



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :12.09.2017
Pronounced on:24.10.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR.C.M.P (MD) Nos.365 and 366 of 2017 and
CMP (MD) .Nos.7509 and 7510 of 2017
and 8381 and 8382 of 2017

TR.C.M.P (MD) No.365 of 2017:

The Chairman,
Pastorate Committee,
St.George's Church,
Main Guard Square,
Near YMCA, Madurai.

... Petitioner/1st Defendant

Vs

1.M.Gnanaraj,
S/o.Mr.Marimuthu,
The Pastorate Committee Member,
For himself and on behalf of the
other members of the
St.George's Church

... 1st Respondent/Plaintiff

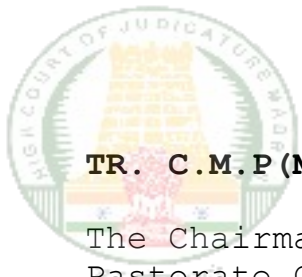
2.The Secretary,
The Pastorate Committee,
St.George's Church,
Main Guard Square,
Near YMCA, Madurai - 1.

3.The Bishop,
Church of South India,
Madurai and Ramnad Diocese,
Having his office at 162,
East Veli Street, Madurai.

... Respondents 2 and 3/
Defendants 2 and 3

Prayer: Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code, to withdraw O.S.No.157 of 2017, on the file of the Principal District Munsif, Madurai and transfer it to the file of any competent Court.

For Petitioner	: Mr.M.M.Manivel Pandian
For R1	: Mr.F.X.Eugene
For R2	: No appearance
For R3	: Mr.M.Rajaraman



TR. C.M.P (MD) .No.366 of 2017

The Chairman,
Pastorate Committee,
St.George's Church,
Madurai.

... Petitioner/1st Defendant

Vs.

1. C.John Victor

2. C.D.Ratna Kumar,
For themself and on behalf of the
members of the
St.George's Church, Madurai.

... 1st & 2nd Respondent/Plaintiffs

3. The Secretary,
The Pastorate Committee,
St.George's Church,
Madurai.

3. The Bishop,
Church of South India,
Madurai and Ramnad Diocese,
Having his office at 162,
East Veli Street, Madurai.

... Respondents 3 and 4/
Defendants 1 and 3

Prayer: Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code, to withdraw O.S.No.271 of 2017, on the file of the Principal District Munsif, Madurai and transfer it to the file of any competent Court.

For Petitioner: Mr.M.M.Manivel Pandian
For R1 and R2 : Mr.F.X.Eugene
For R3 : Private Notice
For R4 : Mr.M.Rajaraman

COMMON ORDER

Since the issues involved in both the Transfer Civil Miscellaneous Petition are inter-related to each other, both the petitions are taken up together and decided by this common order.

2. Tr.C.M.P.(MD)No.365 of 2017 is filed by the petitioner under Section 24 of Civil Procedure Code, to withdraw O.S.No.157 of 2017, on the file of the Principal District Munsif, Madurai and transfer it to the file of any competent Court. Similarly, the petitioner has also filed another transfer Civil Miscellaneous Petition under Section 24 of Civil Procedure Code, to withdraw



O.S.No.271 of 2017, on the file of the Principal District Munsif, Madurai and transfer it to the file of any competent Court.

3. The short facts which are necessary to dispose of the transfer civil miscellaneous petitions are discussed hereunder:-

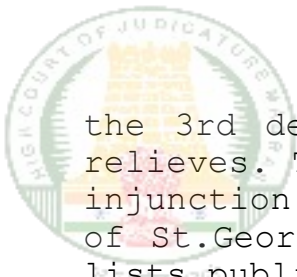
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3.1. The petitioner would aver among other things that he is the Head Pastor and Chairman of the St.George's Church which according to him is an Anglican Autonomous Non Episcopal Church built during the British Period. It is further averred that the church is having more than eight branch churches in and around Madurai. The Bishop of CSI Madurai Ramnad Diocese would usually give conformation to the petitioner congregation by conducting conformation service in the petitioner church. Similarly, the marriage bans would be announced in both the CSI Churches and in the church, if one party to the marriage belongs to petitioner church and another party marriage belongs to CSI Church. It is also averred that except these two admitted fact there is no other connection to the petitioner's church and the respondent's church.

