



A.No.5716 of 2023 in T.O.S.No.9 of 2020

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in
T.O.S.No.9 of 2020

Reserved on : 02.01.2024

Pronounced on : 18.04.2024

A.A.NAKKIRAN, J.

This present application is filed seeking to withdraw and transfer O.S.No.190 of 2016 on the file of the District Munsif Court, Chengalpattu to be tried along with TOS No.9 of 2020 on the file of this Court.

2. The learned counsel appearing for the applicant submitted that the O.P.No.232 of 2018 was filed to probate the will dated 15.09.2014 executed by late A. Arumainathan. Since the defendants filed caveat, the O.P.No.232 of 2018 converted into T.O.S.No. 9 of 2020. During the life time of the Testator Late. A. Arumainathan, he had filed O.S No. 190 of 2016 on the file of District Munif Court, Chengalpattu, to declare the Family Arrangement document dated 05.11.2015 bearing document No.13473/2015 on the file of the Sub Registrar Office, Chengalpattu between the defendants 1 to 3 with regard to the suit properties as Null and Void, granting Permanent injunction against the defendants 1 to 3, restraining them, their men, agents and



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servants from in any way collecting the rent from the tenants/defendants 4 to 19 based on incorrect Registered Family Arrangement Document (Bearing Document No.13473 of 2015 on the file of the S.R.O. Chengalpattu. Wherein, the respondents 2 to 4 have filed the written statement and contested the suit. He further submitted that the subject matter of properties are situated at Vedappa chetty street and Chunambukara street, Chengalpattu Town at Old Police line, Chengalpattu Town. The subject matter of the Will dated 15.09.2014 is a subject matter of TOS No.9 of 2020. The properties covered under the Will are the subject matter of the suit in OS No.190 of 2016. He further submitted that the subject matter of the Will dated 15.09.2014 executed by the Late. A. Arumainathan is a registered Will in Document No. 74/III/14 dated 17.09.2014 on the file of the Sub Register Office, Chengalpattu. Since the properties covered under the TOS No. 9 of 2020 and O.S No. 190 of 2016 are similar and the contesting parties of the both the proceedings are the same. Most of the tenants have vacated and are not contesting O.S.No.190 of 2016. In order to reach the ends of Justice and to avoid conflict of orders, the proceedings mentioned above may be permitted to be tried together. Hence, the present application is filed to withdraw and transfer O.S.No.190 of 2016 on the file of the District Munif



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Court Chengalpattu to this Court to be tried along with TOS No. 9 of 2020.

Hence, the learned counsel prays for allowing this application.

3. The learned counsel for the respondents submitted that the present transfer application is not maintainable under law and facts. TOS No.9 of 2020 is a testamentary suit in which no other can be clubbed. It is settled law that in a testamentary suit only the truth and genuineness of the will said to have been executed by A Aramainathan on 15.09.2014 can be gone into and no more issues can be tried in the said suit. On the other hand admittedly that the said O.S.No.190/2016 is filed for several reliefs including the relief of declaration to declare the family arrangement dated 05.11.2015 registered as Doe. No. 13473/2015, SRO, Chengalpatru as null and void and for permanent injunction restraining the Defendants 1 to 3 namely the Respondents 1, 2 and 6 in the TOS (Defendants No. 1 to 3) from collecting any rents from Defendants No.4 to 19 in the said suit. The property involved in the suit are all situated outside the jurisdiction of this Court. While the property involved in TOS is situated at Chennai. He further submitted that the cause of action for the suit is entirely different from the cause of action in the TOS. He further submitted that only to drag



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on the trial in TOS, this vexatious application is filed. The intention of the applicant is only to avoid/postponement of proving the Will in court of law as he is well aware the alleged Will is a concocted one. Hence, the learned counsel prays for dismissal of this application.

4. Heard both sides.

5. During the life time of the Testator A. Arumainathan, he has filed the suit in O.S.No.190 of 2016 on the file of the District Munsif Court, Chengalpattu in respect of the subject matter properties. After his demise, to prove the Will dated 15.09.2014 executed by the Testator, the O.P.No.232 of 2018 was filed before this Court and the same was converted into T.O.S.No. 9 of 2020 since the defendants filed the written statement. The properties covered under TOS No.9 of 2020 and O.S.No.190 of 2016 are similar and the contesting parties of the both the proceedings are the same and most of the tenants have vacated and are not contesting O.S.No.190 of 2016. Hence, this Court is of the view that in order to reach the ends of justice and to avoid conflict of orders, the proceedings mentioned above can be permitted to be tried together.



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6. Accordingly, the present application is **allowed**. The suit in O.S.No.190 of 2016 on the file of the District Munsif, Chengalpattu is transferred to this Court to be tried along with TOS No.9 of 2020. No costs.

18.04.2024

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