

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

Tr.P(C).No. 562 of 2014 ()

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TRANSFER OS NO.16/1975 OF PRL. SUB COURT, KOZHIKODE TO
SUB COURT, SULTHANBATHERY.
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PETITIONER/DEFENDANT NO.2 IN SUIT:

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PODDAR PLANTATIONS LIMITED,
NOW HAVING ITS REGISTERED OFFICE AT 16A,
BRABOURNE ROAD, 9TH FLOOR, KOLKATTA-700 001,
REPRESENTED BY ITS PRESIDENT SUNIL SIVARAMAN,
RIPON ESTATE, MEPPADI, WAYANAD-673 577.**

**BY ADVS.SRI.P.B.KRISHNAN,
SRI.P.M.NEELAKANDAN,
SRI.P.B.SUBRAMANYAN.**

RESPONDENTS/PLAINTIFFS & DEFENDANT NO.1 IN SUIT.:

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- 1. THEKKEMARIVEETIL GOVINDANKUTTY NAIR,
S/O.MADHAVI AMMA, RESIDING AT
KIZHAKKOTH AMSOM AND DESOM,
KIZHAKKOTH POST OFFICE, KODUVALLY,
KOZHIKODE-673 572.**
 - 2. THEKKEMARIVEETIL DAKSHAYANI AMMA,
D/O.MADHAVI AMMA, RESIDING AT CHERUVALATH HOUSE,
RAROTH AMSOM AND DESOM, POST PARAPPANPOYIL,
THAMARASSERY, KOZHIKODE-673 573.**
 - 3. THEKKEMARIVEETIL JANAKY AMMA,
D/O.MADHAVI AMMA, RESIDING AT
KIZHAKKOTH AMSOM AND DESOM,
KIZHAKKOTH POST OFFICE, KODUVALLY,
KOZHIKODE-673 572.**
 - 4. KAMPURATH SULOCHANA AMMA,
W/O.KESAVAN NAIR, RESIDING AT KATCHERI AMSOM DESOM,
KOZHIKODE TALUK, PIN- 673 502.**
 - 5. M.SURESH KUMAR, S/O.KESAVAN NAIR,
RESIDING AT KATCHERI AMSOM DESOM,
KOZHIKODE TALUK, PIN -673 502.**

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- 6. M.SAMKUMAR, S/O.KESAVAN NAIR,
RESIDING AT KATCHERI AMSOM DESOM,
KOZHIKODE TALUK, PIN- 673 502.**
- 7. M.HEMALATHA, D/O.KESAVAN NAIR,
RESIDING AT AMRUTHA PURI,
KUTTIKATTOOR AMSOM AND DESOM,
KOZHIKODE TALUK, PIN- 673 008.**
- 8. M.SMITHA, D/O.KESAVAN NAIR,
RESIDING AT 'DWARAKA',
VENGALI AMSOM AND DESOM,
KOZHIKODE TALUK, PIN- 673 303.**
- 9. THE CO-OPERATIVE TEA SOCIETY LIMITED,
WILLINGDON ISLAND, COCHIN-682 003.**

**R5 BY SRI.RANJITH THAMPAN, SENIOR ADVOCATE.
ADV. SRI.M.V.ANANDAN.**

**THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-02-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

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APPENDIX

PETITIONER'S ANNEXURES:-

NIL.

RESPONDENT'S ANNEXURES:-

**ANNEXURE R5A COPY OF THE JUDGMENT IN OP(C) NO.4367/2013
DATED 06/02/2014.**

//TRUE COPY//

P.S. TO JUDGE

rs.

P. BHAVADASAN, J.

Tr.P.(C). No. 562 of 2014

Dated this the 23rd day of February, 2015.

ORDER

This is a petition filed under Section 24 of the Code of Civil Procedure seeking to have O.S. No 16 of 1975 pending before Sub Court, Kozhikode transferred to Sub Court, Sulthanbathery.

2. The suit in which the petitioner is the second defendant was one for recovery of possession and for other consequential reliefs. The second defendant, who is the assignee from the original defendant, raised a claim of tenancy and the matter was referred to the Land Tribunal. The Land Tribunal returned the finding that the second defendant, the petitioner herein, is entitled to fixity of tenure, consequent upon which, the suit was dismissed. The matter was carried in appeal before this Court and this Court allowed the appeal and remanded the case for fresh

consideration to Sub court, Kozhikode. The matter was again referred to the Land Tribunal and the Land Tribunal returned a finding that the petitioner is not entitled to fixity of tenure. Thereafter, in the light of the contentions taken by the second respondent, the court below let parties adduce evidence and on appreciation of the evidence adduced before it, decreed the suit. Against the said decree, the second defendant, who is the petitioner herein, filed A.S.528 of 2000 before this Court. This Court allowed the appeal and the matter was remanded with the following directions:

“(a) judgment and decree dated 29.06.2000 in O.S. No. 16 of 1975 of the Sub Court, Kozhikode are set aside.

(b) O.S. No. 16 of 1975 is remitted to the Sub Court, Kozhikode for fresh decision in the light of the observations and findings made above.

© The plaintiffs will have the opportunity to amend the plaint giving a correct description of the leased property which they are entitled to recover possession from the defendants and explaining

discrepancies in the extent, boundaries etc., if any of the said property.

