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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 24.08.2023

Delivered on 29.09.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

Tr.C.M.P(MD)No.423 of 2023
and
C.M.P.(MD).No.8835 of 2023

Indirani

... Petitioner/Appellant

Vs.

1.Palani Ammal
2.Manimekalai
3.Pushpam

... Respondents/Respondents

Transfer Civil Miscellaneous Petition is filed under Section 151 of Civil Procedure Code, to withdraw the pending appeal in A.S.No.48 of 2018 on the file of the Subordinate Court, Lalgudi and to transfer the same to this Court to be heard along with pending C.R.P(MD)No.1340 of 2014.

For Petitioner
For R3

:Mr.P.Thiyagarajan
:M/s.KBS Law Associates
(No appearance)

For R1 & R2

:No appearance

**ORDER**

This Transfer Civil Miscellaneous Petition is filed to withdraw the pending appeal in A.S.No.48 of 2018 on the file of the Subordinate Court, Lalgudi and to transfer the same to this Court to be heard along with pending C.R.P(MD)No.1340 of 2014.

2. Heard the learned counsel appearing for the petitioner and also perused the materials available on record.

3. According to the petitioner, she filed a suit in O.S.No.332 of 2010 before the Additional District Munsif, Lalgudi against the respondents, for the relief of injunction restraining the respondents from interfering with her peaceful possession and enjoyment of the suit schedule property. The respondents, who are the sisters of the petitioner, executed a sale agreement dated 20.09.1984 in favour of her son and on the very same date, the entire sale consideration was paid. Pursuant to which, she is in possession and enjoyment of the suit property and put up a thatched house. Further, patta was transferred in her name and taxes were also paid by her from the year 1984. The respondents filed their written statement disputing the sale agreement and the receipt of the entire sale consideration. During the pendency of the said suit, the respondents filed a suit in O.S.No.2 of 2011



before the Additional District Munsif, Lalgudi, for recovery of possession.

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4. The suit property originally belonged to the plaintiff's father viz., Vadivelu, as the property was assigned by the Government of Tamil Nadu under Harijan Welfare Scheme. After the demise of the plaintiff's father and mother, the plaintiff as their only legal heirs and as such, she became the absolute owner of the suit property. Therefore, the defendants do not have any right over the suit schedule property. The plaintiff is in possession and enjoyment of the suit property pursuant to the sale agreement dated 20.09.1984 and hence, the suit filed under Section 6 of the Specific Relief Act is not maintainable.

5. In such circumstances, both the suits were jointly tried together and by a common judgment and decree, dated 18.12.2013, the suit in O.S.No.2 of 2011 filed by the respondents for the relief of recovery of possession was decreed and the suit in O.S.No.322 of 2010 filed by the petitioner for permanent injunction was dismissed. As against the judgment and decree passed in O.S.No.332 of 2010, the petitioner preferred an appeal in A.S.No. 62 of 2014 before the Subordinate Court, Tiruchirappalli. The said appeal was transferred to the Subordinate Court, Lalgudi and renumbered as A.S.No.48 of 2018 and the same is pending. Since no appeal has been filed against the judgment and decree passed in O.S.No.2 of 2011, as the suit is



filed under Section 6 of the Specific Relief Act, challenging the judgment and decree, the respondents filed civil revision petition in C.R.P(MD)No. 1340 of 2014 before this Court and obtained an order of interim stay. While the civil revision petition came up for final hearing, the learned counsel appearing for the respondents informed about the pendency of the appeal in A.s.No.48 of 2018 before the Subordinate Court, Lalgudi. Therefore, this Court directed the respondents to take necessary steps to withdraw A.S.No. 48 of 2018 pending on the file of the Sub-Court, Lalgudi, to transfer the same to this Court, so as to hear along with the pending civil revision petition.

6. The learned counsel appearing for the petitioner submitted that if the appeal is heard independently and any decision is taken there, that decision will have a bearing in taking decision in the revision petition and hence, he seeks to withdraw the appeal in A.S.No.48 of 2018 pending before the Sub-Court, Lalgudi and transfer the same to this Court to hear along with the pending civil revision petition in C.R.P(MD)No.1340 of 2014.

7. The learned counsel appearing for the respondents submitted that the pending appeal in A.S.No.48 of 2018 filed by the petitioner before the Sub-Court, Lalgudi, is arising out of the suit for injunction in O.S.No.332 of 2010 and hence, she objected to transfer the case.



8. Both the suits in O.S.No.332 of 2010 and O.S.No.2 of 2011 were tried together and a common judgment was passed on 18.12.2013. As against the judgment and decree passed in O.S.No.332 of 2010, the petitioner preferred an appeal in A.S.No.48 of 2018 before the Sub-Court, Lalgudi. Whereas challenging the judgment and decree passed in O.S.No.2 of 2011, the respondents filed C.R.P(MD)No.1340 of 2014 before this Court and the same is pending. In the considered opinion of this Court, if the civil revision petition and the appeal suit are heard independently, there would be a conflict decision. Therefore, in the interest of justice, the appeal suit in A.S.No.48 of 2018 is ordered to be withdrawn from the file of the Sub-Court, Lalgudi and the same is ordered to be heard along with the pending civil revision petition in C.R.P(MD)No.1340 of 2014.

9. In the result, the Transfer Civil Miscellaneous Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

29.09.2023

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

To

1.The Subordinate Court,
Lalgudi.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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K.GOVINDARAJAN THILAKAVADI, J.

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