



Tr.C.M.P.(MD)No.156 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :10.02.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

Tr.C.M.P.(MD).No.156 of 2022

and

C.M.P.(MD).No.2956 of 2022

P.Imayan

... Petitioner

Vs.

1.P.Ganagarathinam

2.G.Poongothai

3.J.Chithra

4.P.Jeya

... Respondents

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 151 of the Constitution of India, pleased to withdraw the O.S.No.178 of 2020 on the file of the Additional District Court, Thenkasi and to transfer the same to the Principal District Court, Virudhunagar at Srivilliputtur.

For Petitioner :Mr.S.Muniyandi

For Respondents :No appearance for R1 & R2
:Mr.C.Godwin for R3 & R4



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ORDER

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The present Transfer Civil Miscellaneous Petition has been filed to withdraw the suit in O.S.No.178 of 2020, on the file of the Additional District Court, Thenkasi and to transfer the same to the Principal District Court, Virudhunagar at Srivilliputtur to be tried along with Probate O.P.No.7 of 2021.

2. According to the learned counsel for the petitioner, the suit in O.S.No.178 of 2020 has been filed by the petitioner's sisters against himself, his mother and another sister for the relief of partition and separate possession. One of the defence taken by the second defendant, in the suit, is that his father Padmanapan, has executed a Will in his favour. The learned counsel for the petitioner further contended that for probating the said Will, he had filed Probate O.P.No.7 of 2021, on the file of the Principal District Court, Virudhunagar at Srivilliputtur. Therefore, according to the learned counsel for the petitioner, the suit for partition and Probate O.P., have to be tried together to avoid conflicting judgments. He further contended that the plaintiffs in the partition suit



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had already filed Tr.C.M.P.No.265 of 2021 before this Court, to withdraw the Probate O.P., from the file of the Principal District Court, Srivilliputtur and to transfer the same to Additional District Court, Thenkasi, to be tried along with the partition suit. However, the said Transfer Civil Miscellaneous Petition was dismissed as withdrawn on 27.07.2021. Hence, he has prayed that the present Transfer Civil Miscellaneous Petition, may be allowed.

3.Per contra, learned counsel for the respondents has contended that the trial in Probate O.P as well as the partition suit have already been started and any joint trial would prejudice the parties. Hence, he has prayed for simultaneous trial of the Probate O.P., as well as the partition suit.

4.In view of the above said fact, this Court passes the following order:

(i) The suit in O.S.No.178 of 2020, pending on the file of the Additional District Court, Thenkasi is withdrawn and transferred to the Principal District Court, Virudhunagar at Srivilliputtur.



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(ii) The learned Principal District Judge, Virudhunagar at Srivilliputtur is directed to conduct simultaneous trial of the partition suit and the Probate O.P., and deliver orders in both the cases on the same day.

(iii) Considering the nature of proceedings, the learned Principal District Judge, Virudhunagar at Srivilliputtur, is directed to dispose of the suit on or before 30.11.2023.

5. With the said observations, this Transfer Civil Miscellaneous Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

10.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

sbm



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To

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- 1.The Additional District Court,
Thenkasi.
- 2.The Principal District Court.
Srivilliputtur, Virudhunagar.



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R.VIJAYAKUMAR ,J.

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