



A.No.3712 of 2024 in
T.O.S. No.28 of 2023
and C.S.No.12 of 2024

P.B.BALAJI. J.,

This application has been filed by the defendants, seeking transfer of O.S.No.3522 of 2019 from the file of the XXII Assistant Judge, City Civil Court, Chennai, to the file of this Court to be tried along with T.O.S.No.28 of 2023.

2. Heard the learned counsel for the applicants and the learned counsel for the respondents.

3. The present application is at the instance of the defendants in the T.O.S.28 of 2023. It is their case that in respect of one of the item belonging to the testator, the plaintiff/1st respondent had obtained settlement deed in her favour and in respect of the said settlement deed, a suit in O.S.No.3522 of 2019 has been filed before the XXII Assistant Judge, City Civil Court, Chennai, and the same is pending. The learned counsel for the applicants would submit that the issues are common in both the suits and the parties are also same. Therefore, it would be just and proper that the pending suit in O.S.No.3522 of 2019 on the file of the XXII Assistant Judge, City Civil Court, Chennai, be withdrawn and transferred to the file of this Court.

4. Mr.R.Subramanian, learned counsel for the respondents would submit that the cause of action is entirely different. He would also submit that the partition suit was filed by the defendants in O.S.No.3522 of 2019 and it is in an



advanced part heard stage and whereas T.O.S.No.28 of 2023, the defendants are yet to even file their written statement. Therefore, there is no necessity to transfer or to conduct joint trial of the suit for declaration, pending before the XXII Assistant Judge, City Civil Court, Chennai along with the TOS.

5. I have heard the submissions of the learned counsel on either side.

6. Admittedly, the partition suit filed before the XXII Assistant Judge, City Civil Court, Chennai has already been transferred to this Court, to be tried along with the TOS. In fact, I find that in the suit for partition, the property which has been settled on the 1st respondent/plaintiff is not even included as a schedule. Therefore, even according to the defendants, they thought it fit to litigate the said property as a separate issue. Therefore, I do not find any reason to withdraw and transfer the suit in O.S.No.3522 of 2019 to be tried along with the T.O.S.No.28 of 2023.

7. I find no merit in the application, and accordingly, the same stands dismissed.

01.08.2024

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