

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

Tr.CMP Nos.363 to 365 of 2015
and
M.P.Nos.1 of 2015

V.Sudhakaran ...Petitioner in Tr.CMP No.363/2015
Revathi ...Petitioner in Tr.CMP No.364/2015
Umadevi ...Petitioner in Tr.CMP No.365/2015

vs.

1.D.Thirunavukarasu ...1st Respondent in all Tr.CMPs
2.R.Selvamani ...2nd Respondent in Tr.CMP No.363/2015
3.C.Krishnamurthy
4.Sathishkumar @ Jagan
5.Jeevarathinam ...Respondents 2 to 5 in Tr.CMP.364 & 365 of 2015
6.Kannan ...Respondents 3 to 6 in Tr.CMP.363 of 2015

Common Prayer :- Transfer Civil Miscellaneous Petitions filed under Section 24 of C.P.C. to withdraw the suit pending in O.S.No.12366, 12367 & 12368 of 2009 on the file of the VI Assistant City Civil Court, Chennai and the same to be transferred to V Assistant City Civil Court, Chennai or any other Assistant City Civil Court, Chennai.

For Petitioner : Mr.E.P.Senniyangiri
in all Tr.CMPs

For Respondent : Mr.D.Senthilkumar for R1

Mrs.Ramya Rao for
R4 to R6.

WEB COPY

JUDGMENT

The image of the judiciary is getting damaged because of a few advocates by making unwanted allegations against the judicial officers stating that the learned Judges are posing questions which ought not to have been put and they allowed unnecessary arguments by other side. The subordinate judiciary is being threatened unnecessarily by deliberate false allegation which is evident in this case.

2. This is a case in which the petitioners have approached this Court with a plea that the learned Judicial Officer should have heard the matter according to the way in which the petitioner thinks and they may not get fair justice. It is clear from the allegations made in paragraph 5 of the affidavit.

3. The petitioners filed suits in O.S.Nos.12366, 12367 & 12368 of 2009 on the file of the VI Assistant City Civil Court, Chennai seeking a declaration that the decree and judgment passed in O.S.No.8681 of 1983 dt.07.01.1985 is not binding upon the plaintiff with respect to the property bearing Plot No.11, Suresh Nagar, Velachery measuring an extent of 2450 sq.ft. Situate in Survey No.336/1 in the suit. Summons were served upon the defendants. Written statement was filed by the 1st defendant on 19.08.2010. Subsequently, in March 2014, additional written statement was filed by the 1st defendant. Trial was conducted and the evidence was closed. The arguments of the plaintiff was heard on 23.04.2015 and the defendants' side argument was heard on 25.04.2015. The problem started thereafter only. The counsel for the defendants made submissions on the plea of forgery and the same was objected by the learned counsel for the petitioners. In spite of the objection raised by the learned counsel for the petitioner, the learned Judge permitted the counsel for the respondents to make his submission on the plea of forgery. According to the petitioners, the conduct of learned Judge gave impression that the plea of forgery taken for the first time in the additional written statement contrary to Order 8 of C.P.C would be considered and the said submission has to be rejected at the threshold itself. As the learned Judge allowed the counsel for first respondent/first defendant to argue the plea of forgery and he commented adversely about the two applications filed by the petitioners, it creates reasonable doubt and apprehension about fair justice before the said court. Hence, these petitions are filed.

4. Heard the parties and perused the records. This Court is unable to understand as to how the petitioners can expect the lower court to reject the plea of forgery, especially when the plea of

forgery has been taken in the additional written statement by the first respondent and that shows the knowledge of the person who objected the plea of forgery. When the plea of forgery is found place in the additional written statement, nobody can contend that there is no pleading. In that event, the learned counsel for the petitioner should not have objected the plea of forgery having been argued and if he objected, it only shows that the pleading was not properly gone through. The parties are at liberty to file additional written statements so as to make pleadings which are necessary to be taken. Assuming for a moment that the plea of forgery has been advanced, in the absence of any pleading, nothing prevented the learned counsel for the petitioners from pointing out the same in his reply argument stating that any amount of evidence is of no avail without pleadings and therefore the plea of forgery has to be rejected.

