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C.R.P.(MD)No.883 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.883 of 2023

and

C.M.P.(MD)No.4048 of 2023

S.Velu

.. Petitioner

Versus

1.Ramesh Babu, S/o.Anandan

2.Arulappan, S/o.Matha

3.Arockiam, S/o.Matha

4.Inbaraj, S/o.Matha

5.Chelladurai, S/o.Matha

6.Koil, S/o.Antony

7.John Peter, S/o.Antony

8.Arockiam, S/o.Antony

.. Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 20.01.2023, passed in Transfer Original Petition No.272 of 2022, by the learned Principal District Judge, Tirunelveli.

For Petitioner

:

Mr.K.Suresh Subramanian

ORDER

The petitioner, who is the defendant in O.S.No.376 of 2015, on the file of the Additional District Munsif Court No.1, Tirunelveli, is aggrieved by the fair and decretal order, dated 20.01.2023, passed by the learned Principal District Judge, Tirunelveli, in Transfer Original Petition No.272 of 2022. By the impugned order,



the learned Principal District Judge, Tirunelveli, dismissed the said Transfer Original Petition filed by the petitioner, seeking to transfer O.S.No.376 of 2015, on the file of the 1st Additional District Munsif Court, Tirunelveli to some other competent Court, for further proceedings. The relevant portion of the impugned order reads as under:-

"8. After taking into consideration on both side learned counsels arguments and on perusal of records it found that the petitioner has filed this petition on two grounds:- The first reason is that the Hon'ble High court has given liberty to the 1st respondent that to file appropriate suit in this matter; but the respondent taking undue advantage by misleading the trial court and requested that to proceed with the suit as though the liberty is given in respect of O.S.376/2015. Another reason stated by the petitioner is that he has preferred CMA No.16/2022 along with stay application against the order and the decretal order passed in IA.1/2020 in O.S.No.376/2015 on the file of Principal Sub court, Tirunelveli and it was posted for process of service. In the meantime, the trial court has hurried to proceed the case and if it was proceeds with the trial of the suit, the object of filings CMA will be defeated. If the petition is not allowed the petitioner will cause prejudice. The above said reasons stated by the petitioner in the affidavit which supported with the petition is not sufficient to transfer OS.376/2015. However the bounden duty of the petitioner to approach the concern court and to get the stay order from the appropriate forum. Therefore, the reasons mentioned in the affidavit by the petitioner for transferring the case from one court to another court is not sufficient to accept the petition. Further on perusal of counter affidavit, it found that more than 137 hearings were given by the learned 1 Additional District Munsif court, Tirunelveli. The petitioner has not come forward to cross examine PW1. Under these circumstances, it is created doubt to the court that due to only drag on the proceedings with



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malafide intention the petitioner has filed this petition. The above said aspects, this court has come to the conclusion that the petitioner is not entitled any relief in this petition. Hence this petition is dismissed. During pendency of the petition, the petitioner has filed IA 2/2022 in Trop No. 272/2022 to stay all further proceedings of O.S.376 2015 on the file of 1st Additional District Munsif court, Tirunelveli till the disposal of this Trop No. 272/2022 and ad interim stay till the disposal of the petition. Since the Trop No. 272/2022 is dismissed today, this stay petition is also dismissed as infructuous. The point is answered accordingly.

In the result, this transfer petition is dismissed. No costs."

2. The above said suit has been filed by the respondents herein against the petitioner for the following relief:-

"1.தபசில் சொத்துக்கள் பொறுத்து முதலாம் வாதியே உரிமையாளர் என்று விளம்புகை பரிகாரம் வழங்கியும், அதன் தொடர்ச்சியாக இந்த பிரதிவாதியோ அவரது வகையாட்களோ எந்தவித இடைஞ்சலும் செய்யக் கூடாது என நிரந்தர உறுத்துக் கட்டடைய பரிகாரம் வழங்கியும்,

2.இந்த வழக்கின் செலவுத் தொகையை இந்த பிரதிவாதி வாதிக்கு வழங்க உத்தரவு வழங்கியும்,

3.இம்மாண்புமைய நீதிமன்றம் உசிதமெனக் கருதும் இதரப் பரிகாரங்கள் வழங்கியும் ஒரு தீர்ப்பும், தீர்ப்பாணையும் வழங்கிட வாதிகள் பிரார்த்தித்துக் கொள்கிறார்கள்."

