



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :15.07.2015
CORAM
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P(MD)No.172 to 175 of 2014 and
Tr.C.M.P.(MD)No.70, 71, 69 and 207 of 2014
M.P(MD)Nos.1,1,1,1,1,1,1 & 1 of 2015

Tr.C.M.P(MD)No.172 of 2014

K.Vijayakumar

rep. By Power of attorney

Dr.R.Shylaja

... Petitioner

Vs.

1.M.Sajini

2.M.Nelson Babu

... Respondent

Tr.C.M.P(MD)No.173 of 2014

1.Dr.K.Kamalesh Babu

2.K.Vijaya Kumar

rep. By Power of attorney

Dr.R.Shylaja

... Petitioner

Vs.

1. Sajini

2.Madhan Kumar Sugeeth @ M.Sugeeth

rep. By his power of Attorney

D.Sudhakaran Nadar

3.M.Nelson Babu

4.Suba Thilagam

5.Stella Dhas

... Respondents

Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code to withdraw the O.S.No.115 of 2013 from the file of the Principal District Court, Kanyakumari at Nagercoil and transfer the same to the file of Principal District Court, Tirunelveli or any other competent Court at Tirunelveli.

Prayer : Transfer Civil Miscellaneous Petition filed under section 24 of Civil Procedure Code praying to withdraw the O.S.No.446 of 2007 from the file of the I Additional District Munsif's Court, Nagercoil and transfer the same to the file of Principal District Judge's Court, Tirunelveli or any other competent Court at Tirunelveli.

Tr.C.M.P(MD)No.174 of 2014

1.K.Vijayakumar

2.Dr.K.Kamalesh Babu

rep. By their Power of Attorney

Dr.R.Shylaja

... Petitioner

Vs.

1.R.M.Rajam

2.Sharmila

3.Shylaja

4.Sudev Kumar

5.Stella

6.Sonia



7.Charisma Das
8.M.Sayini
9.M.Sujith

... Respondents

Prayer : Transfer Civil Miscellaneous Petition filed under section 24 of Civil Procedure Code praying to withdraw the O.S.No.15 of 2008 from the file of the II Additional Sub Judge, Nagercoil and transfer the same to the file of Principal District Judge's Court, Tirunelveli or any other competent Court at Tirunelveli.

Tr.C.M.P(MD)No.175 of 2014

1.Dr.K.Kamalesh Babu
2.K.Vijayakumar
rep. By their Power of Attorney
Dr.R.Shylaja

... Petitioner

Vs.

1.M.sayini
2.M.Sugeeth
3.R.M.Rajam
4.Sharmila
5.Shylaja
6.Sudev Kumar
7.Stella
8.Sonia
9.Charisma Devi
10.Rita
11.T.Vinoth
12.Jeyabalan
13.A.J.Pushpa Rani

... Respondents

Prayer : Transfer Civil Miscellaneous Petition filed under section 24 of Civil Procedure Code praying to withdraw the O.S.No.153 of 2002 from the file of the II Additional Sub Judge, Nagercoil and transfer the same to the file of Principal District Judge's Court, Tirunelveli or any other competent Court at Tirunelveli.

Tr.C.M.P(MD)No.70 of 2014

1.Dr.K.Kamalesh Babu
rep. By their Power of Attorney
Dr.R.Shylaja

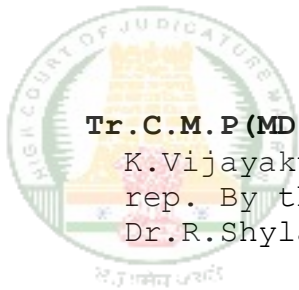
... Petitioner

Vs.

1.M.Sajini
2.M.Nelson Babu

... Respondents

Prayer : Transfer Civil Miscellaneous Petition filed under section 24 of Civil Procedure Code praying to withdraw the O.S.No.128 of 2012 from the file of the Principal District Judge's Court, Kanyakumari at Nagercoil and transfer the same to the file of Principal District Judge's Court, Tirunelveli or any other competent Court at Tirunelveli.

**Tr.C.M.P(MD)No.71 of 2014**

K.Vijayakumar
rep. By their Power of Attorney
Dr.R.Shylaja

... Petitioner
Vs.

