

In the Court of the Principal District Judge,
Cuddalore District, Cuddalore.

Present: **Thiru S.Kumaraguru, B.L.,**
Principal District Judge

Tuesday, the 25th day of August, 2015.

Transfer O.P.No.10/2014

K.Jayanthi

>>> Petitioner

Versus

1.K.Rajammal
2. K.Thirugnanasambandam
3.K.Rajendiran
4.K.Murugesan
5.Mrs. Mallika
6.Miss.K.Rani
7.Mrs. Mangaiyarkarasi
8.Vanaja
9.The Sub Registrar, Chidambaram
10.Mrs. Bhuvaneswari
11.K.Abirami

>>> Respondents

This petition is coming on 17.08.2015 before me for final hearing in the presence of Thiru.M.Pandian, Advocate for the petitioner and of Thiru.R.Sankar Raman, Advocate for the 2nd and 10th respondents and the respondents 1,3 to 9 and 11 were called absent and remained exparte; and upon hearing both side and upon perusing the case records and having stood over for consideration till this day, this court delivered the following:

ORDER

1. This is a petition filed U/s.24 of CPC seeking to withdraw the suit in OS.235/2011 pending on the file of Principal District Munsif, Chidambaram and to transfer the same to the file Sub Judge, Chidambaram to be tried jointly along with OS.10/2012 on its file.

2. The averments raised by the petitioner in the affidavit which supported to this petition are summarized as follows:-

2(i) The petitioner has filed a suit in OS.10/2012 on the file of Sub Judge, Chidambaram against the respondents 1 to 7 for partition. 8th respondent was impleaded in that suit, since 2nd respondent tried to execute documents in favour of him. 9th respondent was also impleaded as a formal party as 9th defendant in that suit. The respondents 1 and 2 alone are contesting the suit by filing of written statement, but the respondents 3 to 9 remained exparte. Now the suit in OS.10/2012 is pending for trial.

2(ii) Before filing of partition suit in OS.10/2012, the respondents 1 and 2 tried to alienate and encumber the properties and hence she has filed suit in OS.235/2011 on the file of Principal District Munsif, Chidambaram for permanent injunction regarding the suit properties. 10th and 11th respondents were impleaded as defendants 3 and 4 in OS.235/2011, since respondents 1 and 2 tried to execute documents and encumber the suit properties in favour of them. The respondents 1 and 2 alone are contesting the suit in OS.235/2011 by filing of written statement. Respondents 10 and 11 remained exparte. Now the suit in OS.235/2011 is pending for trial.

2(iii) Both the suits, suit properties and parties are one and the same and the evidence to be let in both suits being one and the same. Further the issues to be tried are same and both contesting parties in both suits are same. OS.235/2011 is posted in list. The respondents 1 and 2 are claiming right over the suit properties under a Will dated 07.03.1991 but the petitioner denies the Will.

2(iv) To avoid conflict of judgments and multiplicity of proceedings, delay and convenience of both parties in both the suits may be tried together jointly for

which the proceedings in OS.235/2011 the file of Principal District Munsif, Chidambaram may be transferred to the file of Sub Judge, Chidambaram to be tried jointly along with OS.10/2012 which is comprehensive suit pending on his file to be tried jointly along with OS.235/2011 and to render a common judgment. Hence this petition is to be allowed.

3. The averments raised by the 2nd respondent in his counter adopted by the 10th respondent which are summarized as follows:-

3(i) The petition is not maintainable in law and on facts and liable to be dismissed. This respondent denies all the allegations made in the petition. There is absolutely no legal or factual connection between the suit in OS.10/2012 and OS.235/2011. Petitioner filed the suit in OS.10/2012 for partition and separate possession of a share of properties by metes and bounds.

3(ii) The suit in O.235/2011 filed for permanent injunction but it is barred by principles of Or II R 2 CPC since all reliefs which the petitioner is entitled should be asked in the same suit. To avoid dismissal of OS.235/2011, the Transfer petition is invented. Such a suit is not maintainable. Moreover law of lis-pendence bars any sale. Hon'ble High Court and Supreme Court have laid down that any transaction without permission of court, if done, during pendency of a case is not valid as it is affected by law of lis-pendence. Petitioner is aware of the same. OS.235/2011 is filed to harass the respondent.

3(iii) The respondent pointed out to trial court that OS.235/2011 is a vexatious suit and not maintainable in law and liable to be dismissed. Since the petitioner has wanted early disposal, OS.235/2011 was posted in the list. On that day when the suit in OS.10/2012 was taken up for trial, the petitioner apprehended a defeat. Hence to have the suit in OS.235/2011 blessed with life has ingeniously invented the transfer petition on an easy way out. The respondent need not be harassed. There is no common question of law or Act involved. OS.10/2012 is for

partition and OS.235/2011 is for permanent injunction. Hence the respondent need not be burdened to face vexatious suit pending, if joint trial is ordered.

4. The respondents 1,3 to 9 and 11 were called absent and remained exparte.

5. Based on the contentions raised by both sides, this court has framed the following point for final determination.

Whether the petitioner is entitled for the relief as prayed for?

6. In order to prove the case, the petitioner has filed Ex.P1 to P4 on her side, but no oral evidence adduced on her side. No oral or documentary evidence adduced on the side of the respondents.

