

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

Tr.C.M.P.Nos.666 and 667 of 2014

Tr.CMP No.666 of 2014

J.Rajan Babu

... Petitioner

Versus

1.Devarajan

2.Senthil Kumar

... Respondents

Transfer Petition filed to withdraw and transfer O.S.No.460 of 2012 on the file of District Munsif Court, Perambalur to any other Court.

For Petitioners : Mr.T.V.Ramanujam, Senior Counsel
for Mr. C.Jagadish

For Respondents : Mr.P.Ganesan
for M/s.C.S.Associates

Tr.CMP No.667 of 2014

1.J.Rajan Babu

2.J.Janardhanan

... Petitioners

Versus

1.Senthil Kumar

2.Ramasamy

3.Varadharajan

... Respondents

Transfer Petition filed to withdraw and transfer O.S.No.440 of 2012 on the file of District Munsif Court, Perambalur to any other Court.

For Petitioners : Mr.T.V.Ramanujam, Senior Counsel
for Mr. C.Jagadish

For Respondents : Mr.P.Ganesan,
for M/s.C.S.Associates
Mr.V.Arun, for R-2

COMMON ORDER

These two transfer petitions are at the instance of the plaintiff in O.S.No.460 of 2012 (Tr.CMP No.666 of 2014) and the defendants 1 and 2 in O.S.No.440 of 2012 (Tr.CMP No.667 of 2014) on the file of District Munsif, Perambalur, and the prayer is to withdraw the civil suits and transfer the same to any other Court for disposal on merits.

The facts :-

2. The petitioner in Tr.CMP No.666 of 2014 filed a civil suit in O.S.No.460 of 2012 against respondents 1 and 2, praying for a decree of declaration. The petitioner, along with the civil suit, filed an application for injunction in I.A.No.2194 of 2012. According to the petitioner, the respondents took time under one pretext or the other and made the Trial Court to adjourn the proceedings from time to time. Respondents 1 and 2 are influential persons in the locality. Therefore, it would not be possible for the petitioner to appear before the Trial Court and prosecute the suit.

3. The defendants 1 and 2 in O.S.No.440 of 2012 filed the petition for transfer on the ground that the first respondent is the son of Thiru.Devarajan, who is a practicing lawyer at Perambalur. According to the petitioners, Thiru.Devarajan is a influential person in the locality. Because of his influence, police failed to take action earlier in spite of lodging a complaint against the first respondent. The petitioners therefore contended that they are not in a position to defend the suit in O.S.No.440 of 2012 on account of the presence of Thiru.Devarajan and his supporters. There are no other grounds raised in the transfer petitions.

4. The first respondent in Tr.CMP No.666 of 2014 filed a counter affidavit wherein it was contended that the parties are near relatives. The biological father of the petitioner in Tr.CMP No.666 of 2014 is none other than the brother-in-law of the first respondent. He has lodged a police complaint against the father of the petitioner, for his commission of forgery and other criminal acts relating to the family business. Police is now conducting investigation. It is only as a counter blast, the petitioners have filed the transfer petition.

Submissions:-

5. The learned Senior counsel for the petitioners contended that there is no congenial atmosphere in the District Munsif Court, Perambalur, due to the presence of Thiru.Devarajan, who is a practicing lawyer and as such, there is an urgent need to transfer the civil suits to a nearby district. The learned Senior counsel further contended that the respondents failed to file counter or written statement and as such, the suits and applications are now kept pending by the Trial Court. According to the learned counsel, suits would progress only in case they are transferred to a Court outside Perambalur District.

6. The learned counsel for the respective respondents contended that none of the grounds raised in the transfer petitions would qualify for transfer of the civil suits from the file of learned Principal District Munsif, Perambalur.

Analysis:-

7. The petitioner in Tr.CMP No.666 of 2014 filed a suit for declaration with respect to the suit property. The first respondent in Tr.CMP No.667 of 2014 filed a civil suit in O.S.No.440 of 2012 for declaration. The plaint schedule

property in O.S.No.460 of 2012 is also the suit property in the connected suit in O.S.No.440 of 2012.

8. The father of the plaintiff in O.S.No.440 of 2012 is stated to be a legal practitioner. The petitioners appear to be under a mistake notion that it was only on account of the presence of Thiru.Devarajanan, a practicing lawyer before the District Munsif Court at Perambalur, the suits have been adjourned from time to time by the learned District Munsif.

9. The affidavits filed in support of the transfer petitions do not contain any indication that on account of the involvement of Thiru.Devarajan, the Trial Court was biased against the petitioner. There is no allegation made against the Presiding Officer. The fact that the father of one of the parties is a legal practitioner and the suits are pending before the Court, where he is practicing, cannot be a reason to transfer the suits to a different district.

