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A.No.2829 of 2830 of 2023 in TOS.No.8 of 2018

A.No.2829 and 2830 of 2023
in TOS.No.8 of 2018

RESERVED ON : 13.09.2023

PRONOUNCED ON : 21.12.2023

A.A.NAKKIRAN, J.

ORDER

1. These applications have been filed by the Plaintiff to withdraw AS.No.130 of 2017 in OS. No 3822 of 2015, pending on the file of the I Additional City Civil Judge, Chennai and transfer the same to this Court to be tried along with TOS.No.8 of 2018 pending on the file of this Court and to pass an order staying all further proceedings in AS.No.130 of 2017, pending disposal of the above Transfer Application.
2. The TOS has been filed, seeking for Letters of Administration with the Will annexed in favour of the Plaintiff as the son/beneficiary under the Will of the deceased father B.Venkatesan having effect to the State of Tamil Nadu.
3. The case of the Applicant is as follows:-
 - a) The TOS is in part heard stage. The 2nd Respondent has filed O.S.No.3822 of 2015 before the XII Assistant City Civil Judge, Chennai, seeking a judgement and decree for partition of the suit properties and permanent injunction, against the Applicant. The said suit was decreed on 24.04.2017. As against the same, the Applicant filed AS.No. 130 of 2017 on the file of the I Additional City Civil Judge, Chennai and the appeal came up for argument on 02.08.2022. Both the TOS and said first appeal are based on the same cause of action and in respect of



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same schedule of property. The Plaintiff has to prove whether the Will is genuine or not. On transferring the AS.No.130 of 2017 to this Court and trying along with the TOS, no prejudice will be caused to the Respondent. On the other hand, there are possibilities of conflicting judgments. If AS.No.130 of 2017 is heard and disposed of, the Transfer Application will become infructuous. Hence, all further proceedings of A.S.No.130 of 2017 in O.S.No 3822 of 2015 on the file of the I Additional City Civil Court, Chennai may be stayed. If stay as prayed for is not granted, the Plaintiff will be put to great difficulty and hardship. On the other hand, no prejudice will be caused to the respondents. Hence, theses application have been filed, seeking the reliefs, as stated above.

4. In the counter filed by the Respondents, it is stated as under:-

- a) The 2nd Respondent has filed OS.No.3822 of 2015, on the file of XII Assistant Judge, City Civil Court, Chennai, seeking for partition of two properties, namely, (1) Item I: Plot No. 11, New No. 6, comprised in S.No.236/1A and 237/2A in TS.No.88, V.R. Annamalai Village, Chennai - 600 033, and Chetty Nagar, 3rd Street, Mettupalayam, Kodambakkam and (2) Item II: Plot No.31, comprised in S.No. 693/2, at Pallikaranai Village, Saidapet Taluk, measuring to an extent of 2100 Sq.ft. The suit was decreed and a preliminary decree was passed on 24.04.2017, declaring that the 2nd defendant herein is entitled to 1/5th share along with other defendants and permanent injunction was granted. In the said suit, the Plaintiff herein has projected that the alleged Will was said to



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have been executed by his father and he is the absolute owner of the said property. In fact, an issue was also framed in this regard about the alleged Will dated 24.03.1994. The 3rd Respondent has preferred an appeal in AS.No.130 of 2017 before the I Additional City Civil Court and the same is pending for proper adjudication. In the said Appeal the Plaintiff has filed I.A.No.1 of 2019 and it was allowed, confirming the partition by excluding Item II from ambit of present appeal, thereby parties to move court below for final decree by its order dated 27.10.2021. While so, having suppressed the entire facts and circumstances, the present applications are filed with a malafide intention to pass another decree in the above suit. The trial in above TOS.No.8 of 2018, is yet to be started. The present Applicant took number of adjournments and filed various applications in order to drag on the proceedings, since he is collecting the entire rents from Item I of the suit properties and deliberately refused to pay the proportionate rental share amount to the Respondents, who are entitled as per judgment and decree. In such circumstances, these applications are liable to be dismissed.

5. This Court heard both sides and also perused the documents available on record.



6. The learned counsel for the applicant/plaintiff submitted that the present TOS is in part heard stage; the 2nd Respondent has filed O.S.No.3822 of 2015 before the XII Assistant City Civil Judge, Chennai, seeking a judgement and decree for partition of the suit properties and permanent injunction, against the Applicant and the said suit was decreed on 24.04.2017. Aggrieved over the same, the Applicant filed AS.No. 130 of 2017 on the file of the I Additional City Civil Judge, Chennai and the same is pending for arguments. He further submitted that both the TOS and said first appeal are based on the same cause of action and in respect of same schedule of property. The Plaintiff has to prove whether the Will is genuine or not. On transferring the AS.No.130 of 2017 to this Court and trying along with the TOS, no prejudice will be caused to the Respondent. On the other hand, there are possibilities of conflicting judgments. If AS.No.130 of 2017 is heard and disposed of, the Transfer Application will become infructuous. Hence, he prays to transfer the appeal suit and stay all further proceedings of A.S.No.130 of 2017 in O.S.No 3822 of 2015 on the file of the I Additional City Civil Court, Chennai

7. The learned counsel for the respondents/defendants submitted that in the present TOS, trial is yet to be started and in the first appeal, a final decree petition is pending before the court below and therefore, the first appeal cannot be transferred to this Court. He further submitted that the applicant has come forward with the present applications with a malafide intention to pass another decree in the above suit. The present Applicant took number of adjournments



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and filed various applications in order to drag on the proceedings, since he is collecting the entire rents from Item I of the suit properties and deliberately refused to pay the proportionate rental share amount to the Respondents, who are entitled as per judgment and decree. Hence, he prays to dismiss both the applications.

8. It is an admitted fact that a partition suit was filed by the 2nd defendant herein in O.S No.3822 of 2015 and the same was decreed on 24.04.2017 and against which, first appeal was preferred by the applicant/plaintiff herein, in A.S No.130 of 2017 before the I Additional City Civil Court, Chennai. It is the contention of the applicant that since schedule of property is one and the same in both the TOS and first appeal, he has come forward with the present application seeking to transfer the first appeal to this Court. On the other hand, the respondents/defendants contended that the first appeal cannot be clubbed with the present TOS and moreover, a final decree petition is pending and therefore, the first appeal cannot be transferred to this Court. Considering the facts and circumstances of the case, this Court is of the view that the first appeal is continuation of the suit and hence, in the interest of justice, this Court is inclined to allow the application in A.No.2829 of 2023.

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9.In fine, this application is allowed. No costs.



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10. In view of the application in A.No.2829 of 2023 is allowed, this application is closed as infructuous.

21.12.2023

Index:Yes/No
Web:Yes/No
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Pre-Delivery Order in
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