

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2017

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P.Nos.837 & 838 of 2016

&

C.M.P.Nos.20597 & 20598 of 2016

Tr.C.M.P.No.837 of 2016

1.V.Radhakrishnan (Deceased)
2.R.Suganthi
3.V.Ananthi ... Petitioners

Vs.

K.Ramesh ... Respondent

Tr.C.M.P.No.838 of 2016

1.K.Ramadoss
2.V.Radhakrishna (Deceased)
3.R.Suganthi
4.V.Ananthi
5.A.Anu Rekha
6.P.Anitha ... Petitioners

Vs

1.K.Ramesh
2.K.Rajendiran ... Respondents

Prayer: Petitions have been filed under Section 24 of C.P.C. Praying to withdraw A.S.No.184 of 2016 (Tr.CMP.No.837/2016) and A.S.No.58 of 2016 (Tr.CMP.No.838/2016) on the file of VIth Additional City Civil Court, Chennai and to transfer the same to any other competent District Court, Chennai.

For Petitioners : Mr.AR.L.Sundaresan, S.C.
(Tr.CMP.No.837/2016 for Mr.Venkatasamy Babu
(Tr.CMP.No.838/2016) Mr.Venkatasamy Babu

For Respondents in
both Tr.CMPs : Mr.G.Anbumani

COMMON ORDER

Since the issues involved in both Tr.CMPs are the same, these petitions are disposed of by this common order.

declare that the respondents are absolute owners of the suit property and directing the petitioners to vacate and handover the possession of the suit property.

3. On the other hand, the petitioners herein filed a suit in O.S.No.5333 of 1993 on the file of the III Assistant City Civil Court, Chennai, seeking for the relief of permanent injunction restraining the respondents from interfering with their possession and enjoyment of the suit property. Subsequently, both the suits were tried together and the trial Court by the common Judgment and decree dated 11.12.2015, decreed the suit filed by the respondents in O.S.No.3413 of 1993 and dismissed the suit in O.S.No.5333 of 1993, filed by the petitioner.

4. As against the common Judgement and decree of the trial Court dated 11.12.2015 in O.S.No.3413 of 1993 and O.S.No.5333 of 1993, the petitioners have preferred two appeals in A.S.Nos.58 and 184 of 2016 on the file of the VIth Additional City Civil Court, Chennai. Pending the said appeals, the respondents herein have filed E.P.No.975 of 2016 on the file of IXth Assistant, City Civil Court, Chennai, seeking for execution of decree dated 11.12.2015 passed in O.S.No.3413 of 1993. The petitioners also filed CMP No.357 of 2016 in A.S.No.184 of 2016, to stay all further proceedings in respect of judgment and decree dated 11.12.2015 passed in O.S.No.3413 of 1993. Apart from the same, the petitioners filed CMP Nos.357, 1341, 1340 and 1426 of 2016 seeking various reliefs. According to the petitioners, the first Appellate Court refused to hear and pass orders in CMPs filed by the petitioners and the VI Additional City Civil Court, Chennai, adjourned the cases, insisting upon the parties to argue in the main appeals.

5. In the mean time, the respondents herein filed CRP Nos.3529 and 3530 of 2016 before this Court to direct the first Appellate Court to dispose of A.S.Nos.58 and 184 of 2016 at an early date. This Court, by the order dated 02.12.2016, directed the VI Additional City Civil Court, Chennai, to dispose the pending Miscellaneous Petitions in Appeals on or before 13.12.2016 and further, directing the first appeals to be disposed of on or before 31.03.2017. The learned Senior Counsel for petitioners contended that the VI Additional City Civil Court, Chennai, passed the orders in CMP Nos.357, 1341, 1340 and 1426 of 2016 on 09.12.2016 and produced a copy of 'A' diary extract in the typed set of papers in the above Tr.CMPs and contended that the order of the first Appellate Court is against the letter and spirit of the orders passed by this Court and he would further contend that the first Appellate Court refused to grant interim order while pending execution proceedings and insisted upon the appellants to appear on 04.01.2014 and advance arguments on the same day in the main appeals, without going into the merits in the miscellaneous petitions. The learned Senior Counsel would further submit that pursuant to a specific direction by this Court in CRP Nos.3529 & 3530 of 2016 dated 02.12.2016 to

dispose the miscellaneous petitions, the first Appellate Court has not chosen to dispose the same instead directed the appellants to argue the main appeals. As the first Appellate Court deliberately avoided to grant interim stay in CMP No.357/2015, the petitioners have come out with the present Transfer Civil Miscellaneous Petitions.

