



Tr.C.M.P.No.551 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Tr.C.M.P.No.551 of 2024 and
C.M.P.No.12055 of 2024

B.Saravanan

... Petitioner

Vs.

1.B.Rajeswari

2.B.Malliga

3.S.Devi

... Respondents

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure, to withdraw O.S.No.1776 of 2023 on the file of the II Additional Judge, City Civil Court at Chennai and transfer the same to the file of the III Additional District Court of Dharapuram.

For Petitioner : Mr.G.Gokul
For R1 : Mr.K.R.Ramesh Kumar

ORDER

The petitioner who is the 3rd defendant in O.S.No.1776 of 2023 filed this transfer petition seeking transfer of the said suit from the file of the II Additional Judge, City Civil Court at Chennai to the file of the III Additional District Court of Dharapuram wherein the suit in O.S.No.424 of 2022 is pending.

2.The learned counsel for the petitioner/2nd defendant submitted that



the petitioner and the respondents are legal heirs of Dhandapani Mudaliar who was in the business of selling handloom goods in the name of M/s.Nirmala Stores, a family enterprise. The petitioner's father late D.Balasubramaniam had two siblings viz., Shanmugam and Kandasamy. All the three working with their father late Dhandapani Mudaliar and running the family business in the name of M/s.Nirmala Stores which is primary source of income for the entire family. Dhandapani Mudaliar's vision and expressed desire is that all the business and properties to be enjoyed jointly and further M/s.Nirmala Stores should always be a family-run business and all the family members should be involved in day-to-day of its business. M/s.Nirmala Stores is nucleus for entire family. In the course of business, various properties purchased in Chennai and Vellakovil and other places from the corpus of M/s.Nirmala Stores. The understanding between all the family members were in consonance with the vision and desire of late Dhandapani Mudaliar that it is a joint family property and all the family members are equally entitled to all properties.

3.The learned counsel further submitted that in the year 2012, the petitioner's father Balasubramaniam passed away and after his demise, no



proper account of the business maintained and the petitioner was completely kept away. One Balaji and Karthikeyan, sons of Shanmugam and Kandasamy filed suit for partition in O.S.No.424 of 2022 before the learned III Additional District Judge, Dharapuram for two properties in Thirupur. On perusal of the plaint, it is seen that the said Balaji and Karthikeyan not even whispered or uttered about M/s.Nirmala Stores and various other business connected to it. They attempted to project as if the properties in Thirupur are joint family properties and the partition suit filed without arraying all the family members and without bringing all the properties. In such circumstances, the petitioner's sister Rajeswari filed suit in O.S.No.1776 of 2023 before the II Additional Judge, City Civil Court, Chennai seeking partition of only one item of property in Chennai which is not a family property. According to the petitioner, the property purchased by Balasubramaniam individually. Suppression of the property at Chennai to be added in the civil suit which is pending in Dharapuram. For that reason, the petitioner sought transfer of the suit from Chennai to Dharapuram where the other suit in O.S.No.424 of 2022 is pending. He further submitted that the petitioner is now without regular source of income and it is financially challenging for the petitioner to engage a counsel in



Chennai for effective representation in the suit in Chennai. The petitioner already engaged legal representative in Dharapuram and it would be convenient for him to defend both the suits. Hence, he sought for transfer.

4.The learned counsel for the 1st respondent/plaintiff filed counter stating that the transfer petition is filed by the petitioner to deny the respondent's share in the suit property. The respondent's mother Malliga arrayed as 2nd defendant in the suit and his sister Devi arrayed as 3rd defendant. The parties to the suit in O.S.Nos.1776 of 2023 and 424 of 2022 are different. Just because the petitioner and the 1st respondent are one of the party to the suit in O.S.No.424 of 2022, he cannot seek transfer. In O.S.No.1776 of 2023, the 1st respondent herein filed proof affidavit and documents which were marked in support of her claim. The petitioner failing to cross examine the defendants, filed the present transfer petition to protract the proceedings and ensure that the defendants are denied their respective shares and enjoyment of the family property. The said Balasubramaniam who is the father of the petitioner and 1st respondent purchased the suit property in Chennai out of his own earnings through the deed of sale, dated 07.12.1981 registered as document No.4456 of 1981.



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Apart from the property in Chennai, Balasubramaniam purchased lands in Vellakovil village, Kangayam Taluk, Thirupur District along with his brother Shanmugam and Kandasamy through sale deed in document, dated 03.06.1991.

5.It is further submitted that after Balasubramaniam's demise, the 1st respondent, her mother, brother and another sister inherits $\frac{1}{4}^{\text{th}}$ share in the property and in so far as the lands in Dharapuram, Balasubramaniam's brother Shanmugam and Kandasamy settled their respective $\frac{1}{3}$ undivided share in favour of their sons. Since no amicable settlement could be arrived due to adamant nature of the petitioner, having no other option the suit was initiated by Balaji and Karthikeyan for partition. Due to adamant nature of the petitioner, the suit in Dharapuram as well as the present suit in Chennai are pending. In respect of the suit in O.S.No.424 of 2022, the 1st respondent, her mother and sister filed memo submitting to the decree and paid requisite Court fee. It is the petitioner who refused to accept partition in O.S.No.1776 of 2023 filed by the 1st respondent herein. Since the 1st respondent's mother and sister are sailing with the 1st respondent, they remain exparte. The 1st respondent was informed that the petitioner filed suit in O.S.No.2666 of



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2022 on the file of the XV Assistant Judge, City Civil Court, Chennai for dissolution of the firm and in view of the arbitration clause, the same got disposed for want of jurisdiction on 02.02.2024. The petitioner is receiving around Rs.1,00,000/- as rental income generated from the suit property in O.S.No.1776 of 2023 which not accounted or brought to the family account and he is siphoning out the entire earnings from the property for himself and his family. But now claims it to be a family property. Since the parties in the suit are not one and the same and issue are not similar, no purpose would be served if the suit in O.S.No.1776 of 2023 is transferred from Chennai to Dharapuram. On the other hand, it would create great hardship and sufferings to the 1st respondent and her mother who is a senior citizen aged about 71 years with health ailments. Now both the suits are at different stage. Hence, he strongly opposed the petition.

6.In support of his submissions, the learned counsel for the 1st respondent produced proof affidavit of the 1st respondent filed in O.S.No.1776 of 2023, sale deed executed in favour of Balasubramaniam (Ex.P3) and web copy of the order in O.S.No.2666 of 2022 filed before the learned XV Assistant Judge, XV Assistant City Civil Court at Chennai.



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7.Considering the submissions and on perusal of the materials, it is seen that the petitioner earlier filed O.S.No.2666 of 2022 before the learned XV Assistant Judge, XV Assistant City Civil Court at Chennai. The petitioner is a resident of Vepery, Chennai which is an admitted fact in all the suits. The property in Chennai purchased by Balasubramaniam as could be seen from the sale deed document No.4456 of 1981. There is nothing from the document to show that the property purchased by Balasubramaniam from common family funds. On perusal of the entire records, there is no semblance of similarity in both the suits in O.S.Nos.1776 of 2024 and 424 of 2022.

8.In view of the above, this Court does not find any merit consideration in the submissions made by the learned counsel for the petitioner seeking transfer of the suit. Hence, this transfer civil miscellaneous petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

22.07.2024

Speaking Order/Non Speaking Order
Index : Yes/No



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Internet : Yes

Neutral Citation: Yes/No

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To

The II Additional Judge,
City Civil Court at Chennai.



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M.NIRMAL KUMAR, J.

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