

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2018

PRONOUNCED ON : 11.09.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Transfer CMP.No. 460 of 2018
and
CMP.No.11690 of 2018

P.V.Chandrasekar ... Petitioner
Vs.

1.Vallinayagam (Died)
2.Latha
3.Ragini
4.Seethalakshmi
5.Kalpana
6.The Sub-Registrar,
Office of the Sub Registrar
Kundrathur, Chennai. ... Respondents

Prayer :- Transfer Civil Miscellaneous Petition has been filed under Section 24 of CPC to withdraw the original suit in O.S.No.217 of 2007 pending on the file of the learned II Additional District Judge, Thiruvallur at Poonamallee and transfer the same to any District Court situated in Thiruvallur or to any District Court in any nearby District.

For Petitioner : Mr.R.Bakayaraj

For Respondent : Mr.C.Sadhasivam
Nos.2 to 5

For Respondent : No appearance
No.6. Set exparte vide order
dated 29.08.2018

ORDER

The petitioner, who is the plaintiff in O.S.No.217 of 2007 pending on the file of the Second Additional District Court, Poonamallee, has come forward with the petition seeking to transfer the abovesaid suit proceeding from the file of the Second Additional District Court, Thiruvallur at Poonamallee to any other District Court situated at Thiruvallur or to any District Court in any nearby District.

2.O.S.No.217 of 2007 is found to be laid by the petitioner for partition and separate possession against the respondents. Thus, it is found that the above suit is a 10 year old suit. Such being the

position, all concerned should endeavour to ensure that the abovesaid suit gets concluded at the earliest point of time. As could be seen from the materials placed on record, it is found that when the above suit is taken up for trial, the petitioner has laid a petition for causing amendment to the plaint in I.A.No.254 of 2018 and after contest, it is seen that the abovesaid petition has come to be dismissed by the Court below on 04.04.2018. Thereafter, the matter had been posted by the Court below for trial on 09.04.2018 and subsequently adjourned for trial finally on 16.04.2018.

3.Thus, it is found that the petitioner had full knowledge that the matter stood adjourned for trial on 16.04.2018. However, according to the petitioner, as he was unwell on that date and could not appear and lead evidence and his counsel was also out of station in connection with the Bar Council Election, it is stated that no one appeared before the Court on the said date, when the matter was listed for trial. The grievance of the petitioner is that the Court below instead of dismissing the suit for default, had closed the plaintiff's evidence and posted the matter for recording the evidence of the defendants and according to him, the said procedure had been adopted by the said Court, with a view to pronounce the judgment in the above matter on merits and further, according to him, the Court had openly declared that she would ensure that the abovesaid case would be determined on merits and on that mindset, she had, instead of dismissing the suit for default, on 16.04.2018, had closed the petitioner's evidence and adjourned the matter for the evidence of the respondents and on the adjourned date, it is stated that the Court had proceeded to examine DW1 and marked exhibits through him and adjourned the matter for cross on 04.06.2018. It is stated by the petitioner that on 04.06.2018, his counsel filed a memo before the Court concerned that a complaint had been lodged against the presiding officer in the High Court for the injustice meted out to the petitioner by the concerned Court and accordingly, the Court had adjourned the matter after recording the abovesaid memo and setting forth the abovesaid reasons, it is contended by the petitioner that as the acts of the abovesaid Court i.e. the presiding officer of the said Court being against the interest of the petitioner and seem to be in a pre determined manner to dispose of the case in favour of the respondents and not being impartial and apprehending that he may not get justice from the Court, accordingly, had moved the transfer petition.

4.As regards the abovesaid request of the petitioner for effecting the transfer, the respondents have opposed the same by contending that only with a view to delay the proceedings one way or the other, the present petition has come to be laid by the petitioner and in such view of the matter, it is stated that the transfer request of the petitioner should not be countenanced and further, it is contended that with a view to cast aspersions on the presiding officer, the present petition has come to be laid and therefore, according to the respondents, the present petition should be thrown out.

5.As abovenoted, the partition suit laid by the petitioner is a 10 year old suit. In such view of the matter, the act of the petitioner in seeking amendment to the plaint after a period of 10 years as regards the fixation of the shares, to which, the parties would be entitled to, as rightly determined by the Court below, could be very well adjudicated during the course of trial based upon the materials placed by the respective parties. In such view of the matter, it is seen that the Court below had, accordingly, dismissed the amendment petition preferred by the petitioner. Now, according to the petitioner, he had not been offered adequate opportunity to putforth his arguments in the amendment application. However, as could be seen from the materials placed on record only after hearing the petitioner's counsel as well as the respondents' counsel, the amendment petition has come to be disposed of by the Court below. It is further seen that the attempt of the petitioner to re-open the abovesaid matter ended in vain.

