

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.09.2018

PRONOUNCED ON : 05.10.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

Transfer CMP.No.514 of 2018
and
CMP.No.12566 of 2018

C.V.Karthikeyan

...

Petitioner

Vs.

1.P.Subramanian

2.Minor S.Divya Bharathi

Rep.by father,guardian/next friend

P.Subramanian

3.N.Kittusamy Gounder

4.D.Deivathal

5.G.Poongodi

6.P.Muthulakshmi

7.S.Dhandapani

8.P.Gopalsamy

9.P.Palanisamy

10.Samathal

Respondents

Prayer :- Transfer Civil Miscellaneous Petition has been filed under Section 24 of CPC to withdraw the suit in O.S.No.93 of 2012 on the file of the Court of II Additional District Judge at Thiruppur and transfer the same to any other Additional District Court at Coimbatore.

For Petitioner : Mrs.R.T.Syamala

For Respondent : Mr.M.Sivavarthan
 Nos. 1& 2

For Respondent : Mr.T.Senthilkumar
 No.3

Respondent No.10 : No appearance
 set exparte vide order
 dated 28.09.2018

ORDER

The transfer petition has been laid by the petitioner seeking transfer of the suit in O.S.No.93 of 2012 pending on the file of the II Additional District Court, Thiruppur to any other Additional District Court at Coimbatore for disposal.

2.It is seen that O.S.No.93 of 2012 has been laid by the respondents 1 & 2 herein against the petitioner and others for partition. It is seen that the petitioner is contesting the abovesaid suit. Originally, the abovesaid suit had been laid on the file of the Principal District Court, Coimbatore and later on the constitution of the District Court in Thiruppur, it was transferred to the Principal District Court, Thiruppur and later, transferred to the II Additional District Court, Thiruppur. According to the petitioner, he had filed O.S.No.83 of 2005 on the file of the Additional District Court, FTC V, Coimbatore at Thiruppur for specific performance of the sale agreement against the third respondent herein and it is stated that the said suit ended in a decree in favour of the petitioner and the first appeal preferred by the third respondent in A.S.No.145 of 2007 has been dismissed confirming the decree granted by the lower Court and according to the petitioner, with a view to defeat his right in executing the decree obtained by him in O.S.No.83 of 2005, according to him, at the instigation of the third respondent, the

respondents 1 & 2 had laid the suit for partition and separate possession in O.S.No.93 of 2012.

3.Further, it is stated by the petitioner that O.S.No.93 of 2012 was taken up for trial and the evidence of the plaintiffs was completed and according to him, at that juncture, on verification of the documents in the Court, according to him, he had come to understand that the original schedule of the property given in the plaint had been altered and tampered by the plaintiffs. However, the said alteration /insertion was not found in the copy of the plaint served on him and accordingly, apprehending that the Court records had been tampered with by the plaintiffs without seeking necessary amendments with reference to the same, it is stated by the petitioner that he had lodged a complaint to the Registrar General, High Court, Madras, the Vigilance Officer, High Court, Madras and also to the Principal District Judge, Thiruppur and it is his case that notice had been issued, based on the abovesaid complaint, to the Second Additional District Court, Thiruppur and resultantly, according to him, the presiding officer of the Second Additional District Court, Thiruppur got anguished with reference to the same against him and his counsel and further, it is also stated by the petitioner that thereafter, he had filed a petition to reopen and recall the evidence of PW1 and the same had been allowed. However, at the stage of cross examination of PW1, his counsel had returned the bundle to him refusing to appear on

his behalf on account of the anguish expressed by the presiding officer of the Court and accordingly, it is stated by the petitioner that the presiding officer had closed the evidence of PW1 once again without providing an opportunity to cross examine him by the petitioner and it is stated by the petitioner that he had again engaged another advocate and another petition to reopen and recall PW1 was preferred and the same was allowed and the same had been posted for cross examination.

4. Accordingly, it is the case of the petitioner that inasmuch as the presiding officer of the Court had become upset over the complaint preferred by him in the High Court as regards the tampering of the records in the Court concerned, it is his case that though he had not lodged the complaint in specific against the presiding officer but only lodged the complaint against the plaintiffs qua tampering with the Court records, inasmuch as the presiding officer had become upset over the developments abovestated and taking into consideration the inconducive atmosphere for him to conduct the trial, accordingly, has come forward with the petition seeking transfer.

5. The respondents 1 to 3 contested the transfer request of the petitioner putting forth the case that with a view to delay the proceeding one way or the other and to ensure that the case laid by the respondents 1 & 2 do not come to a finality, the petitioners has been taking untenable

stands as if the records had been tampered with and it is further contended by them that the complaint lodged by the petitioner before the High Court had also been closed and it is stated that the alleged anguish or prejudice stated to have been entertained by the presiding officer of the Court based on the complaint said to have been lodged by the petitioner against the plaintiffs is only a myth and without any basis and therefore, according to them, the transfer request of the petitioner is devoid of merits and liable to be rejected.

