



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2016

CORAM

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.C.M.P (MD) No.436 OF 2016

and

C.M.P (MD) No.8714 of 2016

N.Soundar Rajan

... Petitioner

Vs.

1.G.Senthamil Selvi

2.K.Natchimuthu Gounder

... Respondents

Prayer: Petition filed under Section 24 of Civil Procedure Code to withdraw the O.S.No.126 of 2016 from the file of the District Munsif Court, Uthamapalayam and to transfer the same to the file of the District Munsif Court, Oddanchatram, for further proceedings.

For Petitioner : Mr.N.Adithiya Vijayalayan

For Respondents : Mr.K.Vijaya Anand for R1
for Mr.R.Suryanarayanan
: No appearance for R2

ORDER

The facts as stated by the petitioner in this petition is that the suit for partition is filed by the first respondent before the District Munsif Court, Uthamapalayam in O.S.No.126 of 2016 and notice was served to the defendants in the suit. The defendants filed the written statement in the suit and the same is posted for framing issues. At this juncture, the second defendant in the suit filed the present petition to transfer the suit from the District Munsif Court, Uthamapalayam to the District Munsif Court, Oddanchatram.

2. The learned Counsel for the petitioner argued that the petitioner and the respondents are residing at Oddanchathram and the suit was unnecessarily instituted at Uthamapalayam by the first respondent only with an idea to harass the defendants in the suit. He further contended that except 'A' Schedule suit property in the plaint, all other properties are situated within the jurisdiction of Oddachathram and therefore, the suit is to be transferred to Uthamapalayam to Oddanchathram.



(i) In support of the arguments, the counsel for the petitioner has cited a judgment of the Honourable Supreme Court in **Beni Shankar Sharma and Others -vs- Surya Kant Sharma and others** reported in **AIR 1982 SC 52**, wherein, the Honourable Apex Court has held as follows:-

''The deed of family settlement was executed and registered in Calcutta. Almost all who are likely to be witnesses in the suit live in Calcutta. The records relating to the properties in question were all maintained at Calcutta.''

(ii) Yet another judgment of the Honourable Supreme Court in **Neha Arun Jugadar and Another -vs- Kumar Palak Diwan Ji**, reported in **2011 (3) CTC 663**, is also relied on, wherein, the Apex Court at paragraph 3, has held as follows:-

"3. An order of transfer of a case can be passed where both the Courts namely, the transferor Court as well as the transferee Court, have jurisdiction to hear the case and the party seeking transfer of the case alleges that the transferee Court would be more convenient because the witnesses are available there or for some other reason it will be convenient for the parties to have the case heard by the transferee Court. There is no question of transfer of a case which has been filed in a Court which has no jurisdiction at all to hear it."

3. The learned Counsel appearing for the respondents opposed the contention of the petitioner by stating that the 'A' Schedule property is situated within the territorial jurisdiction of the District Munsif Court, Uthamapalayam and therefore, he has got every right to file a suit either at Uthamapalayam or at Oddanchatram in view of Section 17 of the Code of Civil Procedure.

(i) In support of the arguments advanced, the counsel for the respondents has relied upon a decision of the Delhi High Court in **Prem Kumar and another -vs- Dharam Pal Sehgal and others** reported in **AIR 1972 Delhi 90**, wherein, at paragraph 6 it has been held as follows:-

"6. The learned counsel for the petitioners strongly urged that other properties were situated in Hissar and majority of the parties reside at Hissar and so it is extremely inconvenient to come and defend the suit in Delhi, but that is a matter of no consequence. The Court has jurisdiction to entertain the suit and the plaintiffs seek to invoke it. The counsel also referred to Section 16 of the Code and urged that the suit in respect of the properties at Hissar must have been instituted there and the suit in respect of the property in Delhi can be instituted in the Court below, but I am unable to accept



the said submission. If the plaintiffs have got a number of properties, they are fully entitled to take advantage of the provisions of Section 17 of the Code and the Court at Delhi is clearly seized of the jurisdiction over the subject matter in dispute Issue No.2 has, therefore, been rightly answered by the courts below."

(ii) He has also relied on a judgment of the Honourable Supreme Court in **D.A.V Boys Sr.Sec.School -vs- DAV College Managing Committee** reported in **2010 8 SCC 401**, wherein, it has been held as follows:-

"In order to maintain fair trial, this Court can exercise this power and transfer the proceedings to an appropriate Court. The mere convenience of the parties may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice.'"

4. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

5. The decisions relied upon by the counsel for the petitioner cannot be applied to the facts and circumstances of the present case and in the case on hand, the petitioner has failed to establish fair and reasonable grounds for transfer.

6. Except the fact that all the properties except 'A' Schedule property, are situated at Oddanchatram, no other useful ground has been raised by the petitioner. When Section 17 of the Code of Civil Procedure enumerates unambiguously that the parties can choose the Court when the properties are situated within the territorial jurisdiction of one or more Courts. Such being the legal position and in the absence of any other reasonable and valid ground for transfer the case, this Court is not inclined to accept the contentions of the petitioner and hence, this petition is dismissed. No costs. Consequently, connected Miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(Co)

/True copy/

Sub Assistant Registrar

To

1.The District Munsif Court,
Uthamapalayam.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The District Munsif Court,
Oddanchatram.

gsr

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