1.M.Sajini
2.M.Nelson Babu

... Respondents

Prayer : Transfer Civil Miscellaneous Petition filed under section 24 of Civil Procedure Code praying to withdraw the O.S.No.129 of 2012 from the file of the Principal District Judge's Court, Kanyakumari at Nagercoil and transfer the same to the file of Principal District Judge's Court, Tirunelveli or any other competent Court at Tirunelveli.

Tr.C.M.P(MD)No.69 of 2014

1.Dr.K.Kamalesh Babu
2.Dr.K.Vijayakumar
rep. By their Power of Attorney
Dr.R.Shylaja

... Petitioner
Vs.

1.M.Sajini
2.M.Nelson Babu

... Respondents

Prayer : Transfer Civil Miscellaneous Petition filed under section 24 of Civil Procedure Code praying to withdraw the O.S.No.99 of 2008 from the file of the Principal District Judge's Court, Kanyakumari at Nagercoil and transfer the same to the file of Principal District Judge's Court, Tirunelveli or any other competent Court at Tirunelveli.

Tr.C.M.P(MD)No.207 of 2014

K.Vijayakumar
rep. By their Power of Attorney
Dr.R.Shylaja

... Petitioner
Vs.

1.M.Sajini
2.M.Nelson Babu
3.Stella

... Respondents

Prayer : Transfer Civil Miscellaneous Petition filed under section 24 of Civil Procedure Code praying to withdraw the O.S.No.619 of 2001 on the file of the Principal District Judge's Court, Kanyakumari at Nagercoil and transfer the same to the file of Principal District Judge's Court, Tirunelveli or any other competent Court at Tirunelveli.

For Petitioner : Mr.R.Subramanian
Advocate in all the Tr.C.M.Ps

For Respondents : Mr.Ajmal Khan
Senior counsel for
M/S.Ajmal Associates, Advocate
(R.1 in Tr.C.M.P.172/2014)
(R1 and R3 in Tr.C.M.P.173/2014)
(R8 in Tr.C.M.P. 174/2014)



WEB COPY

(R1 in Tr.C.M.P.175/2014)
(R1 & T2 in Tr.C.M.P.
Nos.70,71,69/2014
Mr.Nirmal Kumar, Advocate
for R13 in Tr.C.M.P.No.175/2014

No Appearance R2 in Tr.C.M.P.172/2014
R2,4&5 in Tr.C.M.P.173/2014
R1 to R7&9 in Tr.c.M.P.174/2014
R1 to R3 in Tr.C.M.P.207/2014

C O M M O N O R D E R

The issue involved in all the transfer petitions is one and the same and hence the same are heard together and a common order is passed.

Tr.C.M.P(MD)No.172 of 2014

The Transfer Civil Miscellaneous Petition is filed to withdraw the suit in O.S.No.115 of 2013 from the file of the Principal District Court, Kanyakumari at Nagercoil and transfer the same to the file of the Principal District Court, Tirunelveli or any other competent Court at Tirunelveli.

The suit in O.S.No.115 of 2013 filed by the petitioner for declaration, declaring the document dated 23.10.2011 executed by the first defendant as null and void and consequential relief against Sajini and Nelson Babu as they created bogus document.

Tr.C.M.P(MD)No.173 of 2014

The Transfer Civil Miscellaneous Petition is filed to withdraw the suit in O.S.No.446 of 2007 from the file of the I Additional District Munsif Court, Nagercoil and transfer the same to the file of the Principal District Court, Tirunelveli or any other competent Court at Tirunelveli.

The suit in O.S.No.446 of 2007 filed by the petitioners and another for declaration of pathway in R.S.No.P10-21/3 & P.10-21/2 against Nelson Babu, Sajini and others as they try to illegally put up construction.

Tr.C.M.P(MD)No.174 of 2014

The Transfer Civil Miscellaneous Petition is filed to withdraw the suit in O.S.No.15 of 2008 from the file of the II Additional Sub Court, Nagercoil and transfer the same to the file of the Principal District Court, Tirunelveli or any other competent Court at Tirunelveli.

The suit in O.S.No.15 of 2008 filed by the respondents for partition in respect of properties situated in Neyyattingara against Vijayakumar, Kamalesh Babu and others.