4. According to the petitioner, one Mr.Gnanaraj filed suit in O.S.No.367 of 2016 on the file of the Learned Principal District Munisif, Madurai praying for disqualification of the petitioner from continuing as Priest of the St.George's Church. The interim prayers were dismissed by the Learned Principal and District Munsif and the said suit is pending.

5. Pending the above suit, the said Gnanaraj in a representative capacity filed another suit in O.S.No.157 of 2017 for mandatory injunction directing the Bishop to interfere in the election process right from the preparation of the electoral rolls up to the announcement of the successful candidates within the time frame or appointing advocate commissioner to conduct the election process right from the preparation of the electoral rolls up to the announcement of the successful candidates within the time frame. He also filed an application for temporary injunction restraining the respondents from conducting election of St.George's church, Madurai for the period of 2017 - 2020 till the disposal of the commission petition filed by him.

6. The petitioner further submits that in the meantime one Mr.C.John Victor and Mr.CD.Retna Kumar, who are the members of the church have also filed another suit in O.S.No.271 of 2017 in a representative capacity for declaring the voter's list published by the church as illegal on the ground that it is non-est, invalid and not in consonance with the bye-law and consequential injunction restraining the defendants 1 and 2 their men and agents from in any way conducting the election on the basis of the illegal voter's lists published on 6.4.2017 and for the decree for mandatory injunction directing the election for the pastorate committee of the St.George's Church, Madurai to be conducted by an advocate commissioner to be appointed by this Court under the supervision of



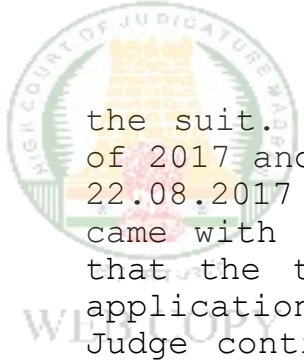
the 3rd defendant after finalizing the voter's list and connected relieves. They have also filed interim application for the temporary injunction restraining the respondents from conducting the election of St. George's church, Madurai on the basis of the alleged voter's lists published on 6.4.2017 till the disposal of the suit.

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7. In both the suits, the present petitioner is the first defendant and the Secretary, Pastorate Committee is the second defendant and the Bishop, church of South India, Madurai is the third defendant. According to the petitioner, with some illegal intention of merging the petitioner's church with C.S.I. Church, the plaintiffs have filed the afore-said vexatious suits for their personal gains. The petitioner further states that interim orders were also passed by the learned Munsif in I.A.No.435 of 2017 in O.S.No.157 of 2017 and I.A.No.408 of 2017 in O.S.No.271 of 2017 dated 21.4.2017 respectively. Against which, the petitioner filed civil miscellaneous appeals before the Sub Judge, Madurai with a delay condonation petition and the same is pending for adjudication. In the afore-said back ground, both the transfer civil miscellaneous petitions have been filed praying for the afore-stated relief.

8. Now, the grievance of the learned counsel for the petitioner is that the interlocutory applications filed by the rival groups are pending for orders before the Court below. It is the case of the petitioner that he has objected to the appointment of an advocate commissioner by filing necessary counters. Further, the interlocutory applications for permission to conduct the elections on the basis of the corrected voters list was also pending. According to him, the Presiding Officer expressed openly in the Court that he was having heavy pressure to decide the case and without understanding the church practice, he passed the interim order also and trying to decide the petition for appointment of advocate commissioner. It is also the grievance of the petitioner the Court below did not give time for conciliation and if sufficient time is given to the parties, definitely, they would have entered into compromise. Eventually, he would submit that the learned Judge by allowing the interlocutory applications of the rival groups, the Court below will grant the relief as prayed for in the main suits itself filed by them. The petitioner further submits since the apprehensions of the petitioner are genuine, he prays this Court for transfer of the afore-said suits filed against the petitioner. In support of his contention, the petitioner relied on the judgment reported in 1998 (II) CTC 308, Arulmigu Alavandar Charities, Mahabalipuram, represented by its, Executive Officer vs. R.Kanniappan and seven others and AIR 1966 Supreme Court 1418 (V 53 C 276) Gurcharan Dass Chandha vs. State of Rajasthan.

