

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.01.2017

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

Tr.C.M.P.No.441 of 2016
and
C.M.P.No.11916 of 2016

R.Sivasubramaniyan

.... Petitioner

vs.

1. R.Periasamy
2. G.Guhan
3. Hemalatha

4. Arulmigu Bhaghavathiamman Deity
presently rep.by Dharmakartha
K.P.Chinuswamy

5. Arulmigu Akkaraipatti Ponkaliasman
Arulmigu Akkaraipatti Muthusamy
and Arulmigu Molipili Annamar Swami
Deities rep.by the Executive Officer
Arulmighu Varadharaja Perumal
Vagaiyara Thirukkoil Devasthanam
Vengumbur, Unajlour via
Erode Taluk.

.... Respondents

Transfer Civil Miscellaneous Petition filed under Section 24 (1) (b) of the Code of Civil Procedure praying to withdraw the suit in O.S.No.156 of 2014 along with all I.As.pending on the file of the I Additional District Court, Erode to the file of this Court and try and dispose of the same.

For Petitioner : Mr.P.V.S.Giridhar
For Respondents : Mr.R.Marudhachalamoorthy
for R1
Mr.R.Karthikeyan for RR2 &3
R4 - No appearance
R5 - Mr.S.Murugan

ORDER

Heard the learned counsel appearing for the petitioner, the learned counsels appearing for respondents 1 to 3 and 5. Despite, notice being served, there is no representation on behalf of the fourth respondent either in person or through the counsel.

2. For the sake of convenience, the parties are referred to here under according to their litigative status and ranking in the suit.

3. The brief facts of the case is as follows:

(i) The first defendant is the petitioner in this transfer civil miscellaneous petition seeking transfer of the suit filed by the plaintiff/first respondent in O.S.No.156 of 2014 from the District Court, Erode to the file of this Court.

(ii) The suit is filed for partition based on the Will alleged to have been executed by the mother of the plaintiff bequeathing her interest in the father's property in his favour and also seeking separate possession.

(iii) The written statement was also filed by the first defendant. At this juncture, the present petition has been filed seeking transfer of the said suit from the file of the District Court, Erode to this Court.

3. The following issues are raised by the learned counsel for the petitioner/ first defendant in this Transfer Civil Miscellaneous Petition:

(i) It is stated that very many important questions of law of public importance in which large number of people interested and determination of them is necessary for the disposal of the said suit.

(ii) The validity as to Explanation (1) to Section 59 of the Indian Succession Act, 1925 is raised.

(iii) Another issue of public importance, alleged is that the State is losing revenue to the extent of few crores of rupees every year through Court fees, on account of litigants in the State paying the Court fees under incorrect provisions of the suits for partition.

According to the first defendant, the above said issues are important legal aspects, which has to be decided by this Court as the same would cut short delay and promote public justice. The first defendant also claims the suit to be the quasi public litigation and prays that only the High Court has to try the

same, which can lay down the law. Besides, the above said legal issues involved, the first defendant has also raised several other issues regarding the probate or letters of administration and the jurisdiction of the Sub Courts to decide the validity of the Will etc.

4. The properties shown in the suit schedule are the separate properties of the father of the both the first defendant and the plaintiff. The allegation of the first defendant is that the plaintiff is making all attempts to grab the properties left by the father for himself without sharing it with the other legal heirs. It is also alleged that the plaintiff is threatening the transfer petitioner. It is stated that the first defendant and his family members are staying in the village with constant fear that the plaintiff may attack them at any time. The first defendant, being a cardiac patient, his health condition is also being taken advantage of by the plaintiff. It is further alleged that the plaintiff had attempted on the life of the first defendant on two occasions, forcing him to give complaint to the police and according to the first defendant, based on the said complaint, police protection is also granted to him. Though the plaintiff is educated because of his political connection, he has been committing crimes and offences.

5. According to the first defendant, his mother was also wrongfully confined by the plaintiff unmindful of her age. After the death of the father, the plaintiff has been taking law into his hands and trying to usurp the entire properties and that he is also taking steps to settle all his personal properties in the name of his wife and son. It is also stated that the first defendant also has filed an OP under Section 113 of CPC for appointing Administrator General of Tamil Nadu to take over possession of all the properties of the estate of the deceased. Without pursuing the same, the suit has been filed.

6. In addition to the above allegations, the first defendant has raised various other allegations also and sought for the transfer of the suit to the file of this Court.

