

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2017

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

Tr.C.M.P.No.691 of 2016

and

C.M.P.No.18045 of 2016

Perumal G.Jayashankar

...

Petitioner

Versus

1. Raghupathy
2. Gnana Soundari
3. Santhi

...

Respondents

Prayer: Petition filed under Section 24 of the Civil Procedure Code praying to withdraw the O.S.No.11977 of 2010, pending on the file of XIX Additional Judge, City Civil Court, Chennai and transfer the same to some other Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.V.Lakshmi Narayanan
for Mr.S.E.Prabu

For Respondent : Mr.M.Muthappan (R1)
(R2 to R4 exparte
before the Lower Court)

ORDER

This petition has been filed by the petitioner/Plaintiff seeking to withdraw the O.S.No.11977 of 2010, pending on the file of XIX Additional Judge, City Civil Court, Chennai and transfer the same to some other Additional Judge, City Civil Court, Chennai.

2. The suit in O.S.No.11977 of 2010, is filed for delivery of possession in respect of Plaint 'B' Schedule property and for permanent injunction. Admittedly, the evidence is over and arguments were also advanced and the matter was posted for Judgment on 20.07.2016 for pronouncing Judgment. However, on the said date, the Judgment was not pronounced and posted to 29.07.2016 and again to 05.08.2016, when the case was suo-motu reopened by the learned Trial Judge for some clarifications. The further arguments were advanced on 29.08.2016 and the again it was posted to 05.10.2016, for pronouncing Judgment. It is stated in the affidavit that in the meanwhile, the Hon'ble Judge who heard the argument was transferred and the present Judge had taken charge. Hence, the matter was suo-motu reopened and posted for arguments and posted on 21.10.2016, which was further adjourned to

24.10.2016 and again to 04.11.2016. At this juncture, the petitioner/plaintiff had filed I.A.Sr.No.1 of 2016 on 04.11.2016 to reopen evidence of D.W.1 and for further cross examination. When the matter was called notice was requested to be issued. But, the applications were rejected by learned Judge, because the arguments were over long back and it was posted for Judgment. The learned Judge also seem to have posted the matter for completing the arguments on 14.11.2016.

3. The proceedings dated 4.11.2016 has filed by the counsel for the petitioner, which is as follows:

" Defendant present. Plaintiff side counsel present. Unmarked SR 0001 and 0002 are rejected today. A perusal shows that written arguments are already filed by the defendant. Counsel for the though present, refused to lead his arguments. Hence for Judgment on merits by 14.11.2016. Un-numbered Applications in S.R.No.0001 and 0002 in O.S.No.11977 of 2010 dated 04.11.2016 COMMON ORDER. These unnumbered applications are filed by the plaintiff in the suit at this fag end of the entire proceedings which have culminated even as early as 05.04.2016 when the suit stood posted for arguments to 13.04.2016. After several adjournments, the plaintiff side arguments was heard on 08.06.2016. Their further

arguments was heard on 09.06.2016. Thereafter, again the suit stood posted for the defendants side arguments on 20.06.2016. When the defendants side arguments was heard in part on 28.06.2016, further arguments of defendants was heard on 04.07.2016, reply arguments was heard and suit stood posted for judgment. Thereafter, at the instance of the court, clarification had been heard and after the new Judge assumed charge, it was suo moto reopened to hear both the sides and both counsel were present. Thereafter several adjournments were given to hear both the sides arguments, but despite a conditional order passed on 21.10.2016, eventhough the first defendant was present, the plaintiff was absent and despite passed over the plaintiff side did not come forward to argue and so for hearing the arguments of plaintiff side it was again adjourned to 24.10.2016 specifically mentioning as N.F.A(No further Adjournment), if not to post for judgment. On 24.10.2016, upon an Adjournment petition filed by the plaintiff, it was again adjourned to 04.11.2016 and today the first defendant Ragupathy was present the whole day and by 3.00 p.m. both side counsel were present, but the plaintiffs counsel was not willing to argue and stated that the bundle is missing in the office and filed the above applications to recall D.W.1 for further cross examination by the plaintiff. A thorough perusal shows that the suit is of the year 2001 and it is one for Declaration, Recovery of

possession, Permanent injunction and for costs. D.W.1 was examined in cross in piecemeans on various dates such as 4.10.2012, 9.10.2012, 18.10.2012, 31.10.2012, 6.11.2012, 19.11.2012, 28.11.2012, 12.12.2012, 21.12.2012, 04.01.2013, 21.1.2013, 12.2.2013, 19.2.2013, 28.2.2013, 7.3.2013, 13.3.2013, 15.03.2013.... 20.08.2014, 11.2.2014, 13.10.2015 and finally on 5.4.2016. Therefore, the Plaintiff can buy no such of imagination pray for further examination of D.W.1 in cross. This is nothing but sheer abuse of process of law when the counsel for the plaintiff himself stated that they have lost the case bundle in their office. Our Honourable Higher Forums of Judiciary had come down heavily upon asking and granting of repeated adjournments especially in the long pending cases. Very recently our Apex Court had in 2016 4 L.W.447 in Ram Rati Vs Mange Ram (d) Through Lrs. and others, by Their Lordships Justices Kurian Joseph J. and Rohinton Fali Nariman J. had held that Rule 17 cannot be invoked to fill up omission in evidence let by witnesses and that no prejudice is caused to either party is not a permissible ground in invoke rule 17. Therefore an application like this, which is frivolous and unfounded on the face of it needs only to be rejected in limini. In view of the foregoing, these unnumbered applications in S.R.Nos.0001, 0002 are rejected."

