



WEB COPY



Tr.C.M.P(MD)Nos.294 and 295 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.09.2024

Pronounced on : 28.10.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Tr.C.M.P(MD)Nos.294 and 295 of 2024

and

C.M.P(MD)Nos.6760 and 6764 of 2024

Tr.C.M.P(MD)No.294 of 2024

N.Elayalwar

... Petitioner

Vs.

1.Suhartha @ Furshiya Nihal

2.K.Chandran

3.Ramkumar Pandian @ Ramkumar Raja

... Respondents

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw and transfer the suit in O.S.No.120 of 2022 on the file of the 2nd Additional District Court, Thoothukudi to the file of the 4th Additional District Court, Tirunelveli and to be tried along with O.S.No.300 of 2021 pending on the file of the 4th Additional District Court, Tirunelveli.

For Petitioner : Mr.Mr.R.Ponkarthikeyan

For R1 : Mr.G.Muthukrishnan

For R2 & R3 : Mr.K.R.Laxman



Tr.C.M.P(MD)Nos.294 and 295 of 2024

Tr.C.M.P(MD)No.295 of 2024

N.Elayalwar

... Petitioner

Vs.

1.Suhartha @ Furshiya Nihal

2.Ramkumar Pandian @ Ramkumar Raja

3.The Firkha Surveyor,
Office of Tahsildar,
Ettaiapuram Taluk,
Thoothukudi District.

4.The Tahsildar,
Ettaiapuram Taluk,
Ettaiapuram.

5.The District Collector,
Collectorate,
Thoothukudi.

... Respondents

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw and transfer the suit in O.S.No.184 of 2023 on the file of the Sub Court, Kovilpatti to the file of the 4th Additional District Court, Tirunelveli and to be tried along with O.S.No.300 of 2021 pending on the file of the 4th Additional District Court, Tirunelveli.

For Petitioner	: Mr.R.Ponkarthikeyan
For R1 & R2	: Mr.K.R.Laxman
For R3 to R5	: Mr.Omprakash
	Government Advocate



Tr.C.M.P(MD)Nos.294 and 295 of 2024

COMMON ORDER

WEB COPY The Transfer Civil Miscellaneous Petition in Tr.C.M.P(MD)No. 294 of 2024 is filed seeking for an order to withdraw and transfer the case in O.S.No.120 of 2022 on the file of the II Additional District Court, Thoothukudi to the file of the 4th Additional District Court, Tirunelveli to be tried along with O.S.No.300 of 2021.

2. The Transfer Civil Miscellaneous Petition in Tr.C.M.P(MD)No. 295 of 2024 is filed seeking for an order to withdraw and transfer the case in O.S.No.184 of 2023 on the file of the Sub Court, Kovilpatti to the file of the 4th Additional District Court, Tirunelveli to be tried along with O.S.No.300 of 2021.

3. The facts of the case:

The 1st respondent has filed a suit in O.S.No.300 of 2021 on the file of the 4th Additional District Court, Tirunelveli for partition of the suit properties mentioned therein. The petitioner has filed a suit in O.S.No.120 of 2022 on the file of the II Additional District Court, Thoothukudi for declaration that the suit property therein has absolutely belonged to him and that the award passed by the Lok Adalat in respect



Tr.C.M.P(MD)Nos.294 and 295 of 2024

of O.S.No.163 of 2021 on the file of the I Additional District Court Thoothukudi is null and void and other reliefs. The petitioner has also filed another suit in O.S.No.184 of 2023 before the Sub Court, Kovilpatti seeking for injunction and declaration that the partition deed under Document No.1073/2022 of Ettayapuram Sub Registrar is null and void.

4. The learned counsel for the petitioner submitted that the petitioner is not a party to the suit in O.S.No.300 of 2021 and so, he filed a petition in I.A.No.1 of 2022 to implead as a defendant. That petition was allowed on 18.03.2024 by the trial Court and the petitioner was impleaded as defendant and the plaint was also amended to that effect. The suit properties in all the three suits in O.S.No.120 of 2022, O.S.No. 184 of 2023 and O.S.No.300 of 2021 are one and the same and the disputes are also interconnected. He further submits that if the suits were tried by different Courts, a conflict of decision would arise. Therefore, the petitioner filed these petitions and they may be allowed.

5. The learned counsel for the first respondent has contended that the petitioner filed the suits in O.S.No.120 of 2022 and O.S.No.184 of 2023 and sought same prayer and so, both the suits can be amalgamated



Tr.C.M.P(MD)Nos.294 and 295 of 2024

and can be merged. But, the nature of the suit and the issues to be decided in O.S.No.300 of 2021 are entirely different. Originally, the petitioner was not added as a party and subsequently, on his petition he was added. Therefore, these petitions may be dismissed.

6. The learned counsel for respondents 2 and 3 would submit that the cause of action in all the three suits is different. In the partition deed, alleged by the petitioner, there is no suit survey number mentioned. The description of properties, their parent documents and four boundaries are entirely different. There is no need for transfer. Hence, these petitions may be dismissed.

7. Heard both sides and perused the records in these petitions. The first respondent has filed the suit in O.S.No.300 of 2021 on the file of IV Additional District Court, Tirunelveli, seeking partition in respect of four items of properties. On perusal of the suit in O.S.No.120 of 2022 on the file of the II Additional District Court, Thoothukudi for declaration and possession and also declaration that the award passed by the Lok Adalat in O.S.No.163 of 2021 as null and void in respect of property in S.F.No.368/3 and 368/37 of Ettayapuram. The suit in O.S.No.



Tr.C.M.P(MD)Nos.294 and 295 of 2024

184 of 2023 of Sub Court, Kovilpatti filed regarding the property in S.No.368/38 of Ettayapuram and the shops situated therein and also for declaration that document in partition Deed No.1073/2022 of Ettayapuram Sub Registrar is null and void. On perusal of plaints in all the three suits, the 4th item of the suit property in O.S.No.300 of 2021 is shown as suit property in O.S.No.120 of 2022 and O.S.No.183 of 2023. Though the respondents' contention that originally the petitioner was not a party in O.S.No.300 of 2021, now he is added as defendant and there is a dispute and also there is no revision against his impleadment. The disputes to be decided in all the three suits are one and the same. Moreover, the trial has not yet commenced in these three suits, which is also undisputed. In case of transfer of suits, no prejudice would be caused to the respondents. Hence, the submission of the petitioner that there will be conflicting judgment if the suits are tried by different courts is acceptable. Therefore, this Court is inclined to allow these transfer petitions.

8. In the result, Tr.C.M.P(MD)Nos.294 and 295 of 2024 are allowed. The suits in O.S.No.120 of 2022 on the file of the II Additional District Court, Thoothukudi and in O.S.No.184 of 2023 on the file of the



Tr.C.M.P(MD)Nos.294 and 295 of 2024

Sub Court, Kovilpatti are withdrawn and transferred to the file of the

IV Additional District Court, Tirunelveli and to be tried along with

O.S.No.300 of 2021. No costs. Consequently, the connected

Miscellaneous Petitions are closed.

28.10.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

VSD

To

- 1.The II Additional District Court,
Thoothukudi.
- 2.The Sub Court,
Kovilpatti
- 3.The IV Additional District Court,
Tirunelveli.
- 4.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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Tr.C.M.P(MD)Nos.294 and 295 of 2024

P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
Tr.C.M.P(MD)Nos.294 and 295 of 2024
and
C.M.P(MD)Nos.6760 and 6764 of 2024

28.10.2024