10. In case civil suits are transferred on the ground that relative of one of the parties to the litigation is a legal practitioner, practicing before the very same Court, it would give a very bad signal. It is not as if the learned Principal District Munsif is bound to decree the suit filed by the first respondent in transfer Petition No.667 of 2014 or dismiss the suit filed by the petitioner in Tr.CMP No.666 of 2014, on account of the presence of a counsel who is a near relative of the parties. So long as it is clear that the learned Judge is impartial and the parties would be in a position to get justice, there is no question of transferring the civil suits to any other Court.

11. The petitioners seek transfer of the suits to a different district. In case the suits are transferred, it would appear as if Thiru.Devarajan, local lawyer and father of the first plaintiff is controlling the civil courts in the district of Perambalur. If really the legal practitioner named above is such an influential person, it would be possible for him to interfere in the process even if the suits are transferred to the neighbouring districts.

12. The proceedings are civil suits. There is no need for the personal appearance of the petitioners or the respondents before the Trial Court, except for giving evidence. Such being the factual position, the petitioners are not justified in filing these two transfer petitions. I am also of the view that there are no materials produced by the petitioners to substantiate their contention. In short the petitioners have not made out a case for transfer of the suits. The prayer for transfer is therefore rejected.

13. The learned District Munsif, Perambalur, is directed to dispose of all the pending interlocutory applications in O.S.No.440 of 2012 and O.S.No.460 of 2012, on merits, as expeditiously as possible and in any case on or before 15 February 2017. There shall be a further direction to dispose of both the suits on or before 30 June 2017.

14. The Transfer Civil Miscellaneous petitions are disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

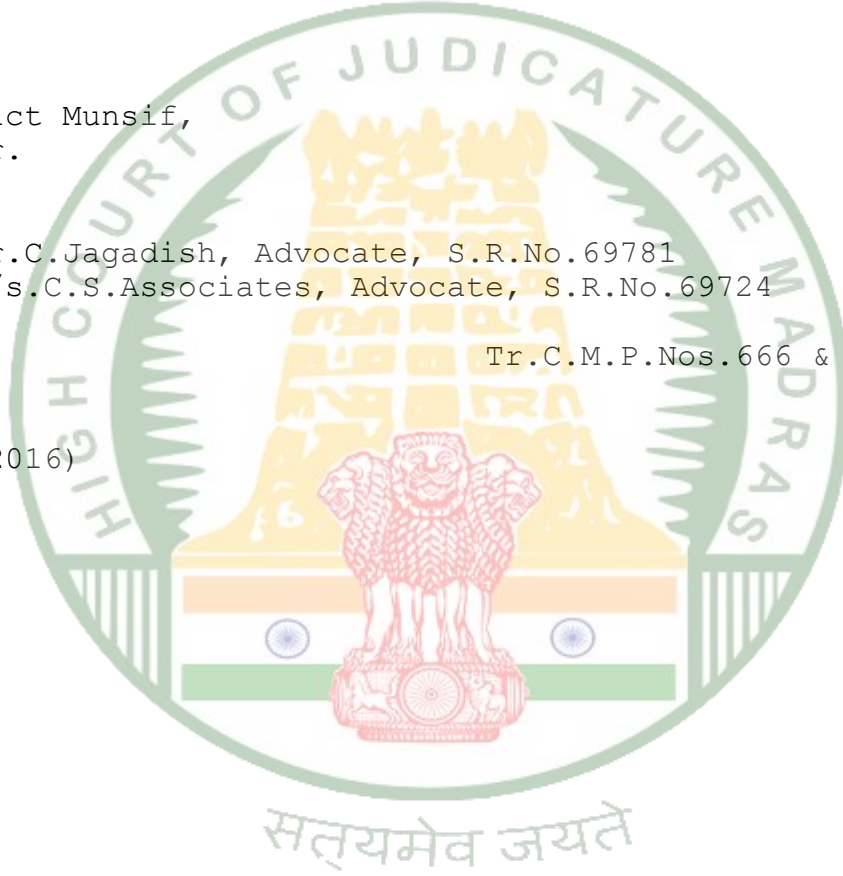
The District Munsif,
Perambalur.

+1cc to Mr.C.Jagadish, Advocate, S.R.No.69781

+1cc to M/s.C.S.Associates, Advocate, S.R.No.69724

Tr.C.M.P.Nos.666 & 667 of 2014

CA(CO)
CA(27/12/2016)



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