

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

Tr.P(C).No. 375 of 2015 ()

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AGAINST THE ORDER/JUDGMENT IN OS 642/2011
OF PRINCIPAL MUNSIF COURT, KOLLAM
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PETITIONER(S)/ADDITIONAL PLAINTIFFS 2 TO 4:

- 1. LEELAMONY AGED 56 YEARS
W/O LATE RAJU, POURNAMY, KUMBALAM
KOLLAM (DT), PIN:691503.**
- 2. MONU M. RAJU AGED 16 YEARS
S/O LATE RAJU, POURNAMY, KUMBALAM
KOLLAM (DT), PIN:691503.**
- 3. MUNNA M.RAJU AGED 17 YEARS
S/O LATE RAJU, POURNAMY, KUMBALAM
KOLLAM (DT)
PIN:691503.**

(MINOR PETITIONERS 2 AND 3 REPRESENTED BY THE 1ST PETITIONER)

BY ADV. SRI.SUNNY ZACHARIAH

RESPONDENT(S)/DEFENDANT:

**CHERUPUSHPAM, AGED 56 YEARS
W/O. STELLAS, 'ASWATHY', KUMBALAM
KOLLAM (DT), PIN:691503.**

**R1 BY ADV. SRI.JACOB P.ALEX
R1 BY ADV. SRI.JOSEPH P.ALEX**

**THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE-1-TRUE COPY OF THE PLAINT IN OS NO.642/2011

ANNEXURE-2-TRUE COPY OF ORDER IN W.P.C.933/2015

ANNEXURE-3- TRUE COPY OF WITNESS SCHEDULE

ANNEXURE-4- TRUE COPY OF THE DEPOSITION

ANNEXURE-4(A) LEGIBLE COPY OF ANNEXURE-4

ANNEXURE-5- TRUE COPY OF IA.NO.3168/2015

RESPONDENT(S)' EXHIBITS

NIL

R.AV

//TRUE COPY//

PA TO JUDGE

K. ABRAHAM MATHEW, J.

TR.P.(C)No.375 of 2015

Dated this the 11th day of September, 2015

ORDER

This transfer petition has been filed by the plaintiffs in O.S.No.642 of 2011 on the file of the Principal Munsiff Court, Kollam. The request is to transfer the suit from the Court of Principal Munsiff to any other court. The main grounds are:-

(i). The Munsiff did not honestly record the evidence of PW9.

(ii). The deposition was not read over.

(iii). The learned Munsiff frequently interfered with and interrupted the cross-examination of the defendant by the plaintiffs's counsel.

2. Heard the learned counsel for the petitioners and the respondent.

3. The learned counsel for the respondent submits that this is an attempt on the part of the petitioners to delay the disposal of the suit. Earlier, the petitioners filed OPs 618 of 2014 and 620 of 2014 in this court to recall PW1. They obtained an order of stay of the trial of the

suit. After about one year, the OPs were withdrawn. On the date on which the OPs were withdrawn they filed another OP, No. 933 of 2015, in this court for a direction to recall PW9. That also was disposed of by this court on the very same day directing the petitioners to file an application before the court below.

4. I have perused the deposition of PW9. He is a highly educated witness. At the foot of the deposition he has recorded in his own handwriting that the deposition was read over to him and it was found to be correct. If the petitioners had any complaint about correctness of the deposition they should have filed an application immediately after the recording of the evidence of that witness, which was not done.

5. There is also an allegation that the learned Munsiff interfered with and interrupted the cross-examination of the defendant by the plaintiffs's counsel. Except a bald allegation there is nothing to support the allegation.

6. There is much weight in the submission of the learned counsel for the respondent that the attempt of the

petitioners has been to stall the trial of the suit somehow or other. But for that purpose they should not have made wild allegations against the presiding officer. This Court in **[Narniat Pharmaceuticals & Chemicals (P) Ltd., Vs. Thomson Drugs and Chemicals Ltd., (1992 (1) KLT 51)]** has considered the circumstances in which a case can be transferred from one court to another. The learned Judge has cautioned: "the need to exercise great care and caution springs from the fact that a light hearted transfer may impute and improper or unjustifiable stigma or slur against the court". The learned Judge has also mentioned: "mere presumption or possible apprehension cannot be made the basis of transferring a case from one court to another". Though I don't want to mention that the stand adopted by the petitioners is unreasonable, I have no doubt that there is no valid ground to allow the transfer application.

In the result, this transfer petition is dismissed.

sd/-

**K. ABRAHAM MATHEW
JUDGE**

R.AV

//True Copy//

PA to Judge