

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P.No.826 of 2016

and

C.M.P.Nos.20466 of 2016 & 2186 of 2017

The Tamil Nadu Waqf Board,
Rep. by its Chief Executive Officer,
1, JafferSyrang Street,
VallalSeethakadhi Nagar,
Chennai - 600 001. Petitioner

Vs.

1. Mahaboosa Begum
2. Fisal Muhammed Khan
3. Bagath Mohammed Khan
4. Soorsha Makkan Wakf
Rep. by its Executive Officer,
Having office at 17, Venkatesan Street,
Chepauk, Chennai - 600 005. Respondents

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw and transfer the suit, O.S.No.4555 of 2000 from the file of the I Assistant City Civil Court cum Waqf Tribunal at Madras to any other court.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : Mr.S.Victor Prasath
for R1 to R3
No Appearance for R4

O R D E R

This Transfer Petition is filed to withdraw and transfer the suit in O.S.No.4555 of 2000 from the file of the I Assistant Judge, City Civil Court cum Waqf Tribunal at Madras to any other court.

2. Petitioner is the first defendant, respondents 1 to 3 are the plaintiffs and 4th respondent is the second defendant in O.S. No.4555 of 2000 pending on the file of the I Assistant

Judge, City Civil Court cum Wakf Tribunal at Madras. The respondents 1 to 3 filed suit for declaration that the suit properties are not wakf properties and directing the petitioner to delete the suit properties from the list of wakf properties.

3. The petitioner and the 4th respondent filed written statement and are contesting the suit. Earlier an ex-parte decree was passed. On petition filed by the petitioner, the ex-parte decree was set aside. The order setting aside the ex-parte decree was challenged by the respondents 1 to 3 in this court in CRP and the said CRP was dismissed. The respondents 1 to 3 let in evidence and closed their side and the suit was posted for evidence on behalf of the petitioner and 4th respondent. The petitioner and 4th respondent informed the learned Judge that the officials of the petitioner were deputed on escort duty on pilgrimage to Huj and they could not let in evidence. In these circumstances, the 4th respondent examined his Executive Officer as DW1. After conclusion of DW1's evidence, the petitioner deputed one Janab Mahmood Hameem to give evidence on behalf of the petitioner. He filed proof affidavit on 28.11.2016 and the suit was posted to 29.11.2016. DW1 was present on that day in the court but suddenly he suffered giddiness and left the court campus. He was advised to take bed rest for 20 days and the same was informed to the learned Judge. In spite of the same, the learned Judge posted the suit to 01.12.2016, 03.12.2016 and 06.12.2016. A certificate issued by the Government Doctor was produced and the suit was posted to 21.12.2016. The learned Judge doubted the genuineness of the certificate and observed in the open court that the Doctor who issued the medical certificate must be examined.

4. On 21.12.2016, DW2 was not present. In spite of best efforts by the counsel for the petitioner and petitioner, they could not contact DW2. A petition for adjournment was filed. The learned Judge dismissed the application for adjournment and closed the evidence on behalf of the petitioner and posted the suit to 23.12.2016 for filing written arguments. The petitioner has filed the present Transfer Petition on the ground that the learned Judge has shown undue haste to decide the suit. The adjournment sought for by the petitioner on valid grounds were rejected by the learned Judge without assigning any reason. Even though on 29.11.2016 the learned Judge was informed that DW2 was suddenly fallen ill and he was advised to take bed rest for 20 days, the learned Judge posted the matter on 01.12.2016, 03.12.2016 and 06.12.2016 for cross examination of DW2. When the medical certificate of Government Doctor was produced, the learned Judge doubted the genuineness of the certificate and on 21.12.2016, the learned Judge dismissed the adjournment petition on the ground that suit is pending from the year 2000, without considering the illness of DW2 which was substantiated by medical certificate issued by Government Doctor. The petitioner has to let in

evidence with regard to revenue records and the learned Judge hastily closed the evidence on behalf of the petitioner and directed the parties to file written arguments, without giving any opportunity to make oral submissions. In view of the above submission, the petitioner has reasonable apprehension that they will not get justice from the present learned Judge and prayed for transfer to some other court.

5. The respondents filed counter affidavit alongwith vacate stay petition and submitted that the suit filed by them is pending for more than 16 years due to delay in tactics adopted by the petitioner and the 4th respondent. All the old suits must be disposed of expeditiously. Earlier also, the petitioner filed Tr.CMP No.77 of 2010 through 4th respondent for transferring of the suit by making allegations against the then learned Judge before the Principal Judge, City Civil Court, Chennai. The said petition was dismissed on 23.03.2010. Again the petitioner has come out with the present transfer petition making baseless allegations against the learned Judge and the transfer petition is liable to be dismissed.

