

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P.No.813 of 2017
and C.M.P.No.16823 of 2017

P.Sundararajan .. Petitioner/Plaintiff
Vs.

1.K.Periyasamy
2.P.Kamalanathan
3.M.Kandasamy
4.V.Palani

5.The Branch Manager,
Canara Bank Seerapalli Branch,
Seerapalli, Atur Main Road,
Devathanmpudur, Rasipuram Taluk,
Namakkal District.

6.The Tahsildar,
Rasipuram Taluk,
Namakkal District.

7.The Assistant Engineer,
Tamil Nadu Electricity Board,
T.Jedarpalayam,
Rasipuram Taluk,
Namakkal District.

8.The Sub-Registrar,
Namagiripettai,
Sub-Registrar Office, सत्यमेव जयते
Namagiripettai,
Rasipuram Taluk,
Namakkal District. ... Respondents/Proposed parties in
I.A.284/16 in O.S.52/16

9.Balamurugan
Inspector of Police,
Namagiripettai P.S.
Now working at Pallipalayam P.S
Tiruchengode Taluk,
Namakkal District. .. Respondents/Proposed party
in I.A.61/17 in OS.52/16

PRAYER: This petition has been filed under Section 24 of C.P.C
to withdraw the suit O.S.No.52 of 2016 pending on the file of
the Sub Court, Rasipuram and transfer the same to the file of
the Sub Court, Salem.

For Petitioner : Mr.V.Sekar

For RR1 & 3 : Mr.J.Prithivi
for Mr.P.Parthi Kannan

For RR2 & 4 : Left

For R5 : No Appearance

For RR6 to 8 : M/s.A.Madhumathi
Additional Government Pleader (CS)

For R9 : Dispensed with

O R D E R

The present Transfer Civil Miscellaneous Petition is filed to withdraw the suit O.S.No.52 of 2016 pending on the file of the Sub Court, Rasipuram and transfer the same to the file of the Sub Court, Salem.

2.According to the petitioner, he has filed the suit O.S.No.52 of 2016 against the respondents 1 and 2 for declaration and permanent injunction restraining the 2nd respondent from in any way dispossessing the petitioner. The petitioner has filed I.A.No.284 of 2016 to implead the respondents 3 to 8 as defendants 3 to 8 in the said suit and I.A.No.61 of 2017 to implead 9th respondent as 9th defendant in the said suit. Both the Interlocutory Applications are pending. The second respondent in the suit was set exparte. The respondents 1 to 3 are represented by counsel. In view of the fact that the second respondent was set exparte in the suit and respondents 3 to 9 are yet to be impleaded, notice to the respondents 4 to 9 are dispensed with, as 3rd respondent has entered appearance through counsel.

3.According to the petitioner, the partition deed dated 26.04.2007 in question is sham and nominal and it was executed to show the solvency of the 2nd respondent to enable him to go to U.S.A. After execution of the said deed, the attitude of the respondents 1 and 2 changed and the petitioner was threatened that he would be dispossessed from the house where he is residing. On 22.08.2016, at the instigation of his brother/2nd respondent, maternal uncle/3rd respondent, his father/1st respondent and mother, broke open the lock of his residence at T.Pachudayampalayam, Rasipuram Taluk, Namakkal District and took away all the original documents and certificates viz., Aadhar card, Pan card, original passport, Bank passbook, Cheque books, case bundles, Court uniform and original Driving Licence, etc., On 12.07.2017, the respondent received a call from the mobile number 9087424566 at about 7.45 p.m from some unknown person and he was threatened of physical harm. The petitioner gave complaint to the Inspector of Police, Rasipuram Police Station. First Information Report

was registered in Crime No.507/17 against the person who had called him from the mobile No.9087424566 and the investigation is pending. In the circumstances, he could not go to his native place to conduct the case and hence prayed for Transfer of the Suit, O.S.No.52 of 2016 from the file of the Sub Court, Rasipuram to the file of the Sub Court, Salem.

4.The respondents 1 and 3 filed counter affidavit and denied all the allegations made in the affidavit filed by the petitioner. The respondents 1 and 3 also denied the contention of the petitioner on merits with regard to the partition and settlement of the property in favour of the second respondent. As far as this Transfer Civil Miscellaneous Petition is concerned, the learned counsel for the respondents 1 and 3 contended that no incident took place on 22.08.2016 as alleged by the petitioner. The petitioner has not given any complaint against the 1st respondent and petitioner's mother. Similarly, it is not correct to state that the petitioner was threatened by the hooligans of the respondents 1 and 3 on 12.07.2017 in front of the Court building. The petitioner has filed private complaint and the same was closed after investigation. The petitioner filed petitions in various forums and also filed Crl.M.P.No.4371 of 2017 under Section 156(3) of Cr.P.C on 17.07.2017 and has not mentioned about the alleged anonymous call on 12.07.2017 giving threat to him on 12.07.2017. The petitioner is a practising Advocate in Salem and Namakkal Districts. Even after filing Transfer Civil Miscellaneous Petition, he is appearing regularly before all the Courts, including the Court at Rasipuram. Only to harass the respondents 1 and 3 and to drag on the matter, the petitioner who is a practising Advocate is filing number of frivolous petitions and prayed for dismissal of the above Transfer Civil Miscellaneous Petition.

5.The learned counsel for the petitioner filed typed set of papers and contended that the petitioner has filed number of complaints.

6.Heard the learned counsel for the petitioner, the respondents 1 and 3 as well as the learned Additional Government Pleader (CS) appearing for the respondents 6 to 8 and perused the materials available on record. Though notice has been served on the 5th respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

7.The petitioner has filed the present Transfer Civil Miscellaneous Petition on the ground that there is life threat to him, if he goes to his native place to conduct the case. The petitioner has mentioned two specific incidents to substantiate his case. Only with regard to alleged threat over phone, he has given complaint to the police, for which investigation is pending. The petitioner has also filed private complaint against the respondents 1 and 3. The

petitioner has admitted that the said complaint was closed after investigation and petitioner also filed objection.

7(a).The contention of the learned counsel for the respondents that the petitioner has not given any complaint against the respondents 1 and 3, his mother for the alleged incident happened on 22.08.2016 and petitioner is appearing regularly before the Court at Rasipuram by filing vakalat and only to drag on the proceedings, the petitioner has come out with the present Transfer Civil Miscellaneous Petition, has considerable force.

8.In view of the fact that the petitioner is appearing before the Court at Rasipuram as an Advocate by filing Vakalat and for the reasons stated above, the Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Rasipuram.

2.The Tahsildar,
Rasipuram Taluk,
Namakkal District.

3.The Assistant Engineer,
Tamil Nadu Electricity Board,
T.Jedarpalayam,
Rasipuram Taluk,
Namakkal District.

4.The Sub-Registrar,
Namagiripettai,
Sub-Registrar Office,
Namagiripettai,
Rasipuram Taluk,
Namakkal District.

+lcc to Mr.P.Parthikannan, Advocate SR.NO.40190
+lcc to Government Pleader SR.NO.40350

VGII(CO)
sm:20.8.2018

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and C.M.P.No.16823 of 2017