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A.No. 3629 of 2023

in

C.S. No. 762 of 2015

A.A.NAKKIRAN, J.

ORDER

This application has been filed to withdraw and transfer the suit in O.S. No.46 of 2022 pending on the file of the Principal District Court, Tiruvarur, to be tried along with suit in C.S. No.762 of 2015.

2. The learned counsel for the applicants would submit that the suit property is belonged to Abu Backer and Bee Fathima. The suits in C.S. No.762 of 2015 on the file of this Court and O.S. No.46 of 2022 on the file of the Principal District Court, have been filed by the same parties seeking for partition against each other in the said suit properties. The parties in both suits, will have to establish through their respective defence. Hence, it is necessary to try the suit in O.S. No.46 of 2022 pending on the file of the Principal District Court, Tiruvarur, along with suit in O.S.No.762 of 2015 pending before this Court. Therefore, he seeks the reliefs as prayed for.



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3.The learned counsel for the respondents 1 to 4 would submit that the suit in O.S. No.46 of 2022 is related to a Will executed by Late Mrs.Bee Fathima in favour of the father of the plaintiffs in C.S. No.762 of 2015, ie. R.K.M. Sharbudeen. Therefore, the said R.K.M.Sharbudeen became the rightful owner of the properties and the applicants/defendant do not have any right over the suit property. Further, the said properties have now been sold to various third parties (respondents 5 to 9) who are the parties in the suit. Further, while the present suit on the file of this Court is at the stage of Trial, the suit in O.S. No.46 of 2022 has been filed by the applicants as an afterthought, with an ulterior motive to harass the respondents/plaintiffs. Hence, any direction to transfer the suit in O.S. No.46 of 2022 pending before the District Court, Tiruvarur, will cause huge inconvenience to the plaintiffs/respondents 1 to 4 herein. Hence, he seeks to dismiss the application.

4.The learned counsel for the respondents 5 to 7 would submit



that the cause of action for both the suits does not appear to be common. The suit in O.S. No.46 of 2022 contains other declaratory reliefs seeking the invalidation of several documents which are not concerned with and are beyond the scope of C.S. No.762 of 2015 pending before this Court. Hence, he seeks to dismiss the application.

5. Heard both sides and perused the material available on records.

6. Having considered the facts and circumstances of the case and submissions made by the learned counsel on either side, it is seen that both the suits have been filed by the same parties seeking for partition against each other in the suit properties belonged to Abu Backer and Bee Fathima. Since the respective parties are seeking for partition in both suits in the suit schedule properties, the partial partition cannot be done. In order to avoid multiple proceedings and in the interest of justice, this Court is inclined to allow the said application as prayed for.

7. After transferring the suit in O.S. No.46 of 2022 from the Trial



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Court, the Additional Master concerned is directed to proceed the Trial

A.A. NAKKIRAN, J

Lbm

Proceedings trying both suits jointly and complete the same within a period of three months from the date of transfer of the aforesaid suit.

8.In the result, the application is allowed.

20.03.2024

Lbm

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