

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.4707 of 2011
and
M.P.No.1 of 2011**

Marimuthu

.. Petitioner

Vs.

Arumugam

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal Order dated 20.09.2011 made in Tr.O.P.No.72 of 2011, on the file of the Principal Sessions Judge, Cuddalore.

For Petitioner : Mr.S.Mani

For Respondent : Mr.R.Venkatesan

ORDER

The petitioner has filed this Civil Revision Petition to set aside the order dated 20.09.2011 made in Tr.O.P.No.72 of 2011 on the file of learned Principal Sessions Judge, Cuddalore.

2.This Civil Revision Petition is filed by the plaintiff in O.S.No.60 of 2007 on the file of the District Munsif Court Cum Judicial Magistrate, Thittakudi. The revision petitioner has filed a suit against the respondent herein in O.S.No.60 of 2007 before the District Munsif Court Cum Judicial Magistrate for recovery of money on the basis of Pronote. Like that the revision petitioner's daughter viz., Bhuvaneswari filed a suit against respondent herein in O.S.No.59 of 2007 before the District Munsif Court cum Judicial Magistrate, Thittakudi for recovery of money on Pronote. Both the suits, the respondent herein is the defendant and in both the suit he remained ex-parte and an ex-parte decree was passed against him.

3.Followed by the ex-parte decree, the revision petitioner and her daughter Bhuvaneswari filed separate execution petitions in E.P.Nos.27 and 28 of 2008 to realize the decree amount. In the meantime, the respondents herein filed I.A.No.991 of 2010 in O.S.No.59 of 2007, and in I.A.No.62 of 2011 in O.S.No.60 of 2007 to condone the delay in seeking to set aside the ex-parte decree passed in the respective suits. The application in I.A.No.991 of 2010 in O.S.No.59 of 2007 was allowed by the learned trial Judge. Now

application in I.A.No.62 of 2011 in O.S.No.60 of 2007 is pending before the same Court.

4.At this juncture, the revision petitioner has filed Tr.O.P.No.72 of 2011 before the Principal District Judge, Cuddalore seeking to transfer the I.A.No.62 of 2011 in O.S.No.60 of 2007 to some other Court in the District on the ground that since the learned District Munsif Court Cum Judicial Magistrate, Thittakudi allowed condone delay petition in I.A.No.991 of 2010 in O.S.No.59 of 2007 and therefore the revision petitioner is apprehending that I.A.No.62 of 2011 in O.S.No.60 of 2007 is virtually same and therefore if the said suit is heard by the same judge i.e the learned District Munsif Court Cum Judicial Magistrate, Thittakudi, the learned Judge would pass the similar order as that of the same in I.A.No.991 of 2010. Therefore, the revision petitioner sought for transfer of I.A.No.62 of 2011 from the file of the learned District Munsif Court cum Judicial Magistrate, Thittakudi to the file of any other Court within the District of Cuddalore.

5.The said application was resisted by the respondent herein that the apprehension of the revision petitioner is unwarranted and

therefore I.A.No.62 of 2011 need not be transferred to some other Court. If the same is transferred it will cause great loss and in convenience to the respondent.

6.The learned Principal District Judge, upon hearing the arguments on either side was pleased to dismiss the Tr.O.P by order and decree dated 20.09.2011. Aggrieved over the same the present Civil Revision Petition is filed.

7.I heard Mr.S.Mani, learned counsel appearing for the revision petitioner and Mr.R.Venkatesan, learned counsel appearing for the respondent and perused the entire records.

8.In this Civil Revision Petition the only question to be decided is whether I.A.No.62 of 2011 is to be transferred from the file of the learned District Munsif Court-cum-Judicial Magistrate, Thitakudi to the file of any other Court within the District of Cuddalore or not? The reason assigned by the revision petitioner for the transfer of the above said application is that the learned District Munsif has allowed the condone delay application in I.A.No.991 of 2010 in O.S.No.59 of 2007 and therefore the learned Judge would allow I.A.No.62 of 2011 also. In

the considered opinion of this Court, the apprehension of the revision petitioner cannot be a ground for transfer of the above said application. The learned Principal District Judge, Cuddalore has rightly held that each case has got its own facts and merits and therefore dismissed the transfer application filed by the revision petitioner. Though the said order does not call for any interference by this Court, however, in the interest of justice, equity, fair play and good conscious it is better to transfer I.A.No.62 of 2011 in O.S.No.60 of 2007 to the file of any other District Munsif Court in Cuddalore District.