7. A counter affidavit has been filed by the respondents 1, 2, 3 and 5 separately.

8. The main contention of the respondents/plaintiff and other defendants is that the question of transfer on the above

frivolous grounds raised by the first defendant does not at all arise as the suit is one for partition. The properties are situated within the territorial jurisdiction of the District Court, Erode and the same cannot be tried before any other Court. It is further stated that the value of the suit is Rs.15,37,000/- only and unless the transferor Court and the transferee Court have the jurisdiction to try the same, the same cannot be transferred or if there is any connected proceeding is pending before the transferee Court, the suit may be transferred to the same court.

9. The next contention of the respondents/plaintiff and other defendants is that even presuming that the question of law as raised by the first defendant/petitioner is tried in the suit, it will be binding only on the parties to the judgment.

10. At this juncture, Section 24 of the Code of Civil Procedure could usefully be referred to:

"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) re-transfer 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 an order of transfer, either re-try 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 deemed to 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]."

11. The sub clause (1)(b) referred to in the above section, specifically empowers the High Court to withdraw any suit to any court subordinate to it, which is competent to try or dispose of the same or re-transfer the same for trial or disposal to the Court from which, it was withdrawn. The power is given to transfer to any Court subordinate to it and competent to try.

12. Reliance was placed on the following judgments of the Hon'ble Supreme Court and the relevant portions are extracted here under:

(i) (2008) 3 SCC 659 [Kulwinder Kaur @ Kulwinder Gurcharan Singh vs. Kandi Friends Education Trust and others].

"23. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to the plaintiff or the defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested

in the litigation; "interest of justice" demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a "fair trial" in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order."

(ii) (1980) 1 SCC 601 [Baselius Mar Thoma Mathews I and others vs. Paulose Mar Athanasius and Others].

"8. We do not for a moment countenance the suggestion that the District Judge is not equal to the legal intricacies or factual challenges of these or other cases, the procedural law having vested him with unlimited jurisdiction and the High Court having committed these cases to his seisin. Hints of bias are also out of bounds, as we have indicated. If these suits, at this stage of early arguments which have yet to begun effectively, are transferred to the High Court a spell of few years in the stressful life of the litigation will be saved. Taking copies of a bunch of decrees by the District Court, followed by preliminaries and filing of appeals, service of notices and other ripening processes, may consume considerable time and money. And then the High Court would begin de novo the entire arguments and appreciation of the whole range of facts and law as in first appeal it is bound to do in a case of this type. Where lakhs of people are excitedly affected by the ultimate decision and the fate of a few hundred suits and a thousand churches is to be settled by a single adjudication, the elimination of some years and duplication of hearings and full arguments, at the commanding height of the High Court, is a wise measure, all things considered. The social savings of abbreviation of law's delays are important to social justice."

13. A transfer would not be readily granted for any fancied notion of a litigant. It should be granted to ensure that the applicant gets fair and impartial justice. The yardstick is only interest of justice. Question of law would certainly arise from each case. However, seeking transfer on the ground that the decision by the High Court would cut short delay and lay

down law cannot be entertained, especially in a civil dispute between private individuals. Another reason is that the transfer of the case to the High Court will cast indirectly doubt upon the integrity or competence of the Judge from whom the matter is transferred. It is therefore, a serious matter which calls for circumspection. Mere presumption or possible apprehension cannot be a ground for transfer. Transfer of suit must not be made in a light hearted manner.

14. The expression "interest of justice" means promotion or advancement of cause of justice. The petitioner being the dominus litus is entitled to file a suit in any forum allowable by the Code. The

Court should not lightly change the forum and compel him to go elsewhere. No doubt the paramount consideration is justice according to law and not being dominus litus alone. The jurisdiction under Section 24 of Code of Civil Procedure should be exercised with extreme caution and the plaintiff ordinarily cannot be stopped from pursuing the remedy where he has a right of action against the defendant.

15. While considering the extra ordinary original jurisdiction of the High Court, the same is ordained by Clause 13 of Letters Patent Act. Clause 13 of the Letters Patent Act reads as follows:

"And We do further ordain, that the said High Court of Judicature at Fort William at Madras shall have power to remove, and to try and determine, as a Court of Extra- Ordinary Original Jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Presidency of Madras, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceeding of the said High Court. "

A reading of above clause, contemplates two contingencies for the High court to exercise Extra Ordinary Jurisdiction namely, on

agreement of parties to the effect that the suit be transferred. Secondly, for the purpose of justice. It further stipulates that the reason for so doing to be recorded on the proceedings in the High Court.

