

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Tr.C.M.P.Nos.188 to 190 of 2018
and C.M.P.Nos.4973 and 4975 of 2018
C

- 1.Minor Subash
- 2.Minor Iniya

.. Petitioners in
all Tr.C.M.Ps.

(Minor rep. By their natural
guardian/next friend mother, Vijaya)

Vs.

- 1.Devi Priya
- 2.Minor Gokul
Rep. By Next friend
Mother Selvarani
- 3.Nallammal
- 4.Thangamani
- 5.Selvarani

.. Respondents in
Tr.C.M.P.No.188/2018

- 1.Rajendran
- 2.Nallammal
- 3.Thangamani

.. Respondents in
Tr.C.M.P.No.189/2018

- 1.Nallammal
- 2.Thangamani
- 3.R.Suresh
- 4.G.P.Varadarajan

.. Respondents in
Tr.C.M.P.No.190/2018

COMMON PRAYER: Petitions filed under Section 24 of the Civil Procedure Code, to withdraw O.S.Nos.130, 50 and 54 of 2011 pending on the file of the Principal District Court, Namakkal and transfer the same to any other competent Court within or outside Namakkal.

For Petitioners : Mr.S.Ramachandran
(In all Tr.C.M.Ps.)

Tr.C.M.P.No.188/2018

For RR1 and 5 : No appearance

For R2 : Minor represented by R1

For RR3 and 4 : M/s.C.Prakasam

Tr.C.M.P.No.189/2018

For R1 : M/s.R.Hemalatha

For RR2 and 3 : M/s.C.Prakasam

Tr.C.M.P.No.190/2018

For RR1 and 2 : M/s.C.Prakasam

For R3 : No appearance

For R4 : No appearance

C O M M O N O R D E R

These Transfer Civil Miscellaneous Petitions have been filed to withdraw O.S.Nos.130, 50 and 54 of 2011 pending on the file of the Principal District Court, Namakkal and transfer the same to any other competent Court within or outside Namakkal.

2.The issues and the parties involved in all the Transfer Civil Miscellaneous Petitions are one and the same and therefore, they are disposed of by this common order.

3.According to the petitioners, this Court directed the Principal District Judge, Namakkal to conduct all the three suits viz., O.S.Nos.130, 50 and 54 of 2011 simultaneously. The contention of the petitioners is that, trial in O.S.No.130 of 2011 filed by them commenced on 05.01.2017 when they filed proof affidavit. The respondents 3 and 4 who are the defendants in the suit filed a memo on 02.01.2018 stating that P.W.1(guardian of petitioners), Attestors, Scribe of the Will dated 25.07.2009 has to be examined on the same day. The said memo was taken on file and the same was ordered. The petitioners took steps to issue

witness summons to Varatharaj, one of the Attestors. The process server could not serve the summons as Attestor was not in station. The learned Principal District Judge, Namakkal without giving any opportunity closed plaintiffs' side evidence. The first respondent attained majority and was declared as major. She did not adduce any evidence. Without setting her exparte, evidence on her behalf was closed.

4.The second respondent is minor represented by his mother and next friend Selvarani, the 5th respondent in Tr.C.M.P.No.188 of 2018. The counsel for second respondent reported no instructions on 01.03.2018. The learned Principal District Judge, Namakkal without giving opportunity to the petitioners to file application for appointment of guardian for the minor 2nd respondent, appointed an Advocate from the Legal Services Authority to represent him.

5.The petitioners filed applications for re-open and recall of P.W.1 on 02.03.2018 in the open Court. The said applications were numbered and the same are pending. O.S.No.50 of 2011 filed by the first respondent in Tr.C.M.P.No.189 of 2018 against the respondents 2 and 3 therein is posted for arguments. O.S.No.54 of 2011 is posted for evidence on behalf of the defendants. According to the petitioners, the learned Principal District Judge, Namakkal is not giving any opportunity to put forth the case on merits. The petitioners apprehend that they will not get justice in the said Court.

6.The learned counsel for the petitioners submitted that the respondents filed counter affidavit stating that they have no objection in transferring all the three suits to some other Court.

7.The learned counsel for the respondents denied the contention of the learned counsel for the petitioner that the respondents have no objection to transfer all the three suits to some other Court.

8.Heard the learned counsel for the petitioners in all Transfer Civil Miscellaneous Petitions, respondents 3 and 4 in Tr.C.M.P.No.188/2018, 1st respondent and respondents 2 & 3 in Tr.C.M.P.No.189/2018 as well as respondents 1 and 2 in Tr.C.M.P.No.190/2018 and perused the materials available on record. Though notice has been served on the respondents 1 and 5 in Tr.C.M.P.No.188/2018 and 3rd respondent in Tr.C.M.P.No.190/2018 and their names are printed in the cause list, there is no representation for them either in person or through counsel. Though notice has been served on the 4th respondent in Tr.C.M.P.No.190/2018 and he entered appearance

through counsel, today there is no representation for him.

