

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) No.1512 of 2017
and CMP.No.7044 of 2017

1.Suseela
2.Jerome @ Amalorpavnathan
Jerold (Died)
3.Alfred
4.Mary
5.Rosaly

.. Petitioners

Vs

1.R.Vimala Ramamurthy
2.D.L.Ravi

.. Respondents

Prayer:- Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the order dated 07.2.2017 passed in Tr.OP.No.119 of 2016 in O.S.No.3542 of 2012 by the learned Principal City Civil Judge, Chennai.

For Petitioner : Mr.S.Dhassaiya

ORDER

The petitioners have filed this petition praying to set aside the order dated 07.2.2017 passed by the learned Principal Judge, City Civil Court, Chennai in Tr.OP.No.119 of 2015.

2. The petitioners, along with one Jerold filed the suit in O.S.No.3542 of 2012 on the file of the learned XIV Assistant Judge,

City Civil Court, Chennai, for permanent injunction restraining the defendants/respondents herein, their men, agents, legal heirs and representatives from in any way interfering with the peaceful possession and enjoyment of the suit schedule property. Pending suit, the third plaintiff died. Thereafter, the petitioners/plaintiff filed a memo dated 07.03.2016 as per Order XXII Rule 2 of CPC, stating that the cause of action in the suit survives on the other petitioners and hence prayed to proceed with the suit at the instance of the surviving petitioners by recording the memo and also to permit the petitioners to amend the plaint. The trial Court has instructed the petitioners to file an application under Order VI Rule 17 of CPC for amendment of plaint and adjourned the case. It was brought to the notice of the trial Court by the learned counsel that the provision under Order VI Rule 17 of CPC would not apply to his case, and as per the facts of the present case, the correct provision to file the petition for amendment of plaint is only Order XXII Rule 2 of CPC. But, the learned Judge did not accept the submission of the petitioner and therefore, there was a lot of procedural lapse on the part of the Presiding Officer. Under the said circumstances, the petitioners filed Tr.OP.No.119 of 2016 before the learned Principal Judge, City Civil Court, Chennai, praying to transfer the case to any other Court.

3. Before the learned Principal Judge, City Civil Court, Chennai, it is contended by the petitioners that the third plaintiff named Jerold died without leaving any legal representatives. The learned Judge rejected the said contention on the ground that the petitioners and deceased third plaintiff are brothers and sisters and therefore, the petitioners are the legal representatives of the deceased third plaintiff, and the said fact has to be incorporated in the short and long cause title. The plaint has to be amended as to whether the cause of action survives or not; and whether any consequential amendment is needed by filing a petition under Order VI Rule 17 of CPC. Hence, the learned Judge insisted on filing a petition under Order VI Rule 17 and it cannot be a ground for the petitioner to file an application for transfer of suit from the trial Court to any other Court, and dismissed the said transfer petition. Challenging the said order of dismissal, the petitioners are before this Court in the present Civil Revision Petition.

4. The grievance of the petitioner is that the death of the third plaintiff has been recorded only as per the provisions under Order XXII Rule 2 of CPC, and the learned Judge, insisted the petitioner to file a petition Order VI Rule 17 CPC for amendment of the plaint, which is not necessary in the facts and circumstances of

the present case. The learned counsel appearing for the petitioner submitted that in view of the attitude of the learned Judge, the petitioner will not get justice.

5. The above contention is not acceptable. The suit cannot be transferred from one Court to another on the mere allegation against the learned Judge, and this is not the sufficient reason to transfer the suit to another Court. Unless when serious allegations are made and proved against the Presiding Officer, the suit cannot be transferred. The Courts must be cautious in ordering the transfer, since such transfer causes stigma on the Officer ordering transfer. This Court relies upon the rulings of the Karnataka High Court in ***M.V.Ganesh Prasad v. M.L.Vasudevamurthy and others*** reported in *AIR 2003 Karnataka 39*, wherein it has been held that it is very necessary for the Courts to examine the allegations in support of an application seeking for transfer made under Section 24 of CPC objectively, impassionately and in the totality of the circumstances.

6. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

7. On perusing the records placed before this Court, it is

seen that the learned XIV Assistant Judge, City Civil Court, Chennai, has not passed any order on the memo dated 07.3.2016 filed by the petitioners. Hence, the learned XIV Assistant Judge, City Civil Court, Chennai, is directed to pass orders taking into consideration the applicability of the relevant provision under CPC to the facts of this case on or before 30.06.2017.

25.04.2017

ds

Speaking order/Non-speaking order
Index : Yes / No

To:
The Principal Judge,
City Civil Court,
Chennai.

V.M.VELUMANI,J

ds

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