



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.11.2016

DELIVERED ON : 08.11.2016

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.C.M.P(MD)No.428 of 2016

and

C.M.P(MD)No.8478 of 2016

1.I.Kalaiselvi
2.S.Savithri
3.M.Malar
4.M.Maheswari
5.P.Murugesan
6.P.Ganesan
7.V.Parameswari
8.S.Senthil
9.G.Marimuthu

... Petitioners/Petitioners

Vs.

1.V.Manikandan
2.V.Angammal

... Respondents/Respondents

Prayer: Petition filed under Section 24 of Civil Procedure Code to withdraw the suit in O.S.No.101 of 2016 on the file of the Sub Court, Dindigul and transfer the same to the file of the I-Additional District Court, Dindigul.

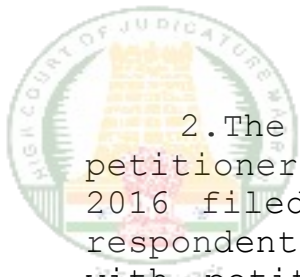
For Petitioners : Mr.M.Ponniah

For R - 1 : No appearance

For R - 2 : Given up

ORDER

The present petition is filed to transfer the suit in O.S.No.101 of 2016 pending before the Subordinate Judge, Dindigul to the I-Additional District Judge, Dindigul.



2.The contention of the third petitioner is that the third petitioner is the fourth defendant in the suit in O.S.No.101 of 2016 filed before the Subordinate Court, Dindigul and the first respondent herein is the plaintiff and the third petitioner along with petitioners 1, 2, 5 to 7 filed a suit for partition in O.S.No.30 of 2015, which is pending before the I-Additional District Judge, Dindigul, against the first respondent herein.

3.This Court raised the issue of maintainability regarding the present transfer petition, which is filed to transfer the suit in O.S.No.101 of 2016 from the Court of Subordinate Judge, Dindigul to the I-Additional District Judge, Dindigul, when both the Courts are coming under the administrative jurisdiction of the District Court, Dindigul.

4.The learned counsel for the petitioners cited the case of this Court in **T.Kamatchi Vs. S.Murali alias Kanagasabapathy** reported in **2006 (1) M.L.J 418** and the relevant portion in paragraph No.17 is extracted hereunder:-

"17. True it is, that the word High Court under Section 3(25) of the General Clauses Act is defined as, 'High Court', used with reference to civil proceedings shall mean the highest civil Court of appeal in the part of India in which the Act or regulation containing the expression operates. Although, it may appear that the Court of appeal for cases in the Districts lying within the territorial jurisdiction of Permanent Bench at Madurai would only be the latter, when once the proviso to presidential order above mentioned empowers the Chief Justice in the Principal Seat at Madras High Court to order for hearing of any case pending in the Madurai Bench at Madras, it would only indicate that such power of appellate authority of the Madurai Bench is likely to be delegated to the Principal Bench at Madras. This delegation as connoted to the proviso to the presidential order cannot have any meaningful effect unless and until the Principal Seat is clothed with such power of appellate authority over the territorial jurisdiction of Permanent Bench at Madurai."

5.In **K.Kavitha and others Vs. Subraminan @ V.S.Mani and others** reported in **2007 (5) CTC 707**, this Court in paragraph No.27 is held as follows:-

"27. According to Section 24 of the Code of Civil Procedure, the High Court may transfer any case pending on the file of a Court subordinate to it from the file of the said Court to the file of any other Court subordinate to it. From the wordings of



Section 24, at the outset, it may appear that both the Courts i.e., from which the case is sought to be transferred (transferor Court) and the Court to which the case is sought to be transferred (transferee Court) should be subordinate to the same High Court for exercise of the High Court's jurisdiction in transfer of cases. What is the meaning to be assigned of the term 'High Court' appearing in the above said Section? Whether the subordinate is judicial subordination or administrative subordination? - are the question to be answered."

6. But in the present case on hand, the transfer of cases are sought for within the District and the transferror Courts and the transferee Courts are coming within the jurisdiction of the same District Court, namely District Court, Dindigul. Therefore, the above cases cited by the learned counsel for the petitioner has no reliance in respect of the issue to be decided in the present case.