(d) It is open to the defendants to take out a commission to assess compensation if any payable for the improvements if any effected in the leased property since Ext.A1 and till this day and prepare a plan of the leased properties regarding which the assessment is made and which they are bound to put in the possession of the property under Sec. 108(q) of the TP Act.

(e) If so advised and found necessary, the plaintiffs also can take out a commission for identification of the leased property.

(f) The defendants and persons claiming under them are restrained by an order of injunction from effecting further improvements in the property leased as per Ext.A1 (the limits of which they are aware) since this day.

(g) The question whether the plaintiffs are entitled to get mesne profits will depend on the finding regarding the entitlement of the defendants for compensation under the Tenants Improvements Act.

(h) The trial court is directed to dispose of the suit as early as possible and at any rate, within six months from this day giving it top priority.”

Matter went back to Sub Court, Kozhikode and it is submitted that panel of Advocates was filed by both sides and an Advocate Commissioner was appointed. The petitioner points out that he has filed his work memo and also deposited commission batta.

3. The petitioner points out that by the bifurcation of courts due to the formation of Wayanad Judicial District, the territorial jurisdiction of the suit falls within Wayanad and it is only proper that the suit be tried before the appropriate court in Wayanad District. Inspiration for the above contention is drawn from Order No.D3-38607/80(1) dated 22.1.1985 by this Court whereby this Court ordered that the then pending cases before the courts at Kozhikode which had to be tried in the courts at Wayanad District are transferred to the latter court.

4. It is not in dispute that from the remand order by this Court in A.S. 528 of 2000 dated 27.9.2013, the

petitioner has filed SLP before the Apex Court and that is pending consideration.

5. According to the learned counsel, a reading of the remand order would show that the suit may have to be re-tried and in which case, it is only proper that it is done by the court which is competent to do so and viewed from that angle, O.S. 16 of 1975 has to be transferred from Sub Court, Kozhikode to Sub Court, Sulthanbathery for trial and disposal.

6. Meeting the above claim, Shri. Ranjit Thampan, learned Senior Counsel for the respondent, contended that this is yet another delaying tactic adopted by the second defendant to see that litigation is not put an end to and it carries on for ever. Learned Senior Counsel relied on the remand order dated 27.9.2013 in A.S. 528 of 2000 and contended that this Court had specifically directed Sub Court, Kozhikode to try and dispose of the matter afresh subject to the conditions mentioned therein and therefore, it

may not be appropriate for this Court now to transfer the case to a court in Wayanad District. Learned Senior Counsel pointed out that on two earlier occasions the matter was remanded by this Court and on both those occasions, there was no whisper from the side of the petitioner that the suit had to be tried before a court in Wayanad District but he meekly submitted to the jurisdiction of Sub Court, Kozhkode even after he was fully aware of the fact that territorial jurisdiction fall within the court at Wayanad. After taking part in the proceedings before Sub Court, Kozhikode, it is too late in the day for the petitioner to contend that the suit ought to have been transferred to Wayanad Court.

7. There seems to be considerable force in the submission made by the learned counsel for the respondents. This Court was approached on two earlier occasions and on none of the occasions, it was pointed out that the suit ought to be tried in a court at Wayanad District. True, the plaintiffs have been allowed to amend

the plaintiff and there are controversies to be resolved in the suit. But the learned Senior Counsel for the respondent pointed out that the question regarding the tenancy stands concluded by the finding of the Land Tribunal so also the rights of the parties. The issues that are left open to be considered are the question of mesne profits, identity and value of improvements claimed by the petitioner herein.

8. It is not in dispute that a commissioner has already been appointed and he has started his work. The controversy regarding work memo filed by the petitioner cannot be sustained. Learned Senior Counsel for the respondent is justified in his submission that when this Court had directed the Sub Court, Kozhikode to dispose of the matter, it will not be appropriate for this Court to exercise its jurisdiction to transfer the case to a different court.

9. As rightly pointed out by the learned Senior Counsel for the respondents, on two earlier occasions when

the remand order was made, there was no demand that since the territorial jurisdiction of the suit fall within the District of Wayanad, suit may be transferred to the appropriate court in Wayanad District. Having stood by and participated in subsequent proceedings even after Wayanad District was formed and when the petitioner was fully aware of the territorial jurisdiction was in Wayanad District, it is too late in the day for the petitioner to contend that since lot of evidence may have to be adduced, the case be transferred to Sub Court, Wayanad. It is well settled that formation of a new court does not necessarily means that all the pending matters before the former court should be transferred to the latter court. It is by virtue of the order of this Court on administrative side, it is claimed that the case be transferred to Wayanad District. Probably as rightly pointed out by the learned counsel for the petitioner, at that point of time the present suit was not pending before the original court and it was pending in appeal.

10. But that by itself is not a ground to transfer when this Court specifically directed the Sub Court, Kozhikode to dispose of the matter within in a time limit which has been subsequently extended. It is quite improper to interfere with the order and transfer the case to a new court. It would cause further delay in disposing of the matter.

This petition is without merits and it is accordingly dismissed.

P. BHAVADASAN,
JUDGE

sb.