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Tr.C.M.P.No.1287 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Tr.C.M.P.No.1287 of 2024

Jacob Thomas Thumbasseril

.. Petitioner

Vs.

1.Binita Jacob

2.Achamma Jacob

.. Respondents

(Cause title accepted vide order of this Court dated 26.11.2024 made in C.M.P.No.26859 of 2024 in Tr.C.M.P.SR.No.127316 of 2024)

Prayer: This Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure, 1908, praying to withdraw the suit in O.S.No.207 of 2017 from the file of the Learned Sessions Judge, Mahila Court, Kancheepuram District at Chengalpattu and transfer the same to the file of the Learned City Civil Court at Chennai.



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For Petitioners : Mr.B.Aravind Srevtsa
for Mr.Manuraj

For R1 : Ms.Binita Jacob
(Party-in-Person)

For R2 : No appearance

ORDER

This transfer petition seeks transfer of O.S.No.207 of 2017 from the file of the learned Sessions Judge, Mahila Court, Kancheepuram District at Chengalpattu, to the file of the City Civil Court at Chennai.

2.Transfer petitioner is the plaintiff in the suit. He presented O.S.No.207 of 2017 seeking the following reliefs:

(a)A declaration of title of the plaintiff and recovery of possession of 50% of the suit schedule property in favour of the plaintiff;

(b)A consequent partition of the suit property by metes and bounds by passing a preliminary decree and final decree granting 50% of the right, title, interest and possession of the suit schedule property exclusively to the plaintiff;



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(c)Declaration of the registered deed of settlement dated 19.02.2013 between the 1st defendant and the 2nd defendant registered as Document No.1123 of 2013 in SRO, T.Nagar as null and void and not binding on the plaintiff and

(d)A permanent injunction restraining the 2nd defendant, her men, agents and servants and anybody is claiming through or under her from in any manner creating any encumbrance in respect of the suit property.

3.On the date of presentation of the plaint, the plaintiff was working abroad. Hence, the suit was presented through his power agent. He claimed that the 1st defendant is his former wife and the 2nd defendant is her mother. Apart from raising his claim on the source of title, he stated that he is entitled to distribution of assets, including the suit property, as per the order dated 20.08.2014 of the Superior Court, Wake County, North Carolina, USA.

4.Initially, he had presented O.S.No.405 of 2014. It was a suit for bare injunction. Subsequently, he filed an application to withdraw the said suit with a liberty to file a fresh suit. Though the Subordinate Court had rejected



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the prayer, pursuant to the intervention of this Court in C.R.P.(PD).No.30 of 2016, the liberty was granted. Hence, O.S.No.207 of 2017 came into being.

5.Summons were sent to the defendants. The defendants entered appearance and have filed a detailed written statement. Amongst several pleas that have been raised by the defendant, an issue was raised as regards the payment of Court Fees. The said objection was considered and the plaintiff was called upon to pay a sum of Rs.5,10,530/- pursuant to the order passed in I.A.No.1717 of 2017 dated 23.04.2018.

6.The cause for this petition is that the petitioner has since shifted his residence from United States of America to M.Palada, Ootacamund, The Nilgiris District. He pleads that the suit is not being proceeded with on account of several e-mails that have been sent by the respondents in the transfer petition to the learned Presiding Officer at the Mahila Court in Chengalpattu. In fact, the proceedings were transferred from the file of the learned Principal District Judge at Kancheepuram District at Chengalpattu to the file of the Mahila Court at Chengalpattu pursuant to the orders passed by



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the learned Principal District Judge on 05.03.2020. The transfer petitioner further pleaded that, being a resident of Ooty, he finds it difficult to travel from Ooty to Chennai and thereafter from Chennai to Chengalpattu. He further pleads that he is currently managing the Good Shepherd International School, Ooty. On account of that fact, he has to be present in School for day-to-day administration. Taking into consideration the pleas raised by the petitioner, I issued notice on 06.12.2024 and posted the matter yesterday, i.e., on 20.12.2024.

7. Notice has been served. Last Morning, Ms. Binita Jacob, made a mention stating that though the summons stating that the matter is to be taken up for hearing on 20.12.2024, the matter had not been listed. She further pleaded that she is leaving the country on 29.12.2024 and that she will be returning back to India only on 19.01.2025. Therefore, she pleaded that the matter need not be taken between 02.01.2025 to 20.01.2025. Since the party-in-person had pointed out that the matter had not been listed and as she will be travelling abroad, I directed the Registry to list the matter today. Accordingly, the matter has been listed and I took it up for final hearing.



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8.I heard Mr.B.Aravind Srevtsa for Mr.Manuraj for the transfer petition and the 1st respondent, party-in-person. The 2nd respondent though served, is not present in the Court either to oppose or to support the transfer petitioner.

9.Mr.B.Aravind Srevtsa narrated the circumstances in the affidavit and sought for transfer.

