



Tr.CMP.No.1046 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Tr.CMP.No.1046 of 2023

and

C.M.P.No.25306 of 2023

Y.Shanthi

.. Petitioner

Vs.

M/s.Risid Finances,
Represented by its Manager,
No.159/1A, Srividya Apartment,
Palaniappa Nagar, Valasaravakkam,
Chennai – 600 087

.. Respondent

Prayer : The Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the proceeding in O.S.No.129 of 2022 on the file of the learned Principal District Judge at Chengalpattu and transfer the same to the file of the learned III Additional City Civil Judge at Chennai to be heard and disposed of along with O.S.No.5491 of 2023.

For Petitioner : Mr.V.Krishnamoorthy

For Respondent : Served, No Appearance



Tr.CMP.No.1046 of 2023

ORDER

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This Transfer Civil Miscellaneous Petition seeks transfer of proceeding in O.S.No.129 of 2022 on the file of the learned Principal District Judge at Chengalpattu to be heard and disposed of along with O.S.No.5491 of 2023 pending on the file of the learned III Additional City Civil Judge at Chennai.

2. O.S.No.129 of 2022 is a suit for specific performance of an agreement of sale dated 18.02.2019. The plaintiff had approached the District Court at Chengalpattu as the properties are situated within the jurisdiction of that Court.

3. After receiving summons in the said suit, the transfer petitioner herein pleading that the entire transaction is a loan transaction between her and one G.Mani and Sivaraman, subsequently, as a plaintiff, has presented a suit in O.S.No.5491 of 2023 before the City Civil Court at Chennai. In the said suit, she has sought the relief of declaration that the agreement of sale dated 05.02.2016 and the subsequent agreement



Tr.CMP.No.1046 of 2023

dated 18.02.2019 (the suit agreement which is the subject matter of O.S.No.129 of 2022) are null and void and not binding on the plaintiff.

As she has presented the subsequent suit, the transfer petitioner wants the suit for specific performance in O.S.No.129 of 2022 to be heard along with her suit in O.S.No.5491 of 2023.

4. Notice was ordered in this application on 09.11.2023. After service of summons, an affidavit of service was filed by the transfer petitioner on 18.06.2024. The respondent has not entered appearance in the said proceeding.

5. The learned counsel for the petitioner would submit that the transfer petitioner is entitled to file an independent suit and not necessarily project a counter claim by raising her pleas in O.S.No.129 of 2022. It is in exercise of that right, he would state that the transfer petitioner has filed O.S.No.5491 of 2023.



Tr.CMP.No.1046 of 2023

6. He would state that the disputes involved in both the proceedings cover the agreements of sale referred to above. He would plead that there should not be a conflict in judgments of both the Courts.

7. I have to agree with the contentions made by the learned counsel for the transfer petitioner that as both the transactions are arising out of the same agreement of sale, in fitness of things, the matters must be heard by one learned Judge.

8. It is the case of the respondent that it is an agreement of sale, whereas, the transfer petitioner would plead that it is only a loan transaction backed up by an agreement as a security. He is certainly right that the plaintiff is entitled to file an independent suit and not necessarily project the counter claim. However, while dealing with the transfer petition, I need not deal with the right of the respective parties to file a suit. If the issues are one and the same as pointed out above, it has to be tried by the same Judge.



Tr.CMP.No.1046 of 2023

9. However, in this case, I have to take note of the fact that the respondent was first of the block by presenting a suit as early as in March 2022. After having received the summons and having waited for nearly one year and six months, the transfer petitioner moved the proceeding in O.S.No.5491 of 2023 before the City Civil Court. Therefore, I am not inclined to transfer the former suit to be heard along with the subsequent suit.

10. While granting the relief of transfer, I am inclined to withdraw the suit in O.S.No.5491 of 2023 pending on the file of the learned III Additional City Civil Judge at Chennai and transfer the same to the file of the learned Principal District Judge at Chengalpattu to be heard and disposed of along with O.S.No.129 of 2022. Another reason why I am inclined to pass this order is because the pleadings are completed in O.S.No.129 of 2022 and it is at the stage of framing of issues.

11. At this stage, the learned counsel for the transfer petitioner would submit that the petitioner is a lady and therefore, she would not



Tr.CMP.No.1046 of 2023

be in a position to travel to Chengalpattu to contest the suit. A perusal of the cause title shows that there are two plaintiffs. The first plaintiff is the wife/transfer petitioner and the second plaintiff is her husband. Therefore, the plea that a hapless lady has to travel to Chengalpattu does not hold water.

12. Hence, the proceeding in O.S.No.5491 of 2023 pending on the file of the learned III Additional Judge, City Civil Court at Chennai is withdrawn and it shall stand transferred to the file of the learned Principal District Judge at Chengalpattu to be heard and disposed of along with O.S.No.129 of 2022. Accordingly, the Transfer Civil Miscellaneous Petition stands ordered. No costs. The connected Civil Miscellaneous Petition is closed.

16.07.2024

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



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Tr.CMP.No.1046 of 2023

V. LAKSHMINARAYANAN, J.

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To

- 1.The learned Principal District Judge,
Chengalpattu
- 2.The learned III Additional City Civil Judge,
Chennai

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and

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