6. The learned counsel for the respondents contended that the learned VI Additional City Civil Judge, considered the CMPs on merits and passed detailed order and produced a copy of the said order. The learned counsel submitted that the learned VI Additional Judge complied with the order of this Court. If the petitioners are aggrieved by the said order, the petitioners have to challenge the said order in appropriate forum. The petitioners are making baseless and frivolous allegations against the learned Judge, which has to be rejected by this Court.

7. Heard the learned Senior counsel for the petitioners as well as the learned counsel for the respondents.

8. The contention of the learned Senior Counsel for the petitioners is that in spite of direction given by this Court, the learned Ist Appellate Judge failed to dispose the CMPs with ulterior motive and insisting on the petitioners to argue the main Appeals itself and produced extract of 'A' Register to substantiate this contention. On the other hand, the learned counsel for the respondents submitted that the learned Judge has complied with the direction given by this Court in CRP Nos.3529 & 3530 of 2016 by directing all the CMPs by the common order dated 09.12.2016 by an elaborate speaking order giving cogent and valid reason and produced a certified copy of the said order. From the said order, it is clear that the learned Judge has complied with the order of this Court by disposing all CMPs by the order dated 09.12.2016 and posted the Appeals on 04.01.2017 and directed the Appellants to appear for final hearing. Posting of appeals to 04.01.2017 for final hearing is also in compliance with the direction of this Court to dispose the appeals as expeditiously as possible in any event not later than 31.03.2017. The contention of the learned counsel for the respondents that Order of the learned Judge that CMPs for remanding the matter can be decided only when the appeals are heard on merits and first Appellate Court comes to the conclusion that the matter has to be remanded to Trial Court, has considerable force.

9. From the order dated 09.12.2016, it is seen that the allegations of the petitioner that the learned VI Additional City Civil Judge, has not disposed the CMPs as per the direction of this Court, is contrary to the facts. In fact, the learned Judge has disposed all the applications by common order dated 09.12.2016. A petition for transfer from one Court to another must be considered by the Court cautiously. A proceeding cannot be transferred on mere unsustainable allegation by the party since a transfer from one Court to another Court Casts stigma on the Presiding Officer.

10. In the affidavits filed in support of the Tr.C.M.Ps., the petitioners have made various averments making allegations against the Presiding Officer. Further, except making allegation against the Presiding Officer, no other valid ground is made out for transfer.

11. In a judgment of this Court in Durairaj v. S.K.M. Animal Feeds and Foods India Ltd., Erode reported in 2006 (4) MLJ 1641, it was held that allegations that the Presiding Officer who had entertained the witness in his chamber also, not substantiated. In Manoharan v. Enercon (India) Ltd., Bombay reported in 2007 (1) MLJ 420, it was held that contention that the Presiding Officer is biased and refusing long adjournment. Mere allegation against the Presiding Officer itself, cannot be a ground for transfer.

12. Considering all the materials on record, I hold that both the Tr. CMPs are devoid of merits and are dismissed. Consequently, connected miscellaneous petitions are dismissed. No costs. It is admitted by both the parties that the appeals are still pending. In view of earlier direction of this Court in CRP Nos.3529 and 3530 of 2016, I direct the learned VI Additional City Civil Court, Chennai, to dispose of the First Appeal Nos.58 and 184 of 2016 on or before 31st July, 2017.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The VIth Additional Judge,
City Civil Court,
Chennai.

+1cc to Mr.Venkataswamy, Advocate, S.R.No.25802
+2cc's to Mr.K.Manikandan, Advocate, S.R.Nos.225809 & 25808

Tr.C.M.P.Nos.837 & 838 of 2016
&
C.M.P.Nos.20597 & 20598 of 2016

BR(CO)
CA(12/06/2017)