

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.Nos.134 and 135 of 2016
and
C.M.P.Nos.3233 and 3234 of 2016

P.Saravana Balaji Petitioner in both Tr.C.M.Ps
vs.

N.Ponnusamy (Died)
S.Shanmugavadiyu Respondent in both Tr.C.M.Ps

Prayer in Tr.C.M.P.Nos.134 and 135 of 2016:

Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code to withdraw O.S.Nos.93 and 92 of 2015 respectively on the file of the Principal District Judge, Coimbatore and transfer the same to any other Court at Chennai

For Petitioner : Mr.AR.L.Sundaresan, Senior
Counsel in both Tr.C.M.Ps for
Mr.K.M.Aasim Shehzad

For Respondent : Mrs. Hemasamptah, Senior Counsel
in both Tr.C.M.Ps for Ms.R.Meenal

COMMON ORDER

The petitioner in the transfer Civil Miscellaneous Petition is the sole defendant in O.S.No.92 of 2015 pending on the file of the Principal District Judge, Coimbatore. The respondent in the transfer Civil Miscellaneous Petition is the sole plaintiff in the said suit. Similarly, a counter suit filed by the revision petitioner herein as plaintiff against the respondent herein is pending on the file of the very same Court as O.S.No.93 of 2015.

2. Though both the suits are for partition, they came to be filed in respect of different properties. Both the suits are tried simultaneously, but evidence have been recorded separately for each case. After completion of recording evidence in both the cases, the cases stood posted for hearing arguments. At that point of time, the petitioner filed application Nos.1,2 and 3 of 2016 in O.S.No.93 of 2015 to re-open the case, to re-call

P.W-1 for further examination and to condone delay in producing the document. All the three petitions were dismissed by a common order. As against the same, the Civil Revision Petitions came to be filed in C.R.P.Nos.350 to 352 of 2016. Now, the petitioner has chosen to withdraw those Civil Revision Petitions and an order dismissing the said Civil Revision Petitions has been passed by this Court today. So far as the transfer Civil Miscellaneous Petitions are concerned, certain allegations have been made against the Presiding Officer, as if the testimonies of the witnesses as deposed, were not correctly recorded and there was an indication by the way in which orders were made and utterances were made by the learned trial Judge during the course of hearing, that gave rise to an apprehension in the mind of the petitioner that the learned trial Judge may be biased.

3. The respondent has entered appearance through Counsel. Mrs.Hema Sampath, learned Senior Counsel appears for Ms.R.Meenal learned Counsel for the respondent in both the transfer Civil Miscellaneous Petitions. Mr.AR.L.Sundaresan, learned Senior Counsel appears for Mr.K.M.Aasim Shehzad, learned Counsel for the petitioner in both the Civil Revision Petitions. The submissions made by Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner and by Mrs.Hema Sampath, learned Senior Counsel for the respondent are heard.

4. Learned Senior counsel for the respondent submits that wild allegations came to be made against the Presiding Officer and without substantiating such allegations, the petitioner cannot be granted an order as prayed for.

5. On the other hand Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner submits that though such allegations have been made regarding the manner in which the case is being conducted by the trial Court, giving rise to an apprehension that the trial Judge may be biased and the petitioner may not get a fair justice, without making an attempt to substantiate those contentions, which may embarrass the petitioner and the counsel appearing for the petitioners as well as the Presiding Officer, he would pray for the transfer of the case on the sole ground that after such development, it may not be conducive to have the cases tried by the particular Presiding Officer, since though there might not have been bias in the past, because of the averments made in the transfer Civil Miscellaneous Petitions, there is every likelihood of the Judge becoming biased.

6. Of course, the said stand taken by the learned Senior counsel for the petitioner can be countered by a contention that such wild allegations are made only to project the developments as the ground for seeking transfer. However learned Senior Counsel for the respondent herein refrains from taking such a stand.

7. The submission made by the learned Senior Counsel for the petitioner is merely a face-saving measure, both for the litigant and their counsel and also for the Presiding Officer. As such, though there could not have been a valid ground for seeking transfer of the cases to any other Court, because of the further developments, it shall not be conducive to have the cases tried by the very same Presiding Officer as there is likelihood of the development of bias subsequent to the filing of the transfer Civil Miscellaneous Petitions. It shall not be enough that justice is rendered, but it shall be manifestly seen to be been rendered, which means, there should not be a room for reasonable apprehension that a biased verdict has been given or may be given. Hence, without going into the correctness or otherwise of the averments made in the transfer Civil Miscellaneous petitions and in view of the submissions made on both sides before this Court and also taking into account the fact that the petitioner has chosen to withdraw the Civil Revision Petitions filed against the orders dismissing I.A.Nos. Nos.1,2 and 3 of 2016 in O.S.No.93 of 2015 to show his bona fide that the petitioner is not intending to drag on the case, this Court holds that it shall be just and necessary that the cases be removed from the file of the particular Presiding Officer and transfered to the file of another Competent Presiding Officer of the very same place and at the same time, a direction shall also be issued for the disposal of the cases within a time frame.

8. For the reasons stated above, the Transfer Civil Miscellaneous Petitions are allowed. O.S.No.92 of 2015 and O.S.No.93 of 2015 are withdrawn from the file of the Principal District Judge, Coimbatore and transfered to the file of the I Additional District Judge, Coimbatore. The I Additional District Judge, Comibatore is directed to dispose of the cases, within a month from the date of receipt of the records. No costs. Consequently, connected miscellaneous petitions are closed.

srn

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Principal District Judge, Coimbatore
2. The I Addl. District Judge, Coimbatore.

+ 2 cc to Mr.R.Meenal Advocate, SR 12426 & 12427

+ 2 cc to M/s.BFS Legal Advocate, SR 12461 & 12462

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