7. Point:-

This court has gone through the case records and Ex.P1 to P3 produced by the petitioner, it is shown that the petitioner has filed a suit in OS.235/2011 against the respondents 1 and 2 on the file of Principal District Munsif, Chidambaram for permanent injunction regarding the suit properties. Then the respondents 10 and 11 were impleaded as defendants 3 and 4, since the respondents 1 and 2 tried to alienate and encumber the suit properties in favour of them. Thereafter the petitioner has also filed a suit in O.S.No.10/2012 on the file of Sub Judge, Chidambaram against the respondents 1 to 7 for partition in the said suit properties. Both the suits are pending for trial.

8. The learned counsel for the petitioner has contended that the subject matter of the suit and the parties are the same in one. In this regard, the learned counsel for the petitioner has further contended that since both the parties and suit property in two suits are the same in one, there will be conflict of decision and miscarriage of justice, if the suits tried in different courts. In such circumstances, it is possible to conduct the suits as joint trial. Further he has contended that if the transfer petition is allowed, no prejudice

will be caused to the respondent. Therefore this petition is to be allowed.

9. On the other hand, the learned counsel for the 2nd and 10th respondents has contended that there is no proper and valid reason to transfer the suit to another court. Further his contention is that one suit is based on permanent injunction regarding the suit properties and another suit is for partition regarding the same suit properties. Further, his contention is that the suit in O.S.No.235/2011 is posted in the list and another suit in O.S.No.10/2012 is posted for trial and both are pending now. Hence it is not possible to conduct joint trial in both suits in one court.

10. Further his contention is that the nature of case in both suits is completely different and hence there is no need for joint trial. Further this petition filed is in the motive of drag on proceedings wantonly and to harass the respondents, since the petitioner does not have prima facie case to transfer the suit from one to another court. Further to avoid dismissal of O.S.No.235/2011 this transfer petition is filed and the suit is not maintainable moreover law of lis-pendence bars any sale. The Hon'ble High Court and Supreme Court have laid down that any transaction without permission of court, if done, during pendency of a case is not valid, as it is affected by law of lis-pendence. Hence this petition is to be dismissed.

11. After taking into consideration of both side learned counsels' arguments and on perusal of the case records and Ex.P1 to P4 plaints and written statements filed in both suits, now this court has to decide that whether the petitioner's contention is acceptable or not? In this regard, this court has gone through the petition mentioned documents with related to above said suits which are plaints and written statements filed by both parties; it would show that the subject matter of the suit in O.S.No.235/2011 for permanent injunction on the file of Principal District Munsif, Chidambaram is related to O.S.No.10/2012 on the file of Sub Judge, Chidambaram for the relief of partition of the said suit properties. The plaint copy and written statement copy in O.S.No.235/2011 are marked as Ex.P1 and Ex.P2. Similarly the plaint copy and written statement copy in

O.S.No.10/2012 are marked as Ex.P3 and P4.

12. This court has gone through the petition averments and copy of complaints and written statements in both suits filed by both parties are still pending for trial. All these aspects are considered by this court and come to the conclusion that the suit in OS.10/2012 is based on partition and the suit in OS.235/2011 is based on permanent injunction. This court has opined that both the suits are pending in different courts for trial and the trial is not yet commenced in both suits, this court has decided that both the suits to be tried simultaneously in one court is not against interest of justice.

13. Further the petitioner has apprehended that if the above suits will be tried in different courts, there will be conflict of decision and miscarriage of justice. In such circumstances, it is not possible to conduct the suits as joint trial, but simultaneously. This court's opinion is that since the subject matter of the suits and parties are one and the same, in these circumstances, if the one suit is transferred to another court, no prejudice will be caused to the both sides.

14. At the same time, both suits are tried separately in two courts, the conflict judgments will be delivered by the both courts. It will create multiplicity of proceedings among the parties with related to the suit properties. In this regard, this court has gone through the case records, the respondents have not raised any serious objection and hence, this court can not accept the contested respondents' contention. In respect of the contention of respondents regarding that out of two suits, one suit is posted for trial and another suit is posted in list, the transfer application cannot be sustained. This aspect is not accepted by this court. This court has gone through the case records, it shows that the subject matter of the two suits is same in one and contesting parties are same in one. The two suits' cause of action is also interlinked each other and hence simultaneous trial to be conducted in one court. Accordingly this point is answered in favour of the petitioner in part.

15. In the result, the petition is allowed. The suit in O.S.235/2011 on the

file of Principal District Munsif, Chidambaram is withdrawn from its file and transferred to the file of Sub Judge, Chidambaram to be tried simultaneously along with O.S.10/2012 on its file. No costs.

Typed to my dictation by the steno-typist, corrected and pronounced by me in the open Court this the 25th day of August, 2015.

PRINCIPAL DISTRICT JUDGE
CUDDALORE
25.08.2015

LIST OF EXHIBITS MARKED

FOR PETITIONER:

- Ex.P1/-- Xerox copy of Complaint of OS.235/2011 on the file of Principal District Munsif, Chidambaram.
- Ex.P2/- Xerox copy of Written Statement filed by Respondents 1 and 2 in OS.235/2011.
- Ex.P3/- Xerox copy of Complaint of OS.10/2012 on the file of Sub Judge, Chidambaram
- Ex.P4/- Xerox copy of Written Statement filed by Respondents 1 and 2 in OS.10/2012.

FOR RESPONDENTS: Nil

LIST OF WITNESSES EXAMINED

FOR PETITIONER: Nil

FOR RESPONDENTS: Nil

Prl.D.J
Cuddalore
25.08.2015

Draft/Fair Order
Transfer O.P.10/2014
Dated: 25.08.2015

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