9.From the averments in the affidavit filed in support of the above three Transfer Civil Miscellaneous Petitions, it is seen that the petitioners have come out with the present three petitions on apprehension that they will not get justice if three suits are heard and disposed by the present Principal District Judge, Namakkal. The allegation made by the petitioners are only with regard to procedure followed by the Principal District Judge, Namakkal. This Court by the common judgment dated 13.07.2011 made in C.M.A.Nos.1423 and 1425 of 2011, directed the learned Principal District Judge, Namakkal to dispose of the three suits simultaneously.

10.The first grievance of the petitioners is that the learned Judge did not give any opportunity to the petitioners to let in evidence and closed their side. As far as closing of evidence is concerned the applications filed by the petitioners for re-open and recall of P.W.1 are pending. Other grievance of the petitioners is that without giving any opportunity to them to file application for appointment of guardian of minor second respondent in Tr.C.M.P.No.188 of 2018, the learned Principal District Judge, Namakkal has appointed an Advocate from Legal Services Authority to represent the minor second respondent. These reasons are not valid reasons for transferring all the three suits. On mere apprehension, the petitioners have come out with the present three Transfer Civil Miscellaneous Petitions which are without merits.

11.In view of the above facts, the learned Principal District Judge, Namakkal is directed to hear and pass orders in the applications filed by the petitioners for re-opening and recalling of P.W.1 on merits and in accordance with law within a period of three weeks from the date of receipt of a copy of this order. The learned counsel for the petitioners contended that the 5th respondent is mother of the minor second respondent. It is open to the parties to file application for appointment of guardian of minor second respondent within a period of two weeks from the date of receipt of a copy of this order. If any such application is filed by the petitioners, the learned Judge is directed to hear and pass orders in the said application on merits and in accordance with law within a period of three weeks thereafter.

12.With the above direction, all the three Transfer Civil Miscellaneous Petitions are dismissed. In view of the fact that the suits are of the year 2011, the learned Principal District Judge, Namakkal is directed to take up the suits on the day-to-day basis. The learned Principal District Judge, Namakkal is directed to dispose of the three suits in any event not later

than four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

gsa

Sd/- -

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

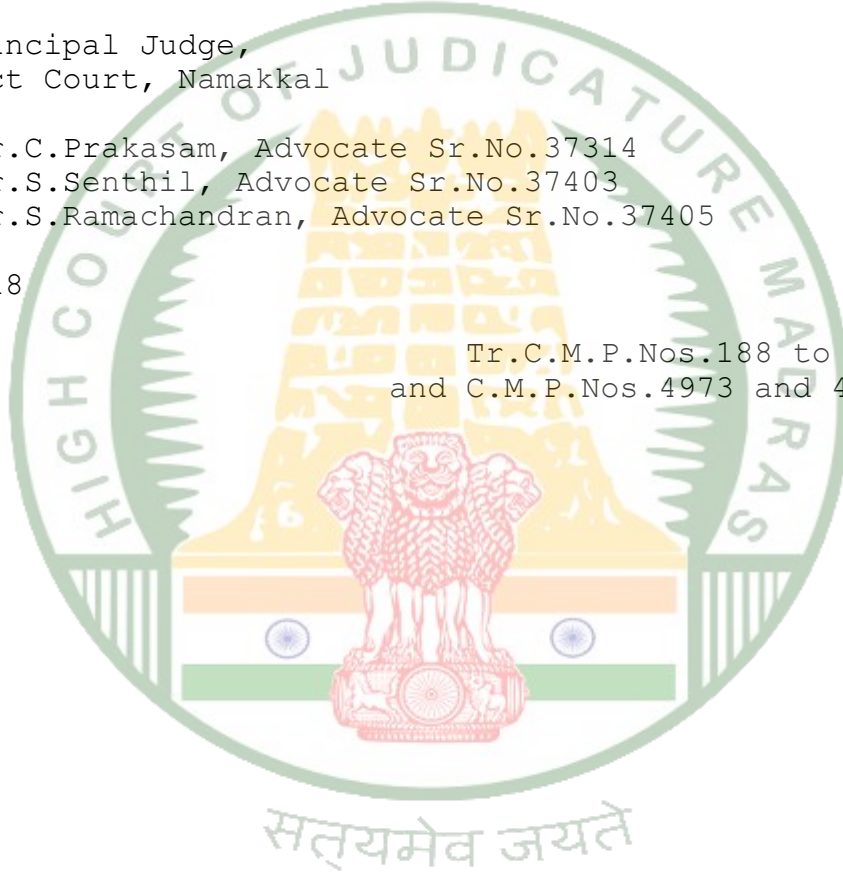
To

The Principal Judge,
District Court, Namakkal

+3cc to Mr.C.Prakasam, Advocate Sr.No.37314
+1cc to Mr.S.Senthil, Advocate Sr.No.37403
+1cc to Mr.S.Ramachandran, Advocate Sr.No.37405

sm:4.7.2018

Tr.C.M.P.Nos.188 to 190 of 2018
and C.M.P.Nos.4973 and 4975 of 2018



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