4. The said order passed by the learned Judge had triggered Tr.C.M.P. being filed in this Court.

5. In paragraph 7 of the affidavit, the petitioner has stated that the present Presiding officer is casting aspersions upon him, as if the petitioner is protracting the case, which is causing apprehension to the petitioner that any decision likely to be taken, may cause prejudice to his interest and therefore he seeks for transfer. From the above dates and events, it can be seen that the matter has been pending for more than 7 years. After completion of the arguments, it is only the change of Judicial Officer that has made the petitioner to file the petition for transfer. If it is only reason given by the petitioner that the present officer may decide in biased manner, the matter may be transferred to any other judicial officer with a timeframe for hearing arguments. However, the said transfer may be allowed on condition that the Petitioner/ Plaintiff should complete the argument on the date that may be fixed by this Court, without further trying to prolong the case by filing Interlocutory Applications.

6. Accordingly, this Transfer Civil Miscellaneous Petition is disposed of and the suit in O.S.No.11977 of 2010 pending on the file of XIX Additional Judge, City Civil Court, Chennai is transferred to the file of XVIII Additional Judge, (Fast Track Court IV) Chennai, on condition that the matter shall be posted for arguments on 04.12.2017 and the parties are directed to complete the arguments on or before 08.12.2017. The Presiding Officer shall pronounce the Judgment as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed. For reporting compliance, post on 22.12.2017.

28.11.2017

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Note: Issue order copy on 29.11.2017.

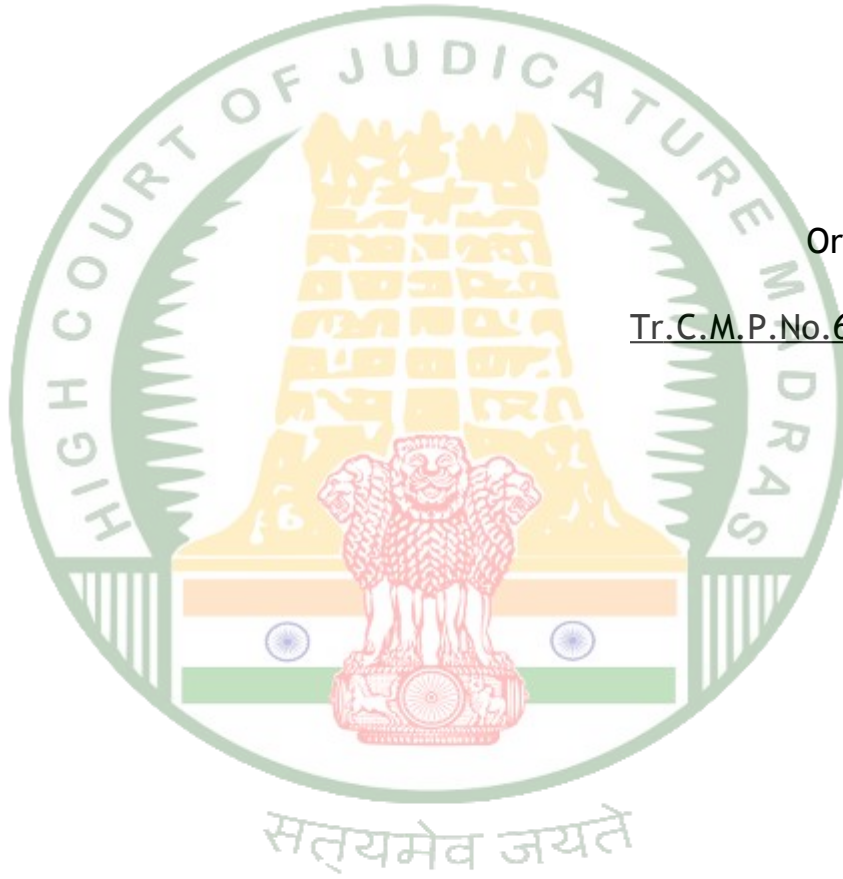
To

1. The XIX Additional Judge, City Civil Court, Chennai
2. The XVIII Additional Judge, (Fast Track Court IV) Chennai.

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PUSHPA SATHYANARAYANA, J

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Order made
in
Tr.C.M.P.No.691 of 2016

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28.11.2017