

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.343 of 2017

and C.M.P.No.6701 of 2017

1.Ganga Bai
2.Murugan
3.Thara

... Petitioners

Vs.

1.Devan
2.Krithika @ Vijayalakshmi
3.Anjali Devi

4.The Manager
Cheyyar Co-operative Sugar Mills
Cheyyar Nagar
Cheyyar Taluk
Thiruvannamalai District.

... Respondents

Prayer:- Petition has been filed under Section 21 of C.P.C., to withdraw O.S.No.20 of 2016 pending on the file of the Principal District Court, Tiruvannamalai and transfer the same to the file of the City Civil Court, Chennai.

For Petitioner : Mr.T.S.Rajamohan

For R2 and R3 : Mr.A.K.Rajaraman for
Mr.R.Sathishkumar

For R1 and R4 : No appearance

O R D E R

This petition is filed to withdraw O.S.No.20 of 2016 pending on the file of the Principal District Court, Tiruvannamalai and transfer the same to the file of the City Civil Court, Chennai.

2.The petitioners are the defendants 1 to 3, respondents 1 to 3 are the plaintiffs and fourth respondent is the fourth defendant in O.S.No.20 of 2016 on the file of the Principal District Court, Tiruvannamalai. The respondents 1 to 3 filed the said suit for partition and other reliefs. Originally, the suit was filed before the Subordinate Court, Cheyyar and subsequently, it was transferred to the District Court, Tiruvannamalai, due to pecuniary jurisdiction.

3.The learned counsel for the petitioner submitted that the

present Tr.C.M.P. is filed seeking transfer of suit O.S.No.20 of 2016 from the file of the Principal District Court, Tiruvannamalai, to the file of the City Civil Court, Chennai, on the ground that some of the properties are situated at Arumbakkam within the jurisdiction of the City Civil Court, Chennai and another property is situate at Cheyyar. The movable properties mentioned in the 'C' schedule are not available to the knowledge of the respondents 1 to 3. He further submitted that only to harass the petitioners, the respondents 1 to 3 have included the said properties in the suit. The suit properties are not properly valued. Even if the value given by the respondents 1 to 3 is correct, their share is only 5/6th share and the District Court has no pecuniary jurisdiction.

4.The learned counsel for the respondents 2 and 3 contended that the present Tr.C.M.P. filed under Section 21 C.P.C. is not maintainable. The objection should be raised before the concerned trial Court and prayed for dismissal of the Tr.C.M.P. In support of his contention, he has relied on the following judgment reported in AIR 1981 SC 1683 (Koopilan Uneen's daughter Pathumma and others v. Koopilan Uneen's son Kuntalan kutty dead by legal heirs, and others);

"3.We have heard learned counsel for the parties on the question of jurisdiction. An unfortunate aspect of this litigation has been that although that question has been agitated already in three Courts and has been bone of contention between that parties for more than a decade, the real provision of law which clinches it was never put forward on behalf of the appellant before us nor was adverted to by the learned District Judge or the High Court. That provision is contained in sub-section (1) of Section 21 of the Civil P.C. Which runs thus:

"21.(1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice."

In order that an objection to the place of suing may be entertained by an appellate or revisional Court, the fulfilment of the following three conditions is essential:

- (1) The objection was taken in the Court of first instance.
- (2) It was taken at the earliest possible

opportunity and in cases where issues are settled, at or before such settlement.

(3) There has been a consequent failure of justice.

All these three conditions must co-exist.

Now in the present case condition Nos.1 and 2 are no doubt fully satisfied; but then before the two appellate Courts below could allow the objection to be taken, it was further necessary that a case of failure of justice on account of the place of suing having been wrongly selected was made out. Not only was to attention paid to this aspect of the matter but no material exists on the record from which such failure of justice may be inferred. We called upon learned counsel for the contesting respondents to point out to us even at this stage any reason why we should hold that a failure of justice had occurred by reason of Manjeri having been chosen as the place of suing but he was unable to put forward any. In this view of the matter we must hold that the provisions of the sub-section above extracted made it imperative for the District Court and the High Court not to entertain the objection whether or not it was otherwise well founded. We, therefore, refrain from going into the question of the correctness of the finding arrived at by the High Court that the Manjeri Court had no territorial jurisdiction to take cognizance of the application praying for final decree."

5. Heard the learned counsel for the petitioners as well as the respondents 2 and 3 and perused the materials available on record. Though notice was served on the respondents 1 and 4 and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

6. The Hon'ble Apex Court in the judgment relied on by the learned counsel for the respondents 2 and 3 have held that the objection with regard to place of suing must be taken in the Court of first instance before settlement of issues and it must be proved consequent failure of justice.

7. The petitioners are seeking transfer of O.S.No.20 of 2016 on the file of the Principal District Court, Tiruvannamalai, to the file of the City Civil Court, Chennai, on the ground that the District Court, Tiruvannamalai has no pecuniary and territorial jurisdiction to entertain and decide the suit filed

by the respondents 1 to 3. This issue cannot be decided in the present Tr.C.M.P. The petitioners have to raise this objection before the District Court, Tiruvannamalai and if the learned District Judge comes to the conclusion that the District Court, Tiruvannamalai, has no pecuniary or territorial jurisdiction, the plaint will be returned to the respondents 1 to 3 to be presented before the proper Court. On facts, the learned District Judge comes to the conclusion that the District Court has pecuniary or territorial jurisdiction, the suit will be decided on merits and in accordance with law.

8. In view of the above, the Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

kj

To

1. The Principal District Judge, Tiruvannamalai.

2. The Principal Judge, City Civil Court,
Thiruvannamalai

+1 cc to M/s.R.Sathishkumar Advocate sr 27157

Tr.C.M.P. No.343 of 2017
and C.M.P.No.6701 of 2017

gmI (co)
aa27/04/2018

WEB COPY