7. At this juncture it is relevant to read Section 24 of the Code of Civil Procedure, which is extracted hereunder:-

"24. General power of transfer and withdrawal.- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage -

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of any order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, -

(a) Courts of Additional and Assistant Judges shall be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.

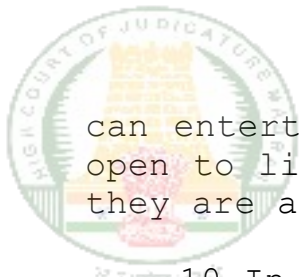


(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it."

8. The learned counsel for the petitioner argued that this concurrent jurisdiction is vested on both the High Court as well as the District Court, and therefore, the aggrieved person can choose any one of the Forum, either High Court or District Court to file a petition to transfer a case from one Court to another, irrespective of the fact that whether they situate within the District or outside the District. Further, the learned counsel contended that the intention of the Legislation is to give option to the litigants to choose any Forum, either the High Court or the District Court concerned.

9. This Court is unable to accept such an interpretation offered by the learned counsel for the petitioner in view of the fact that if such an option is given to the litigants in all circumstances, it will create an ambiguity and the litigants are free to choose either the High Court or District Court and the original jurisdiction granted to the Appellate Court, namely, the District Court will be curtailed. Therefore, the power vested with the District Court need not be taken away and the intention of the legislation is not exactly so under the Code of Civil Procedure. Section 24 of the Code of Civil Procedure enumerates that the High Court or District Court may at any stage transfer any suit, appeal or other proceedings pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same. Sub Clause (3)(a) of that Section states that the Court of Additional and Assistant Judges shall be deemed to be subordinate to the District Court. A reading of the entire Section unambiguously portrays the intention of the Legislation that wherever applicable, the transfer petition is to be filed before the District Court and wherever the transfer is not maintainable before the District Court concerned the petition for transfer is to be filed before the High Court. It is not their intention that the litigants can choose the Forum, either High Court or District Court in all situations. If we permit such a situation then the High Court will be flooded with transfer petitions, which cannot be entertained. This apart while entertaining such applications for transfer by the High Court, the power of the District Court is taken away or usurped by the High Court. This will create a wrong precedent. The power already exists under Section 24 to District Court, namely, appellate Court cannot be ~~usurped~~ taken away by the High Court in ordinary circumstances. In exceptional circumstances, where it is not possible for the District Court to exercise the power of transfer, the High Court



can entertain the same, but not the otherwise, since it is always open to litigants to challenge the order of the District Court, if they are aggrieved.

10. In this context, the Hon'ble Supreme Court of India in the case of **Durgesh Sharma v. Jayshree [AIR 2009 Supreme Court 285]** narrated the entire circumstances relating to Sections 22 to 25 of Code of Civil Procedure. Narrating the scope of Section 23 the Hon'ble Supreme Court in paragraph 42 stated as follows:-

"42. Interpreting Section 23 of the Code, the Court observed:

"Section 23 indicates under three heads the Court to which an application under Section 22 is to be made. (1) Where the several Courts are Subordinate to the same Appellate Court, the application goes before the latter; (2) where the several Courts are subordinate to different Appellate Courts but to the same High Court, the application must go to the High Court; and (3) where the several Courts having jurisdiction over the suit are subordinate to different High Courts, the application must be made to the High Court having authority over the Court in which the suit has been instituted. In the first two of these cases, the Court empowered to decide under Section 22 also has jurisdiction to transfer under Section 24. But in the third case there is no power of transfer, and the question is whether Section 22, under which the application to be made is one for transfer, can be interpreted to mean that in a case like the present, the Court to which the application is made, being powerless to transfer, may nevertheless direct that the plaint be returned to the plaintiff for presentation to some Court under another provisional jurisdiction."

11. Paragraph 71 of the judgment stated to supra is extracted hereunder:-

"In our considered opinion, where several Courts having jurisdiction are subordinate to one appellate Court, an application for transfer may be made to such appellate Court and Court may transfer a case from one Court subordinate to it to an other Court subordinate to it. Likewise, where such Courts are subordinate to the same High Court, an application may be made and action may be taken by the High Court transferring a case from one Court subordinate to it to any other Court subordinate to that High Court. But where such Courts are subordinate to different High Courts, it is only the Supreme Court (this Court) which may pass an order of transfer. In other words, if two courts are subordinate to different High Courts, one High Court has no power, jurisdiction or authority to transfer a case pending in



any court subordinate to other High Court to a Court subordinate to other High Court. It is only the Supreme Court (this Court) which may order the transfer."