10.Ms.Binita Jacob pointed out that the petitioner is not entitled to seek for transfer, as the situation of the matter pending for seven long years, has been brought about by himself. She points out, at several stages of the litigation, he had frequently changed the Lawyers which caused the delay. She pointed out that the transfer itself from the Principal District and Sessions Court at Kancheepuram to the file of the Mahila Court, Kancheepuram District at Chengalpattu in the year 2020 was at the instance of this Court. She further expressed an apprehension that the present wife of the 1st respondent (the marriage of which she does not accept and states that it is a subject matter of challenge before the High Court of Kerala at



Ernakulam) is a Lawyer and her father is a well known Lawyer in the city of Chennai. Therefore, she has apprehensions as regards the quality of Judicial assistance she will get in case the matter is transferred to the City Civil Court at Chennai. She points out that criminal proceedings had been launched against the respondents herein for alleged impersonation of herself before the Mahila Court at Kancheepuram. She states that it was a great difficulty that they were able to come out of the situation that had been created by the transfer petitioner. She states that her mother is 78 years old and therefore that should be taken into consideration prior to passing orders in the petition.

11.I have carefully considered the submissions of Mr.B.Aravind Srevtsa and the party-in-person.

12.It is not in dispute that the petitioner and the 1st respondent had been in a matrimony. Subsequently, the matrimony had been dissolved by an order of the Family Court at Ernakulam. It is a subject matter of appeal before the High Court of Kerala at Ernakulam. This suit does not relate to the marital status of either the petitioner or the 1st respondent. It relates to a property



which is situated at Injambakkam in Chennai. The husband claims that he has a share in the property. The claim of the husband is being resisted by the defendants. The matter is ready for trial.

13.The grievance of the petitioner is that he is unable to travel from Ooty to Chennai and onwards to Chengalpattu. The cause title shows that the respondents are residents of Chennai. The 2nd respondent is admittedly a senior citizen aged about 78 years. The 1st respondent on her own statement is a solitary woman, without any support as her siblings also not in Chennai. One is in Bombay and the other is in Vietnam.

14.At the time of considering the application for transfer, I should see the convenience of both the parties. The petitioner is not seeking for transfer of the proceedings to Ooty, but to Chennai. This is because Ooty is well connected to Chennai. Yet on account of the pendency of the suit, after undertaking this journey, he has to proceed to attend the case in Chengalpattu. The necessity for his presence arose as the suit is now listed for trial. Had the respondents been residents outside the city of Chennai, I would



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not have issued notice for the transfer itself. In matters of transfer, Convenience of the women takes priority. Fortunately, the defendants are residing within the jurisdiction of the Courts at Chennai.

15.The apprehension of the 1st respondent that since the plaintiff is well connected in the legal field, she might not get justice is unfounded. Even if parties are Lawyers, the Court is only going to apply the law to the facts and come to a conclusion. The status or standing of the plaintiff or his counsels does not make a difference to a Judicial Officer.

16.A suit has been pending from 2017 and being a five year old suit, it should have triggered the Trial Court to quicken the trial and complete the same within a time period. Unfortunately, for one reason or the other, it is still pending at the stage of trial.

17.Insofar as the apprehension the frequent change in counsel is affecting the progress of the suit is concerned, the same can be addressed by giving an appropriate direction to the Transferee Court.



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18.In the light of the above discussion, I am inclined to accept the transfer. The suit in O.S.No.207 of 2017 is withdrawn from the file of the Sessions Judge, Mahila Court, Kancheepuram District at Chengalpattu and transferred to the file of the Principal Judge, City Civil Court at Chennai. The learned Sessions Judge, Mahila Court, Kancheepuram District at Chengalpattu, shall transmit the papers forthwith. The papers shall be sent by a Special Messenger and should be received by the City Civil Court, Chennai, on or before 10.01.2025.

19.The Principal Judge, City Civil Court, Chennai, shall re-number the suit as soon as the papers are received from the Sessions Judge, Mahila Court, Kancheepuram District at Chengalpattu. The Principal Judge, City Civil Court, Chennai, shall fix the date of hearing on **27.01.2025**. On that date, he shall commence the trial. He shall receive the proof affidavit of the plaintiff and shall proceed with trial day-to-day. In any event, the suit should be heard atleast thrice a week. The learned Principal Judge, City Civil Court, Chennai, shall not grant unnecessary adjournments to either parties. The Principal Judge, City Civil Court, Chennai, shall not adjourn the matter for



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the mere fact the plaintiff or the defendants make a representation that they are going to engage a new counsel. The suit need not wait for the parties to engage a new counsel. The trial should be completed on or before **29.04.2025**. A report of compliance should be submitted to this Court.

20.Both the learned Sessions Judge, Mahila Court, Kancheepuram District at Chengalpattu and the learned Principal Judge, City Civil Court, Chennai, need not wait for a certified copy of this order. They shall act on the web copy of the order when produced either by the transfer petitioner or by the respondents. The learned Principal Judge, City Civil Court, Chennai, is requested to try the suit himself and not bind over the suit to any other Court.

21.The name of the 1st respondent has been typed as Binta Jacob in the cause title. The 1st respondent pleads that her name is Binita Jacob. Registry is directed to carry out necessary amendment in the cause title. The amendment so made shall enure in favour of the suit also. In case the suit cause title has been shown as Binta Jacob, it shall be corrected to Binita Jacob by the Trial Court.



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22. In the result, this Transfer Civil Miscellaneous Petition is allowed with the above directions. No costs.

Post this case on 30.04.2025 'for reporting compliance'.

21.12.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

NOTE: Registry is directed to carry out necessary amendment.



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To

1.The Sessions Judge,
Mahila Court,
Chengalpattu,
Kancheepuram District

2.The Principal Judge,
City Civil Court,
Chennai



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V.LAKSHMINARAYANAN, J.

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