



Tr CMP Nos.465 & 679 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2024

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THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

Tr CMP Nos.465 & 679 of 2024 &
CMP.Nos.9443 & 14666 of 2024

In Tr CMP No.465 of 2024

R.Palanisamy

: Petitioner

versus

1.Devaki

2.S.Poongodui

3.P.Ayyappan

4.P.Sankar

5.The Joint-I Sub Registrar,
District Registrar Office, Erode.

6.The Sub Registrar, Sub Registrar Office,
Avalpoonthurai, Perunthurai Taluk,
Erode District.

7.The Sub Registrar, Sub Registrar Office,
Namagiripettai Post, Rasipuram Taluk,
Erode District.

: Respondents

Prayer: Petition filed under Section 24 of the Constitution of India to
withdraw the suit in O.S.No.200 of 2021 on the file of the Court of the



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Principal District Judge, Namakkal and transfer the same to the file of the Court of the District and Sessions Judge, Erode and hear the same along with the petition in Probate O.P.No.43 of 2021 on the file of the Court of the District and Sessions Judge, Erode filed by the petitioner.

For Petitioner : Mr.R.Agilesh

For Respondents : Mr.D.Akaash
for Mr.N.Manoharan

In Tr CMP No.679 of 2024

1.Devaki
2.S.Poongodui : Petitioners

versus

1.R.Palanisamy
2.P.Ayyappan
3.P.Sankar : Respondents

Prayer: Petition filed under Section 24 of the Constitution of India to withdraw the Probate O.P.No.43 of 2021 from the file of the Court of the Principal District Court, Erode and transfer the same to the Principal District Court, Namakkal to try along with O.S.No.200 of 2021

For Petitioners : Mr.D.Akaash
for Mr.N.Manoharan



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For Respondents : Mr.R.Agilesh

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COMMON ORDER

The first transfer petition viz., Tr CMP No.465 of 2024 seeks for a transfer of O.S.No.200 of 2021 from the file of the learned Principal District Judge at Namakkal to the file of the District and Sessions Judge, Erode. The second transfer petition viz., Tr CMP No.679 of 2024 seeks exactly the contrary relief.

2. The properties that are involved in the cases belonged to one Ponnammal. From the wedlock between Ponnammal and S.Palanisamy, two daughters namely, Devaki and Poongodi and two sons, namely, Ayappan and Sankar were born. Ponnammal executed a WILL on 18.10.2019 bequeathing her share in favour of her husband, Palanisamy. Ponammal went to meet her maker on 07.12.2019. In order to get probate of the WILL executed by Ponnammal in his favour, Palanisamy initiated O.P.No.43 of 2021 on the file of the Principal District and Sessions Judge at Erode.



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3. Out of six items of the properties, five items are situated within Erode District and one item is situated in Namakkal District. Utilising the property in Namakkal, the respondent in O.P.No.43 of 2021 have initiated a suit for partition in O.S.No.200 of 2021 on the file of the Principal District Judge at Namakkal.

4. Pleading that the transfer petitioner in Tr CMP No.465 of 2024 is a senior citizen, aged about 72 years and is unable to undertake journey from Erode to Namakkal, Transfer CMP No.465 of 2024 has been presented. The daughters, who are the plaintiffs in O.S.No.200 of 2021 have filed Transfer CMP No.679 of 2024.

5. Notice was ordered in the transfer applications on 25.04.2024 and 19.07.2024. The respondents have been served and they entered appearance through counsels.

6. I have heard Mr.D.Akaash for Mr.N.Manoharan and Mr.R.Agilesh.



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7. Mr.R.Agilesh, pleading that his client is a senior citizen and pointing out that apart from Devaki, all other contesting parties are the residents of Karungalpalayam in Erode, would plead that it will be convenient to try the proceedings at Erode.

8. Mr.D.Akaash placing reliance upon a judgment of Supreme Court in *State Bank of India v. Ranjan Chemicals Ltd. And Others, (2007) 1 SCC 97*, would plead that as the issue of WILL alone is involved in a probate proceeding, the substantive proceeding being one of partition, the proceedings would have to be transferred to Namakkal.

9. I have carefully considered the submissions of both sides.

10. A perusal of the address of the parties shows that apart from Ms.Devaki, all other parties to the proceedings are the residents of Karungalpalayam Erode. A perusal of the schedule of the properties involved in the suit would show that out of six items, items 1 to 5 are



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situated in Erode and item 6 alone is situated in Namakkal.

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11. Furthermore, if the Probate OP is granted as prayed for, then Palanisamy, who can claim title over the $\frac{1}{2}$ share, which has been left behind by Ponnammal would become the full owner. If the probate is dismissed, the properties are open for partition. Hence, there should not be conflict of judgments between the Courts at Namakkal and Erode.

12. As pointed in the judgment cited by Mr.D.Akaash, if the relief claimed in both the proceedings arose out of series of transactions, then it is desirable that both the proceedings should be tried by one Court by way of joint trial. As the judgment in the probate proceedings will have repercussions in the partition suit and since the probate proceeding has been initiated earlier, in order to avoid of conflict of judgments, I am inclined to accept the petition filed by Palanisamy.

13. Accordingly, **transfer CMP.No.465 of 2024 stands allowed.**
O.S.No.200 of 2021 pending before the learned Principal District Judge,



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Namakkal is withdrawn and transferred to the file of the learned District and Sessions Judge at Erode to be heard and tried along with Probate O.P.No.43 of 2021.

14. On receipt of the records, the learned District and Sessions Judge at Erode shall take note of the fact that the petitioner in the probate proceeding is a senior citizen and therefore priority will be given in the said mater.

15. Since Transfer CMP No.465 of 2024 is allowed, Transfer CMP No.679 of 2024 is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

20.09.2024

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Index : Yes/No
Speaking Order/Non-speaking order
Neutral Citation : Yes/No



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1. The Principal District Judge,
Namakkal
2. The District and Sessions Judge,
Erode



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V.LAKSHMINARAYANAN, J.

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