6.Considering the 10 year old case of the petitioner, accordingly, it is seen that the Court below had posted the matter for trial finally on 16.04.2018. It is seen that it is not the case of the petitioner that he was not aware of the suit being posted for trial finally on 16.04.2018. In such view of the matter,

the petitioner should be ready to proceed with the trial and on the other hand, according to him, he was unable to be present before the Court below on that date, as he was unwell. As regards the abovesaid reason, there is no material forthcoming. It is also stated by the petitioner that his counsel could not also be present on that date as he was pre-occupied in connection with the Bar Council Election. Even then, nothing prevented the counsel for the petitioner to depute his junior counsel to apprise the Court in expressing their inability to attend the Court on that particular date. Thus, it is seen that deliberately and without any sufficient cause, the petitioner had remained absent on 16.04.2018 and accordingly, it is seen that as the matter stood adjourned for trial, the Court, on seeing the attitude of the petitioner in not proceeding with the trial and endeavouring to delay the same furthermore one way or the other, accordingly, recording the absence of the petitioner as well as his counsel held and recorded that there is no evidence on the part of the petitioner and closed the evidence of the petitioner and posted the matter for recording the evidence of the respondents on 23.04.2018. The abovesaid order of the Court is now projected by the petitioner as if the Court had a predetermined mind in disposing of the case in favour of the respondents. Now, according to the petitioner, the Court, on coming to know of the absence of the petitioner and his counsel on 16.04.2018, should not have endeavoured to close the evidence of the petitioner and on the other hand, the Court should have only dismissed the suit for non prosecution and on the other hand, erred in closing the evidence of the petitioner and posting the matter for the evidence of the respondents to a further date and thereby, it is his contention that he may not get justice from the concerned Court as the Court is bent upon disposing of the case on merits. In this connection, reliance is placed upon Order 17 Rule 2 CPC. According to the petitioner's counsel, when the petitioner as well as his counsel had failed to appear on 16.04.2018, the only mode that could have been adopted by the Court below is to dispose of the suit for non prosecution as contemplated under Order 9 of the Civil Procedure Code and instead the Court had ordered the closure of his evidence and therefore, the abovesaid act of the Court itself is sufficient to reveal the predetermined mind of the Court in disposing the case on merits and hence, the transfer should be effected to as prayed for.

7. A reading of Order 17 Rule 2 CPC would go to show that on the date, when the matter is fixed for hearing, if any of the party failed to appear, it is seen that as per Order 17 Rule 2, the Court may proceed to dispose of the suit for non prosecution as provided under Order 9 of the CPC or make such other order as it thinks fit. Thus, it is found that the Court is not refrained from making other orders as it deems fit considering the facts and circumstances of the case and in such view of the matter, the contention projected that the Court has no other option to dismiss the suit only for default in the absence of the petitioner and his counsel as such cannot be readily countenanced. This attitude of the petitioner would only go to show that he had predetermined in his mind not to proceed with the suit and endeavoured to see that his suit proceeding does not get concluded one way or the other and accordingly, remained absent on that date deliberately without sufficient cause and thereby he had invited the Court to pass an order of the dismissal of the suit for default. However, it is seen that the Court instead of adopting the abovesaid method, chose to make such other order as it deemed fit as provided under Order 17 Rule 2 CPC and accordingly, knowing the conduct of the petitioner in delaying the proceeding one way or the other and also noting that the suit laid by the petitioner is only a partition suit and in a partition suit, as both the parties, namely, the plaintiff and the defendants are the same, it is found that the Court had endeavoured to close the evidence of the petitioner and posted the matter for recording the evidence of the defendants. In such view of the matter, merely because the Court had closed the petitioner's evidence on 16.04.2018, it cannot be readily and certainly construed that the Court had developed the predetermined attitude against the interest of the petitioner or in favour of the respondents and only with that end, had closed the evidence of the petitioner.

8. The grievance of the petitioner is that the Court had not granted sufficient time to put forth the submissions in the amendment application. It is his further grievance that the Court had failed to

provide the opportunity to challenge the abovesaid dismissal of the amendment petition in the High Court by filing a CRP. As abovenoted, the amendment petition has come to be dismissed by the Court below on 04.04.2018. If really, the Court had erred in dismissing the amendment application and the petitioner is aggrieved over the same, by this point of time, the petitioner would have endeavoured to challenge the said order by moving the appropriate forum or the next higher forum for further remedy. However, till this point of time, no material has been placed by the petitioner to hold that he had made any endeavour to challenge the dismissal order of his amendment application. Therefore, the case of the petitioner that the Court below had erred in dismissing the amendment application as such cannot be accepted.

