

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P.(PD)No.1323 of 2017
and
CMP.No.6149 of 2017**

S. Kumaravadivel

.. Petitioner

Vs.

1.K.A.Sivagami
2.K.P.Arumugam
3.Eswari
4.M.Kuppusamy
5.M.Sureshkumar
6.A. Rajendrakumar

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 04.03.2017 passed in Tr.O.P.No.246 of 2016 against O.S.No.537 of 2008 on the file of the Principal District Judge, Erode.

For Petitioner : Mr.T.Dhansekaran

For R1 & R2 : Mr.C.Selvaraj

For R3 & R4 : No Appearance

ORDER

This Civil Revision Petition has been filed to set aside the order dated 04.03.2017 passed in Tr.O.P.No.246 of 2016 against O.S.No.537 of 2008 on the file of the Principal District Judge, Erode.

2. The petitioner is the plaintiff and respondents are the defendants in the Original Suit. The petitioner/plaintiff filed a suit on 23.12.2008 for a declaration to declare the sale deeds dated 03.12.2007 and 10.07.2007 as not binding on the petitioner and consequential injunction.

3. The respondent filed a written statement on 04.01.2010 and contested the suit. Trial commenced. At the time of PW1's cross-examination, petitioner filed a Transfer Original Petition in Tr.O.P.246/2016 to withdraw the Suit in O.S.No.537 of 2008 from the file of II Additional Subordinate Judge, Erode and transfer the same to the file of any other competent court in Erode District for trial and disposal.

4. According to the petitioner, the Presiding Officer and second respondent are close friends and when he was transferred from the earlier place of posting, the second respondent only arranged for the vehicle for transporting the goods. When the case was pending, the second respondent openly challenged that the suit would be dismissed and the Presiding Officer would act according to the whims and fancies of

second respondent. The Presiding Officer also, in the open court, expressed that the petitioner has no case and the counter claim filed by the second respondent was allowed, without considering the objection of the petitioner. Only after filing Civil Revision Petition before this court, the second respondent has agreed to withdraw the counter claim.

5. The respondents 1 and 2 , 3 to 5 have filed a separate counter and the 6th respondent did not file any counter and made an endorsement that he is not filing any counter and opposing the said application. The Learned Principal District Judge called for the report from the II Additional Subordinate Judge, Erode, who, in this report, denied various allegations made by the petitioner and furnished the details of the pendency of the suit from the year 2008 and disposal of the I.A wherein, the counter claim in I.A.No.232 of 2014 was pending for nearly 32 hearings and the application filed by the petitioner for amendment of the plaint was allowed and after amendment was carried out, the suit was posted for cross examination of DW1.

6. The Learned Principal District Judge, Erode, after considering the averments in the counter affidavit and report of the learned II Additional Subordinate Judge, Erode, and relying on the Judgment submitted by the respondent, dismissed the Transfer Original Petition in Tr.O.P.No.246/2016 holding that the transfer from one Court to another has to be exercised

with more caution as any transfer cast stigma of the Presiding Officer and petition for transfer cannot be lightly dealt with.

7. The Learned Principal District Judge, Erode, also took note of the fact that the trial of the suit is almost completed. Against that, the present Civil Revision Petition is filed.

8. Heard the learned counsel appearing for the parties.

9. The petitioner has made an allegation on the Presiding Officer mainly on the ground that Presiding Officer is the friend of second respondent even before he was posted at Erode. In the open court, the Presiding Officer has expressed that the petitioner has no case and Presiding Officer and the second respondent were travelled together in a car. The learned Principal District Judge, Erode, has called for the report from the learned II Additional Subordinate, Judge, Erode. But he has denied various allegations made by the petitioner. The petitioner also did not substantiate various allegations made against the Presiding Officer. From the order of the Learned Principal District Judge, Erode and on perusal of 32 hearings in the docket, it is seen that the petitioner participated in the trial proceedings and Interlocutory Application in I.A.No.232 of 2014 filed for counter claim which was posted for more than 32 hearings and on disposal of the said application, petitioner

participated in the trial proceedings for almost one year from the date of Order of the Interlocutory Application in I.A.No.232/2014 and he has come out with the Transfer Original Petition in Tr.O.P.No.246/2016 only when the suit was posted for cross examination of DW2.

10. It is well settled fact that from the allegation of the petitioner, the proceedings cannot be transferred from one court to another as rightly held by the Learned Principal District Judge, Erode, that transfer of proceedings from one court to another based on the allegation by one party and will cast stigma on the Presiding Officer.

11. On considering all these materials on record, the learned Principal District Judge, Erode, has held that the petitioner failed to substantiate his allegation against the Presiding Officer and his participation in I.A.No.232/2014 for more than 32 hearings and participation in the trial proceedings for more than one year after allowing the application clearly shows that the allegations are not true. The learned Principal District Judge has properly appreciated all the materials available on record as well as relied on the judgment submitted by the learned counsel for the respondents and resultantly, dismissed the application. There is no infirmity or irregularity in the said order warranting interference by this court.

In the result, this Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

Gv

10.04.2017

Speaking / Non-speaking order

Index :Yes/No

To

The Principal District Judge,

Erode.

V.M.VELUMANI.,J.

gv

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