9.At this juncture, it is to be pointed out that the transfer of case cannot be ordered mere asking for by the parties concern. In this case, when the revision petitioner sought for transfer of I.A.No.62 of 2011 on the ground of apprehension, though the same cannot be a ground for transfer, but after filing the transfer application it is not proper for the Court below to conduct the case by the same Court. Even after the transfer application, if the learned District Munsif Court, Thittakudi is conducting the case, the mind of the Court would be prejudiced in one way or other. Therefore, I am of the considered view that the order of the learned Principal District Judge, Cuddalore is liable to be set aside and accordingly it is set aside.

10.In the result:

(a) this Civil Revision Petition is allowed and the order and decree dated 20.09.2011 made in Tr.O.P.No.72 of 2011 on the file of the learned Principal District and Sessions Judge, Cuddalore, is hereby set aside and I.A.No.62 of 2011 in O.S.No.60 of 2007 to the file of District Munsif Court-cum-Judicial Magistrate, Thitakudi, is ordered to be transferred to the file of the learned Principal District Munsif, Cuddalore;

(b) further, the learned District Munsif Court-cum-Judicial Magistrate, Thitakudi, is directed to transfer the above said I.A. along with all other related papers to the file of learned Principal District Munsif, Cuddalore, forthwith, on receipt of a copy of this order;

(c) the learned learned Principal District Munsif, Cuddalore, is directed to dispose of I.A.No.62 of 2011 in O.S.No.60 of 2007 within a period of four weeks from the date of receipt of the records from the learned District Munsif Court-cum-Judicial Magistrate, Thitakudi. No cost. Consequently, connected miscellaneous petition is closed.

vs

08.02.2017

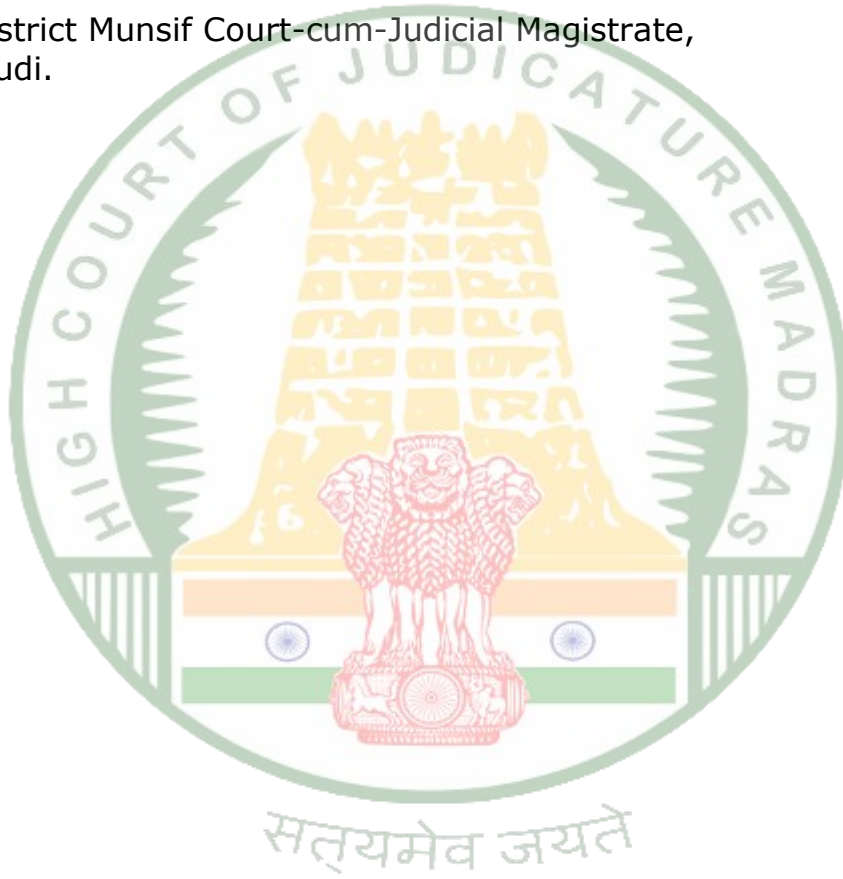
Note:Issue order copy on 17.11.2017

Internet:Yes

Index:Yes

To

- 1.The Principal Sessions Judge,
Cuddalore.
- 2.The District Munsif Court-cum-Judicial Magistrate,
Thitakudi.



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M.V.MURALIDARAN, J.

VS



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