

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.373 of 2018
and C.M.P.No.10039 of 2018

K.Palanisamy

... Petitioner

Vs.

K.Paramasivam

... Respondent

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw A.S.No.22 of 2018 pending on the file of I Additional District Court, Salem and transfer the same to any other competent Court at Salem.

For Petitioner : Mr.K.Selvaraj
For Respondent : Mr.D.Shivakumaran

O R D E R

This petition is filed to withdraw A.S.No.22 of 2018 pending on the file of I Additional District Court, Salem and transfer the same to any other competent Court at Salem.

2.The petitioner is appellant and respondent is respondent in A.S.No.22 of 2018 on the file of I Additional District Court, Salem. The petitioner filed the said appeal against the dismissal of order dated 20.04.2018 made in R.E.A.No.233 of 2011 in R.E.P.No.39 of 2004 in O.S.No.414 of 1996. According to the petitioner, an appeal was filed during vacation before the Vacation Court (District Court), Salem. He also filed I.A.No.466 of 2018 in A.S.No.22 of 2018 and the learned Vacation Judge on 24.05.2018 granted interim order deferring the delivery of batta till 08.06.2018 and ordered notice to the respondent. Subsequently, the appeal suit was transferred to the Additional District Court, Salem, on 04.06.2018 and it was posted for hearing on 25.06.2018. On 08.06.2018, the respondent entered appearance through his counsel and filed counter in I.A.No.466 of 2018. The learned Judge adjourned the said I.A. to 11.06.2018 without extending interim order. Again on 11.06.2018, the learned Appellate Judge adjourned I.A.No.466 of 2018 to 13.07.2018 and has not extended interim order.

3. According to the learned counsel for the petitioner, the Bench Clerk of the Court contacted the counsel for the petitioner on 12.06.2018 at 5.30 p.m. and informed him that hearing of the appeal was adjourned to 13.06.2018 and on that day, appeal itself would be heard and decided. On this averment, the petitioner has sought for transfer of A.S.No.22 of 2018 pending on the file of I Additional District Court, Salem and transfer the same to any other competent Court at Salem on the ground that the learned I Additional District Judge, Salem, has prejudged the issue and the petitioner will not get justice from the learned Judge.

4. The learned counsel for the respondent filed counter, typed set of papers and referred to earlier order passed by the Executing Court, this Court and Hon'ble Apex Court and contended that only to drag on the proceedings and deprive the respondent from enjoying the fruits of the decree obtained by him on 28.06.2002, the petitioner is filing number of applications and present Transfer Petition. Before the learned Judge, the petitioner is not willing to argue the matter. The respondent filed the suit in the year 1996 and the suit was decreed on 28.06.2002. The respondent has filed R.E.P.No.179 of 2002 and the Court has executed the sale deed. The present R.E.P.No.39 of 2004 is filed for delivery of possession. The said R.E.P. is pending from the year 2004, as the petitioner is filing number of applications to drag on the proceedings and prayed for dismissal of Transfer Petition.

5. Heard the learned counsel for the petitioner as well as respondent and perused the materials available on record.

6. From the materials available on record, it is seen that R.E.P. No.39 of 2004 is filed for delivery of possession and the same is pending from the year 2004. The appeal is filed against the order passed in R.E.A.No.233 of 2011 in R.E.P.No.39 of 2004 in O.S.No.414 of 1996. The reason given by the petitioner for transfer is that the learned Judge is insisting the counsel appearing for the petitioner for hearing the appeal itself without extending the interim order.

7. In view of the above facts and circumstances of the case, especially considering that R.E.P. is pending from the year 2004, this Transfer Civil Miscellaneous Petition is dismissed as devoid of merits. The learned Judge is directed to dispose of the appeal in A.S.No.22 of 2018 within three months from the date of receipt of a copy of this order. Till the disposal of the First Appeal, there will be an order of stay of delivery for

three months from today and file compliance report before this Court. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District Judge,
Salem.

2.I Additional District Judge, Salem.

3.The I Additional Sub Judge,
Salem.

+1cc to Mr.Mr.K.Selvaraj, Advocate, S.R.No.

+1cc to Mr.Mr.D.Shivakumaran , Advocate, S.R.No.

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