

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.778 of 2017

and C.M.P.No.15816 of 2017

S.J.Prakash

... Petitioner

Vs.

1.Gnanasekar

2.G.Kavitha

... Respondents

Prayer:- Petition has been filed under Section 24 of C.P.C., to withdraw A.S.No.1 of 2011 pending on the file of the Subordinate Court, Tambaram and transfer the same to any other Subordinate Court.

For Petitioner : Mr.P.L.Narayanan

For Respondents : Mr.T.Thiyagarajan

O R D E R

This petition is filed to withdraw A.S.No.1 of 2011 pending on the file of the Subordinate Court, Tambaram and transfer the same to any other Subordinate Court.

2.The petitioner is the appellant and respondents are the respondents in A.S.No.1 of 2011 on the file of the Subordinate Court, Tambaram. The petitioner has come out with the present Transfer Civil Miscellaneous Petition to transfer the said Appeal from the file of the Subordinate Court, Tambaram to any other Subordinate Court.

3.According to the petitioner, there are conflicting views in the report of the Advocate Commissioner. The petitioner has filed I.A.No.52 of 2017 for appointment of an Advocate Commissioner in the Appeal in A.S.No.1 of 2011. The petitioner and respondents filed written arguments in the Appeal and arguments were advanced before the earlier Judicial officer. After transfer of earlier Judicial Officer, no oral arguments were advanced before the present Judicial Officer. The petitioner filed a memo on 01.09.2017, pointing out that no oral arguments were advanced and also sought for disposal of I.A.No.52 of 2017. While so, on 04.09.2017, the learned Judge posted the main appeal for orders and judgment. The learned Judge posted the appeal on 08.09.2017 for arguments. On

08.09.2017, the learned counsel for the petitioner wanted to advance the arguments in I.A.No.52 of 2017. The learned Judge passed over the matter and in the evening the learned counsel for the petitioner came to know from the Court diary that "judgment already dictated to the steno. Steno is on leave from 06.09.2017 to 12.09.2017. Hence judgment by 13.09.2017." In view of this order, the petitioner apprehended that the learned Judge is biased and judgment would not have been dictated as mentioned in the Court diary.

4.The learned counsel for the petitioner reiterated the averments in the affidavit and in support of his contentions, relied on the judgment reported in (1992) 2 SCC 676 (Pushpa Devi Saraf and another Vs. Jai Narain Parasrampur and others):

"10.We, however, feel that the learned Presiding Officer has been unduly affected by the allegations leveled against him, as would be evident from his report. In this view of the matter, we are inclined to think that in the interest of the learned Presiding Officer himself, the suit may be sent to another Court. We, accordingly, request the learned District Judge, Kanpur to transfer the said suit (Suit No.537 of 1984 on the file of VII Additional District Judge, Kanpur) to such other Additional District Judge, as he may designate in his behalf. Such transferee-Court shall proceed with the suit expeditiously as directed by this Court in its order dated August 14, 1991 quoted herein above."

5.The learned counsel for the respondents denied all the allegations made by the learned counsel for the petitioner and contended that written arguments were filed in the main appeal in the year 2014 and therefore, there is no error in the order dated 08.09.2017 and already Advocate Commissioner inspected the property and filed his report. The Advocate Commissioner was examined before the Trial Court. Based on the evidence of the Advocate Commissioner and the report filed by him, the suit filed by the petitioner was dismissed and only to drag on the proceedings in the appeal, the petitioner has filed I.A.No.52 of 2017 and prayed for dismissal of the Transfer Civil Miscellaneous Petition.

6.Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

7.The grievances of the petitioner is that when hearing the arguments in I.A.No.52 of 2017 and appeal in A.S.No.1 of 2011, the learned Judge posted the appeal for judgment. This reason for transferring appeal from Subordinate Court, Tambaram to some other Subordinate Court is not valid. Instead the learned Judge is directed to hear I.A.No.52 of 2017 and pass orders on merits

and in accordance with law as expeditiously as possible, in any event, not later than eight weeks from the date of receipt of a copy of this order. The learned Judge is also directed to permit the petitioner and respondents to advance their arguments, hear the Appeal and dispose of the same as expeditiously as possible thereafter.

8.The judgment relied on by the learned counsel for the petitioner is not applicable to the facts of the present case.

9.With the above direction, this Transfer Civil Miscellaneous petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)
//True Copy//
Sub Assistant Registrar

gsa

To

The Subordinate Judge,
Tambaram.

+1 cc to M/s.P.L.Narayanan Advocate sr 26517
+1 cc to M/s.T.Thiyagarajan Advocate sr 26132

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