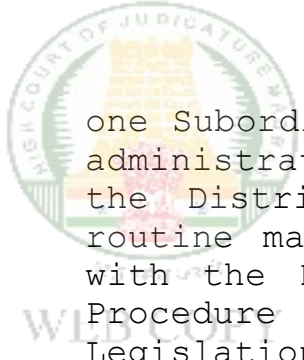
12. It is relevant to cite Section 151 of the Code of Civil Procedure, which provides inherent powers of Court.

"151. Saving of inherent powers of the Court - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

13. The intention of Section 151 C.P.C. is to provide substantial justice to the aggrieved persons and it cannot be invoked in each and every case, where there is a procedure to file transfer petition is unambiguously enunciated with regard to transfer. Section 24 of the Code of Civil Procedure categorically states that if the transfer is sought between the Subordinate Courts coming under the administrative control of the District Court then the petition is to be filed before the District Court, and if the transfer is sought for from one Court which is subordinate to one authority to another Court which is subordinate to another authority, it is before the High Court. Such being the position, the transfer petition to transfer a case between two subordinate Courts which is coming under the control of the very same appellate Court, the said transfer petition cannot be entertained by this Court in view of the fact the powers vested to such appellate Court under Section 24 cannot be taken away in a mechanical and routine manner. The inherent power vested under Section 151 C.P.C. has to be exercised sparingly to prevent abuse of process of Court. Therefore, Section 151 C.P.C. cannot be invoked in a routine manner so as to allow transfer of a case in a routine way.

14. This Court in a case **Xxxxx 'A' v. Yyyyy 'B' [2016(4) CTC 834]** invoked the inherent power and declared the marriage as null and void. This Court inclined to consider the extraordinary circumstances and special facts relating to that particular case and such situation cannot be compared to ordinary circumstances of each and every case so as to invoke the power by the High Court under Section 24 CPC. In special circumstances and extraordinary fact cannot be treated as precedent and all the routine cases where transfer is sought for cannot be treated on par with the case where the High Court has exercised the power under Section 151 of the Code of Civil Procedure and Section 227 of Constitution of India.

15. At present, the litigants are directly approaching the High Court, by filing transfer applications to transfer the cases from



one Subordinate Court to another Subordinate Court coming with the administrative jurisdiction of the same Appellate Court namely, the District Court. If such petitions are entertained in a routine manner, this Court is of the view that the power vested with the District Court under Section 24 of the Code of Civil Procedure is taken away and that cannot be the intention of the Legislature under Section 24 of the Code of Civil Procedure. The original jurisdiction of the District Court conferred under Section 24 cannot be usurped in a routine manner so as to defeat the real object and the spirit of Section 24 of the Code of Civil Procedure. Therefore, the litigants are not permitted to choose the forum as per their likes and dislikes which will create ambiguity and the circumstance will arise that one litigant will file a transfer petition before the District Court and his opponent may file another transfer petition before the High Court in order to create inconsistency and such a situation needs to be averted. The jurisdiction of the Courts for filing transfer applications should be definite and clear. By vague and shallow interpretation, the litigants should not be allowed to choose the forum at their choice. If any application for transfer is to be filed, the same is to be filed within the same administrative jurisdiction of the District Court concerned and if it falls within the jurisdiction of different District Courts, then the petition for transfer shall be filed before the High Court. Such an interpretation will have a constructive meaning and will serve the purpose to have a definite jurisdiction in respect of filing of the applications for transfer under Section 24 of the Code of Civil Procedure.

16. In view of the principles stated supra, the Transfer Civil Miscellaneous Petition is not maintainable before this Court and the same is dismissed. The petitioners are granted liberty to approach appropriate Court under Law. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

1. The Sub Judge,
Dindigul.

2. The I-Additional District Judge,
Dindigul.

+1 cc to MR.M.PONNIAH, Advocate SR.No.66504

TR.C.M.P. (MD) No.428 of 2016

08.11.2016