16. In this regard, the decision of the Hon'ble Supreme Court reported in (1988) 4 SCC 358 [Abhay Singh Surana vs. Indian Rayon and Industries Ltd.,] could fruitfully be cited.

"10. The aforesaid clause has been the subject matter of various adjudications and interpretations by the High Court. It enables the High Court to exercise the extraordinary original civil jurisdiction. The Letters Patent contemplates two contingencies for the High Court to exercise extraordinary jurisdiction, namely, on agreement of the parties to that effect, the suits be transferred and, secondly, for the purpose of justice. It further stipulates that the reasons for so doing to be recorded on the proceedings in the High Court. In this case, apparently the suits were transferred by agreement of the parties. There is, however, great deal of difference as to what that agreement was. On behalf of the appellant, it is contended that there was simply an agreement to have the two suits transferred to the High Court for quick and expeditious disposal. It was, further, asserted that in view of the long delay in filling the written statements, it was, therefore, advisable to have the suits disposed by the High Court."

17. In the instant case, which is a fight between two brothers, one of them said to be a lawyer himself, over property decision, other than the allegation that there is life threat and complaint has been lodged with the police, there is nothing to show that the parties are aggrieved by the Court. The merits of the matter cannot be gone into in the transfer petition. It is a partition suit with properties and witnesses within the jurisdiction of the Court where the suit is instituted. It was filed in 2014 and none of the parties even alleged delay on the part of the Court.

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18. For the foregoing reasons, the Transfer Civil Miscellaneous

Petition is not maintainable on the grounds mentioned. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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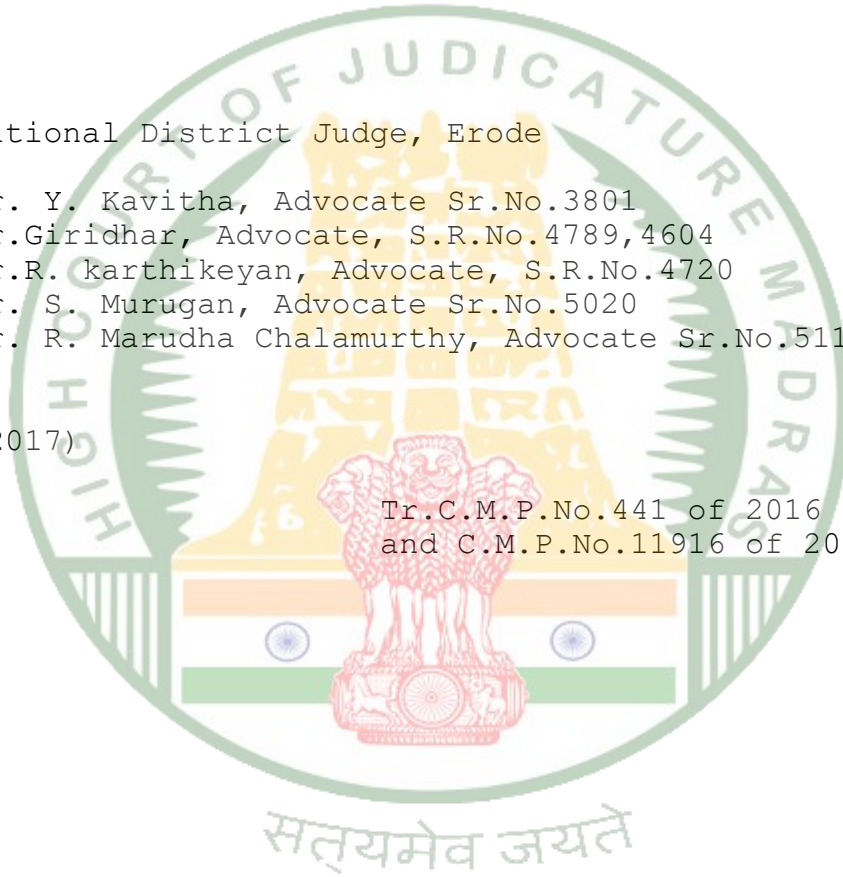
Sub Assistant Registrar

To
The I Additional District Judge, Erode

+1cc to Mr. Y. Kavitha, Advocate Sr.No.3801
+3cc to Mr.Giridhar, Advocate, S.R.No.4789,4604
+1cc to Mr.R. karthikeyan, Advocate, S.R.No.4720
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rsy(CO)
md(08/02/2017)

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