9. The learned counsel appearing for the rival groups would submit that through their vacate stay petitions that even though the suit was ready for trial, after filing the written statement, the petitioner in the transfer petitions is trying to drag on the proceedings by making all hurdles in getting along with the trial of

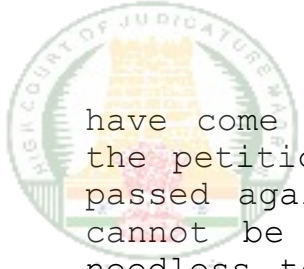


the suit. Therefore, the Court below was forced to hear I.A.No.241 of 2017 and posted the case for orders on 02.08.2017, 11.08.2017 and 22.08.2017 and after getting all those adjournments, the petitioner came with the present petition under Section 24 of C.P.C presuming that the trial Judge had already determined in the interlocutory application itself a conclusion and therefore, if the trial Court Judge continuous to hear the case, he would express the same view and hence, stating the untenable reason, he sought for transfer of the suits from the Principal District Munsif Court, Madurai to any other same Court of the same pecuniary jurisdiction. This prayer by the petitioner is totally against law and concept of the contemplated provision of Section 24 of CPC. Simply because passing an order in any interlocutory application would not make any impact in the trial. He would further submit that the trial Court as Presiding Officer could not predict as he has taken a view as per the necessity and balance of convenience in the interlocutory petition, but where he has to pass a verdict judgment after a full trial. According to him, the petitioner's expectation is beyond the scope of law and hence, that need not be a ground for transfer. The very intention of the first respondent is to file the transfer civil miscellaneous petition is to stall the proceedings of the trial Court. The relief sought for transfer of the case is not a bona fide one but a mala fide one and prays for the dismissal of the transfer petitions.

10. Heard the learned counsels appearing for the respective parties and perused the materials available on record.

11. The law with regard to transfer of cases is well settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail on the basis of surmises and conjectures. No doubt, the petitioner is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the Court to be a reasonable apprehension.

12. Here is the case where the learned counsel for the petitioner himself admitted in the affidavits filed in support of the petitions that if sufficient time is given to the petitioner as well as his rival groups, there is possibility of arriving at an amicable settlement between the parties, which according to this Court, is nothing but to drag on the proceedings, the petitioners



have come up with the present Civil Revision Petitions. Further, the petitioner has presumed that an adverse order may likely to be passed against him by the Court below citing flimsy reason, which cannot be ground for to entertain these applications. Further, needless to mention that on assumption, no petition can be filed. The suit in question will be decided by the Court below depending upon the facts and circumstances of the case as well as the merits of the case alone and not as alleged by the petitioner in the affidavits filed in support of the petitions. When the suits are ripe for trial, granting an interim order would have a great impact on the main suit. There is no valid ground raised by the petitioner to grant the relief sought for by the petitioner in both the transfer civil miscellaneous petitions. It is also seen that the petitioners have filed appeal against the interim applications with the petition to condone the delay which itself shows that the intention of the petitioner is to drag on the matter endlessly and if at all, the petitioner is aggrieved by the interim order, they would have filed an application immediately and got it numbered and could have obtained the relief, but, the petitioner has not done so. Further, the judgments relied on by the petitioner is no way helpful to the case of the petitioner, but, it supports the case of the respondents.

13. In the light of the discussion, both the transfer miscellaneous petitions stand dismissed. The Court below is directed to dispose of the suits pending on the file of the Principal District Munsif, Madurai, on its own merits and in accordance with law, as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order, without being influenced by any of the observations made hereunder. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif, Madurai.

+ 2 CC TO Mr.FX.EUGENE, ADVOCATE IN SR No. 83408, 83409

SSM

TE/JC/SAR-I : 13/11/2017 : 6P/4C

order made in
TR.C.M.P (MD) Nos.365 and 366 of 2017
24.10.2017