available on record.

3. The applicant is the plaintiff; he has filed O.P.No.964 of 2015 for the grant of Letters of Administration in respect of a Will dated 30.04.2007 executed by his father viz. D.Natarajan, in the said O.P.No.964 of 2015 an *ex parte* order was passed on 05.12.2018; the plaintiff has filed another suit in O.S.No.4260 of 2019 on the file of the learned XVII Additional Judge, City Civil Court, Chennai, for the reliefs of recovery of possession and injunction against the respondent / defendant, in the said suit the respondent/defendant remained absent and hence *ex parte* decree was passed on 21.01.2020; subsequently on the application filed by the respondent / defendant, *ex parte* decree passed in O.P.No.964 of 2015 was set aside and objection filed by the respondent / defendant, O.P.No.964 of 2015 came to be converted as T.O.S.No.20 of 2022; *ex parte* order passed in O.S.No.4260 of 2019 was also set aside and the suit was restored for further proceedings. Since the parties are the same and the subject matter is



also one and the same, both the matters can be tried jointly in order to avoid multiplicity of proceedings. Hence this application has been filed to withdraw O.S.No.4260 of 2019 on the file of the learned XVII Additional Judge, City Civil Court, Chennai and to transfer the same to this Court to be tried along with T.O.S.No.20 of 2022.

4. The learned counsel for the respondent / defendant submitted that this application itself is not maintainable as the applicant ought to have filed the Transfer Original Petition but filed an application in T.O.S.No.20 of 2022. He further submitted that the suit itself has been filed only with a view of the *ex parte* order got by the plaintiff in O.P.No.964 of 2015 and once the *ex parte* order is set aside, the suit which is an offshoot of the order passed in O.P.No.964 of 2015 will become infructuous.

5. The learned counsel for the applicant / plaintiff submitted that as per the Letters Patent for High Court Madras Rules, 2013 the High Court has got an extraordinary original jurisdiction to remove any suit falling within the jurisdiction of any Court, within the superintendence of High



Court and transfer it to be tried by the High Court itself in the interest of justice or on an agreement between the parties.

6. There is no disagreement on the submission made by the learned counsel for the applicant / plaintiff that the High Court has got its extraordinary original jurisdiction to remove any suit to be tried by itself in the interest of justice. But the applicant had filed the application in T.O.S.No.20 of 2022 instead of filing it in Transfer Original Petition to seek such a prayer. As submitted by the learned counsel for the respondent / defendant the suit filed by the applicant / plaintiff in O.S.No.4260 of 2019 is an offshoot of the *ex parte* order that has already been passed in O.P.No.964 of 2015. So it is claimed by the respondent / defendant that the suit will become infructuous. Since the issues are either different or consequent to the disposal of T.O.S.No.20 of 2022, it is premature to try the issues that might be framed in O.S.No.4260 of 2019.

7. In view of the above stated reasons, it is not feasible to withdraw O.S.No.4260 of 2019 on the file of the learned XVII Additional



Judge, City Civil Court, Chennai and transfer the same to this Court to be tried along with T.O.S.No.20 of 2022 and hence, this application in A.No.2536 of 2023 stands dismissed.

23.06.2023

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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R.N.MANJULA, J.

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Pre-Delivery Order made in
Application No.2536 of 2023
in T.O.S.No.20 of 2022

23.06.2023