6. The petitioner is the first defendant in the suit and DW1, the witness of second defendant/4th respondent was examined first and it was adjourned on several occasions for cross examination. The respondents 1 to 3 were regularly attending the court to cross examine the witnesses. The petitioner examined DW2 and witness was repeatedly absent from 28.11.2016 after filing proof affidavit and marking documents. On 08.12.2016, when the petitioner filed petition for adjournment with medical certificate, the suit was adjourned to 21.12.2016. Even on that day, DW2 was not present and adjournment petition was dismissed by the learned Judge on the ground that the suit is 16 years old. Only on the memo filed by the petitioner that his witness will not be available till 10.10.2016, the witness of fourth respondent/second defendant was examined first.

7. The petitioner has filed petition for re-opening and re-calling and application for appointment of Advocate Commissioner to record the evidence of DW2. The petitioner has not mentioned filing of these petitions in the transfer petition. After filing the proof affidavit and documents on 28.11.2016, DW2 was absent on 01.12.2016, 03.12.2016 and on 07.12.2016. On all these hearings, the petitioner did not file medical certificate while seeking adjournment. On 08.12.2016, when the petitioner filed adjournment petition with medical certificate, the learned Judge adjourned the suit to 21.12.2016. It is not correct to state that inspite of filing medical certificate, the learned Judge adjourned the suit on 01.12.2016, 03.12.2016 and 06.12.2016. 06.12.2016 was a holiday and hence the suit was called on 07.12.2016. Even on that day, the petitioner did not produce any medical certificate. The petitioner has not given any valid reason for the absence of DW2 on 21.12.2016. Even according to the

petitioner, inspite of their best efforts, they could not contact DW2. The learned Judge closed the evidence of DW2 only after giving ample opportunity to the petitioner to complete the evidence of DW2. The petitioner has made baseless allegations and a reading of extract of 'A' diary would reveal that these allegations are contrary to the facts.

8. Heard the learned counsel for the petitioner, respondents and perused the materials available on record.

9. The petitioner is seeking transfer of O.S.No.4555 of 2000 from the file of I Assistant Judge, City Civil Court cum Wakf Tribunal, Chennai to any other court. The ground on which the petitioner is seeking such a transfer is that the learned Judge has in hasty manner closed the evidence of DW2, the witness of petitioner, which shows undue haste to dispose the case. Both these allegations are not substantiated by materials on record.

10. The respondents 1 to 3 filed an extract of 'A' diary which shows that the petitioner has filed medical certificate showing illness of DW2 only on 08.12.2016. Considering the adjournment petition with medical certificate, the learned Judge adjourned the suit to 21.12.2016 for cross examination of DW2. A reading of the said extract of 'A' diary shows that the allegation of the petitioner that inspite of medical certificate being filed, the learned Judge adjourned the suit from 29.11.2016 to 01.12.2016, 03.12.2016 and 06.12.2016 is not correct and is contrary to 'A' diary extract filed by the learned counsel for the respondent in the typed set of papers.

11. The contention of the petitioner that the learned Judge is showing undue haste to dispose the suit is also untenable. The suit is of the year 2000 and the learned Judge has taken steps to dispose the suit during December 2016 as the suit is pending for more than 16 years. The learned Judge cannot be faulted with for taking earnest steps to dispose the oldest suit, as expeditiously as possible. Further, the petitioner has already filed petition for re-opening the case and recalling DW2 and application for appointment of Advocate Commissioner to record the evidence of DW2. The petitioner has not mentioned filing of these application in the affidavit filed in support of the transfer petition. Any petition for transfer must be considered by the court cautiously and must transfer a suit or proceedings from one court to another only on proven serious charges against the learned Judge. Any transfer from one court to another will cause stigma on the Presiding Officer. It is to be noted that on earlier occasion also, the 4th respondent filed transfer petition before the Principal Judge, City Civil Court, Chennai and the same was dismissed.

12. Considering all the above facts, I hold that the petitioner has not made out any case for transferring

O.S.No.4555 of 2000 from the file of the I Assistant Judge, City Civil Court cum Waqf Tribunal at Madras to any other court. However, it is open to the petitioner to prosecute the applications filed by him to re-open and re-call and examine DW2 on commission. The learned Judge is directed to consider the same on merits and pass orders in accordance with law.

13. In the result, this transfer petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpl/jv

To

The I Assistant Judge,
City Civil Court cum Wakf Tribunal,
Chennai.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.40408

+1cc to Mr.S.Victor Prasath, Advocate, S.R.No.40447

Tr. C.M.P. No.826 of 2016

RK(CO)
CA(13/06/2017)

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