

R. Chelladurai Vs. S. Mamtha Devi and Another

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Court : Chennai Madurai

Decided On : Oct-19-2016

Judge : S.M. Subramaniam

Appeal No. : TR.CMP (MD) No. 372 of 2016 & C.M.P (MD) No. 7251 of 2016

Appellant : R. Chelladurai

Respondent : S. Mamtha Devi and Another

Judgement :

(Prayer:Petition filed under Section 24 of the Civil Procedure Code, to withdraw the suit in O.S.No.203 of 2015 filed by the first respondent herein on the file of the District Munsif, Uthamapalayam and transfer the same to the file of the Principal District Munsif, Madurai Town to be tried along with O.S.No.165 of 2015 on its file on merits in accordance with law and grant such other relieves.)

1. This Transfer Civil Miscellaneous petition has been filed to withdraw the suit in O.S.No.203 of 2015 filed by the first respondent herein on the file of the District Munsif Court, Uthamapalayam and transfer the same to the file of the Principal District Munsif Court, Madurai Town to be tried along with O.S.No.165 of 2015 on its file on merits in accordance with law and grant such other relieves.

2. The short facts for considering the transfer petition for the case on hand is that the first respondent filed O.S.No.165 of 2015 seeking permanent injunction before the Principal District Munsif Court, at Madurai. The very same first respondent filed

another suit in O.S.No.203 of 2015 before the District Munsif Court, Uthamapalayam. Both the suits are filed seeking relief of permanent injunction in respect of the properties situated within the territorial jurisdiction of Madurai and Uthamapalayam. The present Transfer petition is filed by the petitioner/second defendant to transfer the suit in O.S.No.203 of 2015 from the file of the District Munsif Court, Uthamapalayam to the file of the Principal District Munsif Court, at Madurai town.

3. The respective counsel both for the petitioner and the respondents are heard.

4. The learned counsel for the petitioner argued that the suit is between the brother and sisters and all the parties are residing in Madurai. Further the learned counsel for the petitioner contended that both the suits are filed seeking the relief of permanent injunction and a common Will is to be produced and examined in respect of both the suits. Therefore, by conducting the cases of two suits differently may create conflict of decisions. Further, it will cause inconvenience to the respective parties, since all the parties are residing at Madurai.

5. The learned counsel for the first respondent vehemently opposed that the transfer petition cannot be considered in view of Section 22 of C.P.C. Further, he contended that the territorial jurisdiction of the properties falls separately both at Madurai and Uthamapalayam and the suits were filed separately for the purpose of adjudication in respect of settlement.

6. The learned counsel for the first respondent further stated that Section 22 of C.P.C., enumerates where a suit may be instituted in any one of two or more Court and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court and hence, applying this Section to the present case deserves no consideration.

7. In respect of the arguments, the learned counsel for the first respondent submitted the Judgment reported in 1953 AIR (All) 772; 1953 Supreme(All) 149, (Rajnath Vs. L.Vidya Ram), wherein it is extracted below:-

The general power conferred by Section 24 is not to be applied where the case falls under Section 22. If Section 24 were to apply to the classes of cases covered by Section 22, it would not have been necessary for the legislature to enact Section 22 at all. It is a general principle of interpretation of Statutes that where there is a special provision for a particular matter and there is also a general provision, the special provision should be applied. The application in the present case having been made on the ground which is covered by Section 22 falls under that Section and not under Section 24.

The above Judgment submitted by the learned counsel for the first respondent cannot have a direct implication with regard to the facts and the circumstances of the present case on hand. Because the trial is not yet commenced in both the suits.

8. The learned counsel for the second respondent very fairly argued that all the parties are residing at Madurai and two different suits in two different places may result in conflict of decisions which will be inconvenient to the parties and to the judicial process. Further, the learned counsel for the second respondent stated that the common Will is in dispute, which is to be produced in both the suits.

9. Considering the arguments of the respective counsel, this Court is of the view that both the suits are interrelated between the same parties and all the parties are residing at Madurai. Therefore, there is no dispute with regard to the convenience of the parties, and it can be only at Madurai. Further, both the learned counsel for the petitioner and the second respondent represented that the trial is yet to be commenced in both the suits in O.S.No.203 of 2015 and O.S.No.165 of 2015. In view of these factors, it is desirable to conduct the trial in both the suits together which will be more convenient to the parties, who all are one and the same in both the suits.

10. Accordingly, the TR.C.M.P.(MD)No.372 of 2016 is allowed and the suit in O.S.No.203 of 2015 pending before the District Munsif Court, Uthamapalayam is ordered to be transferred to the file of the Principal District Munsif Court, Madurai Town, forthwith, for joint trial. No costs. Consequently, C.M.P.(MD)No.7251 of 2016 is closed.