5. As narrated above, the plea of forgery, even according to the petitioners themselves would find place in the pleading. Therefore, the plea that there is no plea of forgery, has got no basis at all and therefore the consequent objection made by the learned counsel for the petitioner is unwarranted.

6. For allowing the learned counsel for the first respondent / first defendant to argue the matter elaborately cannot be a ground to transfer of the cases and it would not enable the petitioners to get an impression that the judicial officer may not be fair. Therefore, the contention of the petitioners that the plea of forgery ought to have been rejected in the threshold by the learned Judge is unfounded. The learned Judge cannot dance in the hands of the petitioners according to the wishes of the petitioners.

7. The worst part is that after the case is posted for judgment, the petitioners, for the reasons best known to them, chose to file two applications in each suit before the trial court viz., one to strike out the additional written statement filed by the 1st defendant and one to re-open the case for fresh hearing. The petitioners are guilty of laches. The petitioners have been sleeping like Rip Van Winkle and suddenly woke up and filed applications belatedly for striking out the additional written statement and to re-open the case for fresh hearing. Filing of applications after the case is posted for judgment is nothing but abuse of process of law. As rightly observed by the learned Judge, this Court is of the same opinion that it deserves to be called as abuse of process. It is a classical example in which the provisions of law have been misused and abused raising doubt about the fairness of the Judge unnecessarily.

8. Even legally, when additional statement has been filed with destructive pleadings and the court has accepted the additional statement, nothing prevented the petitioner from filing Civil Revision Petition against such order. Instead of doing so, he allowed the matter to attain finality. Moreover, it is settled law that it is open to the defendants to take any defence by pleading.

9. As stated above, belatedly, after argument was over and the case is posted for judgment, two applications have been filed and hence those applications are not maintainable for the reasons stated above. It is filed with a malafide intention only to prolong the matter and to see that the case is not disposed. It is a ruse to avoid the court. Therefore, this Court, invoking Article 227, suo motu strikes off those two applications in I.A.No.6964 and 6965 of 2015 from the file of the VI Assistant City Civil Court, Chennai. The learned VI Assistant Judge, City Civil Court, Chennai is directed to pronounce the judgment, within one week from the date of receipt of a copy of this order and report the matter to this Court.

10. If this kind of transfer petitions are allowed to be entertained, it will make the judicial process a mockery. The judicial system cannot be tuned according to the whims and fancies of the petitioners. Filing of applications after the case is posted for judgment and filing of transfer petitions making allegations against the court are instances of abuse. Therefore, these Civil Miscellaneous Petitions are dismissed with a cost of Rs.10,000/- to be paid by the petitioners to "The Chief Justice Relief Fund" within one week from the date of receipt of a copy of this order, failing which the Tahsildar, Anna Nagar, Chennai is directed to take proceedings under the Revenue Recovery Act to collect the money from the petitioners and to deposit with the Chief Justice Relief Fund. Consequently, connected Miscellaneous Petitions are closed.

11. Mrs.Kavitha, learned Government Advocate takes notice on behalf of the Tahsildar, Anna Nagar, Chennai and undertakes to inform the concerned officer.

12. Post the matter for compliance on 25.06.2015.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

rgr

To

1.The VI Assistant Judge,
City Civil Court,
Chennai

2.The V Assistant Judge,
City Civil Court,
Chennai.

3.The Section Officer,
Accounts Section,
High Court, Madras.

4.Mrs.Kavitha,
Government Advocate,
High Court, Madras.

5.The Section Officer,
Judicial Department,
High Court, Madras.
(To Post this case on 25.06.2015)

6.The Tahsildar,
Anna Nagar,
Chennai.

3 CCs to Mr.E.P.Senniyangiri, Advocate SR.No. 28641, 28642, 28643

4 CCs to Mr.D.Senthilkumar, Advocate SR.No. 28631, 28630, 28629

Tr.CMP Nos.363 to 365 of 2015

TS (CO)
PSI (16.06.2015)

सत्यमेव जयते

WEB COPY