

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.No.187 of 2016

&

C.M.P.No.5310 of 2016

Perugunarayana

... Petitioner

vs.

1.K.A.Kamalnathan
2.K.A.Rajendran
3.K.A.Pratap
4.K.A.Ethirajan
5.K.A.Baskaran
6.S.Asokan
7.K.R.Kamalakannan
8.R.Annamalai

... Respondents

Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure to withdraw the suit in O.S.No.203 of 2008 on the file of the learned Additional District Judge No.1, Thiruvallur and transfer the same to any other Court Competent to try the same.

For Petitioner : Mr.N.Chidambaram

ORDER

This petition has been filed under Section 24 of the Code of Civil Procedure for transferring O.S.No.203 of 2008 pending on the file of the Additional District Judge I, Thiruvallur to another Court.

2. In the supporting affidavit, besides narrating the entire evidence leading to the filing of the case, the petitioner has made an attempt to contend that he apprehends bias on the part of the trial Judge. From the affidavit it is seen that the case was originally pending in the Fast Track Court III, Thiruvallur and subsequently it was transferred to the Additional District Judge I, Thiruvallur. The evidence on both sides were recorded in full and the matter stood listed for hearing arguments to be advanced on both sides. The evidence came to be closed on 12.02.2016 and thereafter, the petitioner was taking adjournments for

arguments. More than six adjournments covering a period of over a month were granted and thereafter, the petitioner has chosen to come forward with the present petition seeking transfer of the original suit to some other Court at the stage of argument. The allegations sought to be made against the trial Judge is contained in three paragraphs numbered as 10,11 and 12 of the supporting affidavit. For the sake of convenience, Paragraphs 10 to 12 in the supporting affidavit are reproduced:

"10. I submit that, during the course of the cross examination of the respondents witnesses particularly DW4 and DW5, the learned Judge was reluctant to record the admissions made by them and insisted my counsel to curtail with the number of questions and urged to complete the cross examination at the earliest. The learned Judge has not allowed my counsel to conduct the case in an independent manner and for the reasons best known to her refused to conduct the case in accordance with law and failed to follow the legal procedures. I lost hope and unable to understand the as to why the learned Judge hurriedly taking up this particular case without following the legal procedures and wanted to dispose/dismiss the suit against natural justice.

11. I further submit that, as matter of fact my erstwhile counsel who is a very senior Advocate in Thiruvallur was unable to conduct the case due to his ill health and expired on 07.03.2016 and I am in the process of engaging another senior counsel to conduct my case. Due to the very short adjournments given by the learned Judge almost like a day today proceedings I am unable to meet any Senior Advocate which prompted me to engage the present counsel. The counsel is unable to conduct the proceedings before the learned Judge with full hope and independence since the learned Judge is biased and not affording fair opportunity. If the matter remained in the same court there is a likelihood of miscarriage of justice.

12. I state that the manner in which the learned Judge is haring the Suit without affording me sufficient opportunity to cross-examine the defendants side witnesses creates a genuine and bonafide doubt that the learned Judge has already predetermined the issue. I have got a reasonable apprehension that if proceedings are allowed to continue before the learned Additional District Judge No.I, Thiruvallur justice may not be done. Justice shall not only be done but also seem to be done. Unless all further proceedings are not

stayed I will be put into irreparable loss and hardship."

3. Though the petitioner/plaintiff tries to cause aspersions on the Judge as if the Judge was not granting sufficient opportunity to cross-examine Dws 4 and 5, there is nothing to show that either DW4 or DW5 was not at all cross-examined or their evidence came to be closed in the middle. No petition seeking recalling of those witnesses for further examination came to be filed. On the other hand, from 12.02.2016, the petitioner had been taking adjournments for advancing arguments. Now, realizing that he cannot take further adjournments, he has come forward with the present petition trading an allegation against the Judge that the Judge is showing unduly haste in concluding the proceedings of this case.

4. A perusal of the details of adjournments included in the typed-set of papers will show that there is no iota of truth in such a contention. Even otherwise, when a suit has been made part-heard and it is pending in the part-heard stage for more than one year, the contention of the petitioner that the Court below showed undue haste in concluding the proceedings cannot be countenanced. In fact, the dilatory tactics adopted by the petitioner was not properly checked by the Court. If at all there could be any grievance, it shall be for the respondents to express such grievance and not the petitioner/plaintiff. The real reason behind filing of the petition may be something else than the one stated in the petition. There is no bonafide in the petition and hence, the same deserves to be dismissed.

Accordingly, the Transfer Civil Miscellaneous Petition is dismissed. The trial Court is directed to dispose of the suit within two months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

gpa

To

The Additional District Judge No.1
Thiruvallur

2 ccs to Mr.N. Chidambaram, Advocate, Sr. 18557, 18430
1 cc to Mr.V.P. Sengottuvel, Advocate, Sr. 18813

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