9. Furthermore, according to the petitioner, the Court should not have closed the petitioner's evidence on 16.04.2018 and instead should have only dismissed the suit for non prosecution. However, as above discussed, when the Court is also entitled to make such other order as it deems fit as contemplated under Order 17 Rule 2 CPC, when a party fails to appear on a particular hearing date, as seen above, the petitioner knowing fully well that the matter is posted for trial on 16.04.2018, despite the same, he has chosen to remain absent without sufficient cause as above discussed, even assuming for the sake of arguments that the abovesaid order passed by the Court below on 16.04.2018 is an erroneous order, nothing precluded the petitioner from throwing a challenge to the same in the manner known to law. If the litigants are to be allowed to move the transfer request making allegations one way or the other, on the footing that the order passed by the Court below, during the course of a proceeding of one suit or matter is incorrect or an erroneous order and when it is found further that in the course of a proceeding, the Court below would be required to pass various orders in various applications preferred therein, to contend that if an order is passed against a party, the Court had become prejudiced to the interest of the said party, if such type of request is entertained, it is seen that no Court below would be able to function smoothly and efficiently and they would always be at the mercy of the litigants one way or the other and in such view of the matter, it is seen that the present transfer petition is nothing but a ruse to delay the proceeding further so as to cause undue hardship and loss to the respondents.

10. The petitioner having laid the suit for partition should endeavour and ensure that his lis gets concluded at the earliest point of time. On the other hand, the petitioner's attitude would only go to disclose that he is not interested in getting the suit concluded at the earliest point of time. Already 10 years had passed since the institution of the suit. Still further, the petitioner wants to delay the proceeding endlessly and accordingly, with that end, it is seen that without sufficient cause, he has deliberately remained absent on 16.04.2018 and thereby, deliberately endeavoured and invited the Court to pass an order of dismissal of the suit for non prosecution, so that he could move necessary application thereafter for the restoration of the suit and still further delay the proceeding one way or the other. Accordingly, it is seen that the Court below, on knowing the conduct of the petitioner and his intention is only to delay the proceeding endlessly and considering the nature of the proceeding between the parties, being a partition suit and in a partition suit, both the parties, the plaintiff and the defendant as the case may be occupy the same position and rank and accordingly, it is seen that the Court below had closed the evidence of the petitioner on 16.04.2018 and posted the matter to further dates for further process.

11. In the light of the above discussions, the contention of the petitioner that the Court by passing the erroneous order dated 16.04.2018, having exhibited the hostile mind set towards the petitioner and there is a likelihood of bias of the Court against his interest and therefore, the suit proceeding should be transferred to some other Court as such cannot be accepted. We come cross various proceedings in and by which numerous orders are being passed by the Court in various applications preferred therein. In such view of the matter, the Court cannot be expected to pass favourable orders to one party in all situations. Orders would come to be passed by the Court on various

applications depending on the merits of the matter one way or the other. In such view of the matter, merely because, the Court had passed an order against a party, he cannot be allowed to project a case as if the said Court had taken a hostile attitude against him and thereby, entitled to seek the transfer of the proceeding from the said Court to another Court. In such circumstances, if these types of transfer requests are entertained, in my considered opinion, the same would give room to various such petitions and also would create a fear psychosis in the mind of the Court below and the Court below would not be able to function smoothly fearlessly and therefore, considering the abovesaid factors, I am not inclined to accept the transfer request of the petitioner.

12. As above noted, even assuming for the sake of arguments that the order passed by the Court below on 16.04.2018 is unsustainable, still it is found that the petitioner is not remediless. It is always open to the petitioner to challenge the said order in the manner known to law. On the other hand, it is seen that the petitioner instead of resorting to further course available to him under law, had chosen to prefer a complaint against the officer concerned to the High Court vigilance as if the concerned officer had become a puppet in the hands of the respondents by taking illegal gratification from them with a view to dispose of the case in their favour. With regard to the said allegation, when there is no prima facie material projected by the petitioner to arrive at any such conclusion, it is seen that the abovesaid aspects projected against the Court below is only made with a view to prejudice the mind of the High Court one way or the other so as to wield a concealed threat to the Court below to act to the dictates of the petitioner and in my considered opinion such endeavours of the petitioner or the litigants like the petitioner should be curtailed at the inception and should not be allowed to expand in any manner.

13. In this Connection, the petitioner's counsel relied upon the decision reported by the apex Court dated 07.12.2011 in Criminal Appeal Nos. 753-755 of 2009 (State of Punjab Vs. Davinder Pal Singh Bhullar & Ors. etc.). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

For the reasons aforesaid, I do not find any valid cause to accept the transfer request of the petitioner. Resultantly, the Transfer Civil Miscellaneous Petition is dismissed. Consequently, connected CMPs, if any, are closed.

11.09.2018

Index : Yes / No

Internet : Yes / No

sms

Note: Registry is directed to send the copy of this order to the Registrar (Vigilance), High Court, Madras.

To

1. The II Additional District Court, Thiruvallur at Poonamallee.

T.RAVINDRAN, J.

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Pre-delivery Order made
in Transfer CMP.No. 460 of 2018
and
CMP.No.11690 of 2018

11.09.2018