

Tr.C.M.P(MD)No.594 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.02.2025

Pronounced on : 04.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Tr.C.M.P(MD)No.594 of 2024

and

C.M.P(MD)No.13905 of 2024

1.K.Jayalatha

2.I.Kamala Jayanthi

... Petitioners

Vs.

1.S.Baskarababuji

2.S.Jayakumar

... Respondents

PRAYER : This Transfer Civil Miscellaneous Petition is filed under Section 24 r/w 151 of the Civil Procedure Code, to withdraw the proceedings in O.S.No.271 of 2022 on the file of the Principal District and Sessions Court, Thanjavur and transfer the same to the Principal District and Sessions Court, Sivagangai.

For Petitioners : Mr.S.Selva Aditya

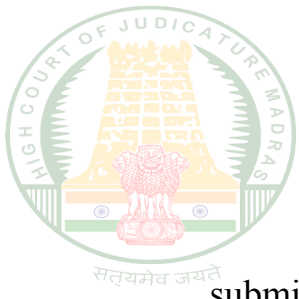
For Respondents : Mr.M.V.Santharam



ORDER

WEB COPY This petition is filed by the petitioner U/s.24 and 151 of the Civil Procedure Code, seeking for an order to withdraw the case in O.S.No.271 of 2022 from the file of the Principal District and Sessions Court, Thanjavur and to transfer the same to the file of the Principal District and Sessions Court, Sivagangai.

2. The learned counsel for the petitioners has submitted that the petitioners and the respondents are siblings and children of late.K.Sivaraj Servai and late Nagalakshmi, who died intestate. Their parents had several properties and as the respondents were not ready to partition the properties, the petitioners filed a suit for partition in O.S.No.83 of 2022 on the file of the Principal District and Sessions Court, Sivagangai. As a counter blast, the respondents have filed a suit in O.S.No.271 of 2022 before the Principal District and Sessions Court, Kumbakonam. The first petitioner is a widow and has no sufficient means to travel to Kumbakonam. Since both suits are filed for the same relief of partition, no prejudice would be caused to the respondents in case of transfer. The petitioner undertakes to cross examine the witness on the same day. Therefore, the petition is filed.



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3. The learned counsel for the respondents has filed a counter and submitted that the averments that the parents died intestate are denied as false, their father executed a Will, dated 18.01.2012. The learned counsel further submitted that the suit filed by the respondents is pending for examination of witnesses, the executor and the scribe and notarised advocates of the Will have died and only to avoid marking the Will, the petitioners have filed this petition. The respondents are also aged and if the suit is transferred to Sivagangai the respondents are put to hardship to examine the attestor of the Will at Sivagangai. The petitioners suppressed these facts. The Courts are meant to do substantial justice and technical rules or procedure should not be given precedence over doing substantial justice. Therefore, the petition may be dismissed. The learned counsel relied on the ruling of the Hon'ble Supreme Court reported in **2017 (6) CTC 54 (Pankajbhai Rameshbhai Zalavadia /v/ Jethabhai Kalabhai Zalavadiya)**.

4. Heard both sides. Perused the records. The petitioners have produced copies of complaints in O.S.No.83 of 2022 and O.S.No. 271 of 2023. On perusal of the above documents, it is clear that the same properties situated at Kumbakonam and Sivagangai are mentioned as suit properties in both the cases and it is admitted by both parties.



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The petitioners are women and the first petitioner stated that she is sick widow. The respondents have not specifically denied the same. The petitioners have also given undertaking that they would complete the cross examination of witness on the day of chief examination. The respondents being male and also the alleged witness is also male member, there will be no prejudice caused in case of transfer of the case to Sivagangai. They can be able to travel from Kumbakonam to Sivagangai. The respondents have not produced any material to show that they are not able to travel much less their side witness. Considering the above facts and circumstances, this Court is inclined to allow this petition and withdraw the suit in O.S.No.271 of 2022 from the file of the Principal District and Sessions Court, Thanjavur and to transfer the same to the file of the Principal District and Sessions Court, Sivagangai.

5. In the result, this Transfer Miscellaneous Petition is allowed. The suit in O.S.No.271 of 2022 from the file of the Principal District and Sessions Court, Thanjavur, is ordered to be withdrawn and the same is transferred to the file of the Principal District and Sessions Court, Sivagangai. The learned Principal District and Sessions Judge, Thanjavur, is directed to transmit the entire records pertaining to the case in O.S.No.271 of 2022 to the Principal District and Sessions Court,



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Sivagangai within a period of three weeks from the date of receipt of a copy of this order. On receipt of records, the learned Principal District and Sessions Judge, Sivagangai, is directed to take the case on file and dispose the same in accordance with law. No costs. Consequently, the connected Miscellaneous Petition is closed.

04.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Principal District and Sessions Judge,
Thanjavur.
- 2.The Principal District and Sessions Court,
Sivagangai
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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