Tr.C.M.P(MD)No.175 of 2014

The Transfer Civil Miscellaneous Petition is filed to withdraw the suit in O.S.No.153 of 2002 from the file of the II Additional Sub Court, Nagercoil and transfer the same to the file of the Principal District Court, Tirunelveli or any other competent Court at Tirunelveli.



The suit in O.S.No.153 of 2002 filed by the first respondent for partition against Kamaleshbabu, Vijayakumar and others in respect of several items property in Neyyattingara, Nagercoil, Velimalai and others areas.

Tr.C.M.P(MD)No.69 of 2014

The Transfer Civil Miscellaneous Petition is filed to withdraw the suit in O.S.No.99 of 2008 from the file of the Principal District Munsif Court, Nagercoil and transfer the same to the file of the Principal District Court, Tirunelveli or any other competent Court at Tirunelveli.

The suit in O.S.No.99 of 2008 filed by the petitioners for declaration that settlement deed, dated 13.02.2007 relating to R.S.No.P10-20/2 and R.S.No.P10-20/3 is non-est against Nelson Babu and Sajini as they fraudulently registered a document, dated 09.11.2007.

Tr.C.M.P(MD)No.70 of 2014

The Transfer Civil Miscellaneous Petition is filed to withdraw the suit in O.S.No.128 of 2012 from the file of the Principal District Court, Kanyakumari at Nagercoil and transfer the same to the file of Principal District Court, Tirunelveli or any other competent Court at Tirunelveli.

The suit in O.S.No.128 of 2012 filed by the petitioner for declaration and recovery of possession of property in R.S.No.P10-20/3 part and R.S.No.P10-18 part against Sajini and Nelson Banu as they encroached the suit property.

Tr.C.M.P(MD)No.71 of 2014

The Transfer Civil Miscellaneous Petition is filed to withdraw the suit in O.S.No.129 of 2004 from the file of the Principal District Court, Kanyakumari at Nagercoil and transfer the same to the file of Principal District Court, Tirunelveli or any other competent Court at Tirunelveli.

The suit in O.S.No.129 of 2004 filed by the petitioner for declaration and recovery of possession in respect of R.S.No.P10-20/2 against Nelson and Sajini as they illegally made enclosed the suit property.

Tr.C.M.P(MD)No.207 of 2014

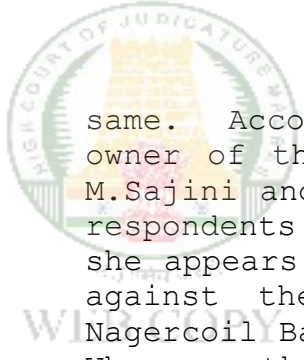
The Transfer Civil Miscellaneous Petition is filed to withdraw the suit in O.S.No.619 of 2001 from the file of the Principal District Munsif Court, Nagercoil and transfer the same to the file of the Principal District Court, Tirunelveli or any other competent Court at Tirunelveli.

The suit in O.S.No.619 of 2001 filed by the petitioner for injunction in respect of Old Sy.No.2489C, Re.S.No.P3-16/1 which is the subject matter of partition deed, dated 13.10.1965 against Vijayakumar and Stella.

2. In all the Transfer Civil Miscellaneous Petitions filed to transfer the above mentioned suits filed by either by the petitioners or by some of the respondents.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The learned counsel for the petitioners herein represented that in all the suits, parties and subject matter of the issue are one and the



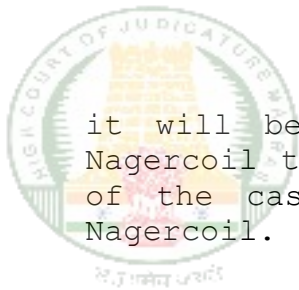
same. According to the petitioner, she is the power of attorney of the owner of the subject matter of the properties. The respondents by name M.Sajini and M.Nelson Babu are the Advocates practicing at Nagercoil. The respondents threatened the petitioner with dire consequences whenever, she appears before the Court. The respondents have made police complaints against the petitioner herein and a resolution was passed by the Nagercoil Bar Association that not to appear on behalf of the petitioner. Whenever the petitioner appears in the Court, Advocates are gharoing her and there is always a charged atmosphere and the suits are adjourned. In the above circumstances, she has come out with the present transfer petitions.

