

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) Nos.1530, 1532, 2595 of 2016

and Tr.C.M.P.No.305 of 2016

C.R.P.(PD) Nos.1530 and 1532 of 2016

P.RAJAN ... petitioner

Vs

1 GOOD SHEPHERD EDUCATION TRUST
REP BY ITS MANAGING TRUSTEES
M/S.P.C.THOMAS&ELSAMMA THOMAS
GOOD SHEPHERD PUBLIC SCHOOL
FERNHILL UDAGAMANDALAM NILGIRIS

2 R.PREMA ... respondents

PRAYER: Revisions filed under Article 227 of the Constitution of India against the order in I.A.No.517, 518 of 2016 in O.S.No.170 of 1999 dated 2.4.2016, on the file of Sub Judge, Ootacamund, Nilgiris District.

C.R.P.(PD) No.2595 of 2016

1. P.RAJAN
- 2 P.SANTHANAKRISHNAN
- 3 P.GURUJAYAKUMAR
- 4 P.KOTEESWARAN
- 5 P.MALLIGA
- 6 P.JOTHI
- 7 P.NEELAKANTAN
- 8 VIMALA MAYILVAHANAN

9 SUMITRA
 10 A.RAJKUMAR
 11 S.ANANTHALAKSHMI
 12 YAMUNA
 13 P.G.SEKAR
 14 D.UDAYAKUMAR
 15 D.KRISHNAKUMAR
 16 S.RAJALAKSHMI
 17 M.G.SHANMUGHAM
 18 PARIMALA
 19 M.GAYATHRI (Minor)
 20 MIONR M.DHANANJAYAN
 MINORS REP BY MOTHER, 18TH PETITIONER ... petitioners

Vs

R.Prema ... respondent

PRAYER: Revision filed under Article 227 of the Constitution of India against the order in I.A.No.255 of 2016 in O.S.No.170 of 1999 dated 8.2.2016, on the file of Sub Judge, Ootacamund, Nilgiris District.

Tr.C.M.P.No.305 of 2016

1. P.RAJAN
 2 P.SANTHANAKRISHNAN
 3 P.GURUJAYAKUMAR
 4 P.KOTEESWARAN
 5 P.MALLIGA
 6 P.JOTHI
 7 P.NEELAKANTAN
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Vs

1 GOOD SHEPHERD EDUCATION TRUST
 REP BY ITS MANAGING TRUSTEES
 M/S.P.C.THOMAS&ELSAMMA THOMAS
 GOOD SHEPHERD PUBLIC SCHOOL
 FERNHILL UDAGAMANDALAM NILGIRIS
 2 R.PREMA ... respondents in Tr.C.M.P.305 / 2016

PRAYER: Transfer petition filed to withdraw and transfer the OS No. 170/1999 now pending on the file of the Sub Court Ootacamund to the file of the Sub Court Coimbatore-District.

For petitioner :: Mr.G.Masilamani, Senior counsel
 for Mr.M.S.Mani

For respondents :: Mr.C.A.Diwakar, for R-1

COMMON ORDER

The learned Subordinate Judge, Nilgiris, dismissed the interlocutory applications filed by the petitioner to recall P.W.1 and to receive documents notwithstanding the indulgence shown to the first respondent by receiving the documents produced by the trust. The common order is challenged in the civil revision petitions for various reasons.

2. The petitioner filed the Transfer Civil Miscellaneous Petition on the ground that on account of the background facts, he would not get justice in case the civil suit is taken up by the learned Subordinate Judge, at Nilgiris for disposal.

3. The learned Senior counsel for the petitioners contended that the learned Subordinate Judge allowed the application filed by the first respondent and received the documents on the date of filing itself, without giving an opportunity to the petitioner to file counter. According to the learned Senior Counsel, the learned Subordinate Judge should have considered the application filed by the petitioner to reopen and recall P.W.1, taking into account the indulgence shown to the first respondent. However, the learned Trial Judge took a diametrically opposite position and negated the prayer. The learned Senior counsel took me through the order passed by the learned Trial Judge to substantiate his contention that all is not well.

4. The learned Senior counsel submitted that in view of the apprehension raised by the petitioner, it is necessary to withdraw the suit from the file of Subordinate Court, Udagamandalam and transfer the same to the District Court, Ooty.

5. The learned counsel for the first respondent by placing reliance on the earlier proceedings contended that the petitioner has been filing applications one after another to drag on the proceedings. According to the learned counsel, none of the documents produced by the petitioner are admissible in evidence and as such, the Trial Court was correct in dismissing the applications. The learned counsel opposed the prayer for transfer. According to the learned counsel, in case transfer is made on the basis of such wild allegations, Judicial Officers would be in a position to discharge duties.

6. After hearing the learned Senior counsel for the petitioner and the learned counsel for the first respondent, I was convinced that the learned Trial Judge was not correct in dismissing the application filed by the petitioner. When it was pointed out as to how the learned Subordinate Judge allowed the application filed by the first respondent immediately on filing, and dismissed the applications filed by the petitioner without making an attempt to verify as to whether the applications could be allowed to give quietus to the issue, the learned counsel for the first respondent fairly

submitted that he has no objection in recalling P.W.1 for further examination and to receive documents, subject to proof, relevancy and admissibility.

7. The Trial Court has given its own reasons to justify the dismissal of the interlocutory applications. Since substantial contentions were taken in the suit, I am of the view that opportunity should be given to the petitioner to recall him for further evidence.

Disposal of C.R.P.(P.D.) Nos.1530, 1532, 2595 of 2016 :-

8. The interlocutory applications filed by the petitioner are allowed. The learned Trial Judge is directed to post the civil suit for further examination of P.W.1. The documents produced by the petitioner along with the interlocutory applications would be received subject to proof, relevancy and admissibility. The respondents should be given reasonable opportunity to cross examine P.W.1. Thereafter, the suit would be posted for further evidence.

Disposal of Tr.C.M.P.No.305 of 2016

9. The petitioner filed transfer petition with an apprehension that he would not get justice in case the suit is taken up by the learned Subordinate Judge, Uthagamandalam. It is not possible to withdraw the suit on the basis of the grounds taken by the petitioner. The learned Trial

Judge has given his own reasons while dismissing the application filed by the petitioner. Merely because the learned Judge dismissed the application filed by the petitioner, it cannot be said that he is biased and the petitioner would not get justice. I am therefore of the view that the petitioner has not made out a case for transfer.

10. In the result, the Transfer Civil Miscellaneous Petition is dismissed. The civil revision petitions are disposed of with the above direction. No costs. Consequently, C.M.P.Nos.8405, 13401, 8320 of 2016 are closed.

23.11.2016

Index:Yes/no
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To
The Subordinate Judge, Uthagamandalam.

K.K.SASIDHARAN, J.

(tar)

C.R.P.(P.D.) Nos.1530, 1532, 2595/2016

and Tr.C.M.P.No.305 of 2016

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