3. In the said suit, the petitioner filed I.A.No.1 of 2020 stating that the suit was barred on account of *res judicata*, as the first respondent had earlier filed O.S.No.247



of 1995, for declaration and injunction in respect of the property covered in O.S.No. 376 of 2015 and that the said suit was dismissed on 20.04.1998 and that a further appeal in A.S.No.44 of 1998 was also dismissed on 14.12.2000, against which, the first respondent preferred S.A.No.559 of 2001 before this Court and the same was also dismissed on 11.07.2019.

4. It is submitted that I.A.No.1 of 2020 was dismissed, against which, petitioner had filed C.M.A.No.16 of 2022 before the Principal Sub Court, Tirunelveli. The learned counsel for the petitioner, today, affirms that the said C.M.A. has been dismissed after filing of Transfer Original Petition No.272 of 2022.

5. It is submitted that though the respondents/plaintiffs have also consented for transfer of O.S.No.376 of 2015, the learned Principal District Judge, Tirunelveli, has declined to transfer the said suit filed by the respondents herein and dismissed Transfer Original Petition No.272 of 2022.

6. I have considered the arguments advanced by the learned counsel for the petitioner.

7. Merely, because I.A.No.1 of 2020 was dismissed, *ipso facto* did not give the petitioner a right to file Transfer Original Petition No.272 of 2022. In the counter



affidavit, the first respondent/first plaintiff has merely stated that even if the Court was inclined to transfer the case to another Court, the petitioner may be directed to give an undertaking to co-operate with the Court. The relevant portion of the counter affidavit filed by the first respondent/first plaintiff in Transfer Original Petition No.272 of 2022, reads as under:-

"8.மனுதாரரின் மனு நிச்சயமாக ஏற்கத்தக்கது கிடையாது என்பதற்கு மாண்புமைய 1வது கூடுதல் மாவட்ட உரிமையியல் நீதிமன்றத்தில் காலம் கடத்திய 137 வாய்தாக்களே போதிய ஆதராப்பூர்வமான நீதிமன்ற சாட்சியாக இருக்கும் நிலையில் இந்த Tr.O.P மனு தள்ளுபடி செய்யப்படுவதே நீதிக்கு ஏதுவான ஒன்றாகும். எனினும் இம்மாண்புமைய நீதிமன்றம் இம்மனுவை அனுமதிக்க விரும்பும்பட்சத்தில் எதிர்மனுதாரர் மேற்படி அ.வ.எண்375/2015-ஐ முடிவுக்கு கொண்டு வர ஒரு நீதிமன்றம் சரியென கருதும் ஒரு கால அளவை நிர்ணயித்தும், அதற்கு ஏதுவாக மனுதாரரிடம் உரிய உத்திரவாத பிரமாண வாக்குமூலம் ஒன்றை தாக்கல் செய்ய உத்திரவிட்டும் மேலும் அ.வ.எண்375/2015 வியாஜ்ஜியமானது விரைவில் நிறைவு பெற மாவட்ட நீதிமன்றம் உகந்தது என கருதும் இதர உத்திரவுகளையும் பிறப்பிக்க வேண்டுமென 1வது எதிர்மனுதாரர் வணக்கமாய் பிரார்த்தித்துக் கொள்கிறார்."

8. In my view, the Transfer Original Petition filed by the petitioner was misadventure and the learned Principal District Judge, Tirunelveli, has rightly dismissed the same, vide the impugned order dated 20.01.2023. Therefore, the impugned order does not call for any interference by this Court. Hence, this Civil Revision Petition is liable to be dismissed. It is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.



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The Principal District Judge,
Tirunelveli.



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C.SARAVANAN, J.

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