4.The respondents 1 & 2 in Tr.C.M.P.No.69 of 2014 has filed common counter affidavit denying various allegations made by the petitioner and specifically denied that resolution being passed by the Nagercoil Bar Association. In the supplement affidavit, the petitioner also did not deny the statement of respondents 1 & 2 that petitioner is being represented by number of Advocates. According to the respondents, the petitioners are representing through Advocates in all the hearings. The respondents are practicing Advocates having good practice in Nagercoil. If the suits are transferred, they will loose their clients and their children are studying at Nagercoil and only the respondents are taking care of the children. Most of the witnesses are from Kerala and they know only Malayalam and they cannot travel for the purpose of giving evidence to Tirunelveli or any other Court. It will be difficult for any Advocate appointed as Commissioner to visit Nagercoil and Kerala to inspect the property to effect partition. In some of the suits trial has started. The respondents are not seeking any adjournments and they are always willing to co-operate for conclusion of trial of suits. The petitioner was not gharoing when she appears before the Court and there is no charged atmosphere. The petitioner is a doctor practicing at Nagercoil. It will be convenient for the petitioner also, if the Trial is contested at Nagercoil. Therefore, prayed for dismissal of Transfer Civil Miscellaneous Petition.

5. Heard the learned counsel appearing for the petitioners and the respondents.

6.The petitioner is seeking transfer of suits on the ground that respondents 1 & 2 are practicing Advocates in Nagercoil Courts. In view of this, Bar Association, Nagercoil passed a resolution that no Advocates should appear for the petitioner in the suits. According to the petitioner, whenever she goes to attend the cases, Advocates gharoing her and there is a charged atmosphere in the Courts. The cases are not proceeded with but are adjourned. The respondents 1 & 2 denied all these allegations. They have stated that no resolution is passed by Nagercoil Bar Association as alleged by the petitioner. They have also stated that trial commenced in two suits filed by them.

7. The petitioner filed Supplementary affidavit. In the Supplementary affidavit the petitioner has not given particulars of alleged resolution passed by Bar Association, Nagercoil and she also did not deny the statement of respondents 1 & 2 that petitioner is being represented by number of Advocates. The contention of respondents 1 & 2 that most of the witnesses are from State of Kerala and they know only Malayalam and



it will be very difficult to take them to any other Court outside, Nagercoil to give evidence has considerable force. At the same time some of the cases are pending before I Additional District Munsif Court, Nagercoil.

8. The subject matter and parties are one and the same. For convenience sake and to avoid conflicting of judgments and interest of justice, all the cases are must be heard and decided by the same Court. In the circumstances, the following cases in O.S.No.446 of 2007, on the file of the I Additional District Munsif Court, Nagercoil, O.S.No.15 of 2008, on the file of the II Additional Sub Court, Nagercoil, O.S.No.153 of 2002, on the file of the II Additional Sub Court, Nagercoil, and O.S.No.619 of 2001, on the file of the Principal District Munsif Court, Nagercoil and O.S.No.99 of 2008, on the file of the Principal District Munsif Court, Nagercoil are transferred to Principal District Court, Nagercoil to be tried along with O.S. No.128 of 2012, O.S.No.115 of 2013 and O.S.No.129 of 2004.

9. The petitioner has stated that the suits are not proceeded with but are adjourned. The suits are pending from the year 2001 and therefore, the learning Principal District Judge, Nagercoil is directed to hear and dispose all the suits as expeditiously as possible in any event not later than 31.01.2016.

10. With the above directions, these Transfer Civil Miscellaneous Petitions are disposed of. No Costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Court, Kanyakumari at Nagercoil
2. I Additional District Munsif Court, Nagercoil
3. II Additional Sub Court, Nagercoil
4. The Principal District Munsif Court, Nagercoil
5. The Principal District Court, Tirunelveli.

+1cc to M/S.Ajmal Associates, Advocate SR.No.38974

+1cc to M/S.R.Subramanian, Advocate SR.No.39225

Tr.C.M.P(MD)No.172 to 175 of 2014 and
Tr.C.M.P.(MD)No.70, 71, 69 and 207 of 2014
M.P(MD)Nos.1,1,1,1,1,1,1 & 1 of 2015

15.07.2015