

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

Tr.C.M.P.No.21 of 2018

and

C.M.P.No.558 of 2018

S.Chandrasekar

... Petitioner

Versus

1. M.Ramachandran (Deceased)

2. P.J.Dravin Paul Raja

... Respondent

Prayer: Petition filed under Section 24 of the Civil Procedure Code praying to withdraw and transfer the appeal bearing A.S.No.219 of 2017 pending on the file of XVI Additional Judge, City Civil Court, Chennai to any other Additional City Civil Court, Chennai.

For Petitioner : Mr.L.Dhamodaran

For Respondent-1: Died

For Respondent-2: Served-No Appearance

O R D E R

The appellant in A.S.No.219 of 2017 on the file of XVI Additional Judge, City Civil Court, Chennai, has preferred the above Tr.C.M.P seeking transfer of the said appeal to any other Additional City Civil Courts at Chennai.

2. The suit is filed by the petitioner herein in O.S.No.7426 of 2006 for specific performance of the agreement of sale dated 15.12.2004. After contest, the said suit was dismissed by the trial Court on 15.12.2004 and the appeal has been preferred by the petitioner. Pending appeal, an application in C.M.P.No.42 of 2017 was taken out for interim injunction restraining the respondent from alienating and encumbering the plaint schedule property, which was also allowed on 16.12.2017.

3. It is stated by the petitioner in paragraph 2 of the affidavit filed in support of the petition that the Presiding Officer had directed them to file the written arguments in the main appeal, so that the appeal itself could be disposed of. It is further stated that copy applications to obtain the certified

copies of the documents and depositions in the suit, were applied recently and the petitioner is yet to get the copies of the same. As the Court insisted on getting along with the appeal, the petitioner has moved this Court for transfer alleging that the Presiding Officer may not refer and appreciate the facts and oral evidence available on record. According to the petitioner, the urgency shown by the Presiding Officer gives an impression that he may not adopt a fair approach to hear and decide the appeal. The appeal itself is filed on 25.10.2017 and the matter was pending on account of interim order. Perhaps, the learned Judge, having gone through the entire papers at the time of passing the interim orders, it would be easy for her to dispose of the appeal at the earliest, as she had already read the papers fully. However, the learned Judge could have granted sufficient time for the parties and counsels to get ready to argue the appeal with all the material papers in hand. The first appellate Court being a final fact finding Court, should have given sufficient opportunities for the parties to discuss the oral and documentary evidence available on record in detail. The parties also need not have unnecessary apprehension merely because the Presiding Officer wanted to dispose of the appeal at the earliest. Transfer cannot be granted on the grounds mentioned in the affidavit.

4. Considering the above facts, it would be appropriate to give sufficient time for the learned counsel on both sides to obtain the certified copies of the required documents from the trial Court and thereafter, prepare the appeal and advance their arguments. Accordingly, three months' time is granted for the learned counsels to obtain necessary copies from the trial Court and get ready to argue the appeal and thereafter, the appeal may be disposed of.

5. With the above observations, Tr.C.M.P. is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते
s/d-

Assistant Registrar (CS IX)

True Copy

Sub-Assistant Registrar

srn

To

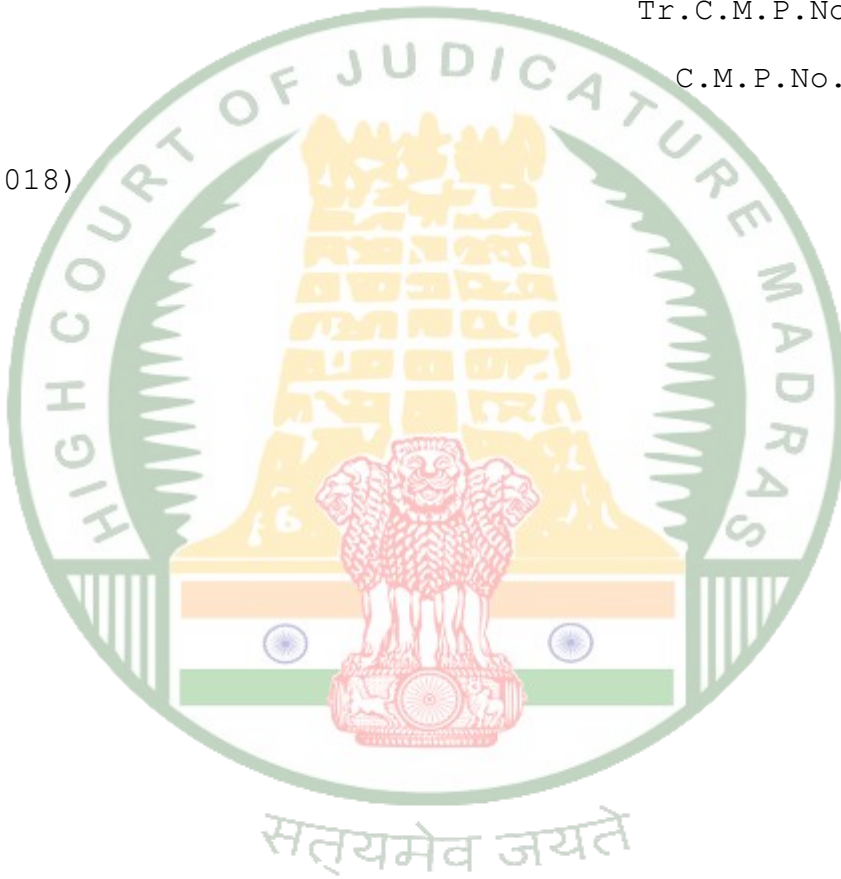
1. The XVI Additional Judge, City Civil Court,
Chennai

2. The Additional City Civil Court,
Chennai.

+1 CC to M/s. L. Dhamodaran, Advocate sr 6729.

Tr.C.M.P.No.21 of 2018
and
C.M.P.No.558 of 2018

KAN(CO)
SP(15/02/2018)



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