6. In this matter, we are not going to deal with the issues as to whether the Court records had been tampered with as put forth by the petitioner. Now, according to the petitioner, with reference to the same, he had preferred a complaint to the High Court against the plaintiffs. Thus, it is seen that even as per the case of the petitioner, he had preferred the said complaint only against the plaintiffs and not against the presiding officer. In such view of the matter, it does not stand to reason as to how the petitioner has formed an opinion that the presiding officer of the concerned Court had become upset and anguished over him or his counsel on the abovesaid developments. If the petitioner had preferred any complaint regarding the tampering of the records in the Court below in the High Court, the machinery of the High Court would take up the case in the manner known to law and investigate the same and do the needful depending upon the issues involved in the matter.

Such being the position, to say that the presiding officer of the Court on that score had become upset and anguished against the petitioner and his counsel cannot be readily countenanced.

7. Even as per the case of the petitioner, after the lodging of the above complaint, his petitions to reopen and recall PW1 have been entertained by the concerned officer on whom the alleged anguish/prejudice is put forth by the petitioner. However, it is stated by the petitioner i.e. his earlier counsel had returned the bundle to him on account of the anguish expressed by the presiding officer, but with reference to the same, there is no material forthcoming. It is not made clear for what reason his earlier counsel has given change of vakalath to the petitioner. In such view of the matter, it cannot be presumed without any material that the earlier counsel had returned the bundle to the petitioner because of the alleged anguish developed by the presiding officer in respect of the complaint stated to have been lodged by the petitioner qua the tampering of the records. Furthermore, even as per the case of the petitioner, although the officer concerned had closed the evidence of PW1 on account of the failure of the petitioner to cross examine PW1, despite sufficient indulgence been given by the concerned officer, it is seen that the second application preferred by the petitioner to reopen and recall PW1 have been entertained by the same officer and in such view of the matter, to say that the concerned presiding officer of the

Court had become prejudiced/anguished over the petitioner and his counsel, in my considered opinion, the abovesaid cause is only projected with a view to cause prejudice to the officer concerned to ensure that he does not take up the case further one way or the other. When it has not been established prima facie that the officer concerned had become anguished/prejudiced against the petitioner or his counsel and on the other hand, as per the version of the petitioner himself, he had been entertaining the requests of the petitioner to recall PW1 for further cross examination, in such view of the matter, the petitioner, without endeavouring to proceed further in the matter as rightly put forth by the respondents with a view to stall the proceeding one way or the other, has come forward with the transfer petition causing some unwarranted and uncalled for aspersions on the part of the officer, so as to stifle the conduct of the suit proceeding in the concerned Court. Accordingly, it is noted, as put forth by the respondents that the petitioner is unable to place any material worth acceptance to substantiate his reasons for seeking the transfer put forth by him.

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8.To say that the presiding officer of the Court had become upset/anguished on the basis of the complaint said to have been lodged with reference to the Court proceeding, in my considered opinion, if these type of reasons or cause are to be taken at face value, no court would be able to function smoothly and freely and no case would be able to be

conducted in a conducive atmosphere and accordingly, it is seen that for one and reason or the other, the litigants like the petitioner has developed a wrong notion that if such type of baseless allegations are made against the presiding officer, the High Court would entertain the transfer request and accordingly, seem to have come forward with the said transfer request in the High Court. However, when with reference to the same, the petitioner is unable to substantiate the reason projected by him with acceptable material and as above discussed, when the alleged upset, anguish/prejudice on the part of the presiding officer of the Court concerned is not made out by the petitioner by placing even prima facie material worth acceptance and on the other hand, as above discussed, the presiding officer of the concerned Court had been entertaining the requests of the petitioner to proceed further, with a view to ensure that ends of justice is met by enabling the petitioner to recall PW1 twice or thrice, so as to enable the petitioner to cross examine PW1 at the earliest point of time, in such view of the matter, to say that the atmosphere is not conducive for the further proceeding of the suit in the concerned Court is highly condemnable and liable to be rejected in toto. It is seen that the transfer request has been laid with the sole aim of delaying the proceeding endlessly so as to prevent the conclusion of the trial one way or the other by the presiding officer of the concerned court.

For the reasons aforesated, the transfer civil miscellaneous petition is found to be devoid of merits and resultantly, is dismissed. Consequently, connected CMP No.12566 of 2018 is also dismissed.

Index : Yes / No
Internet : Yes / No
sms

05.10.2018

To

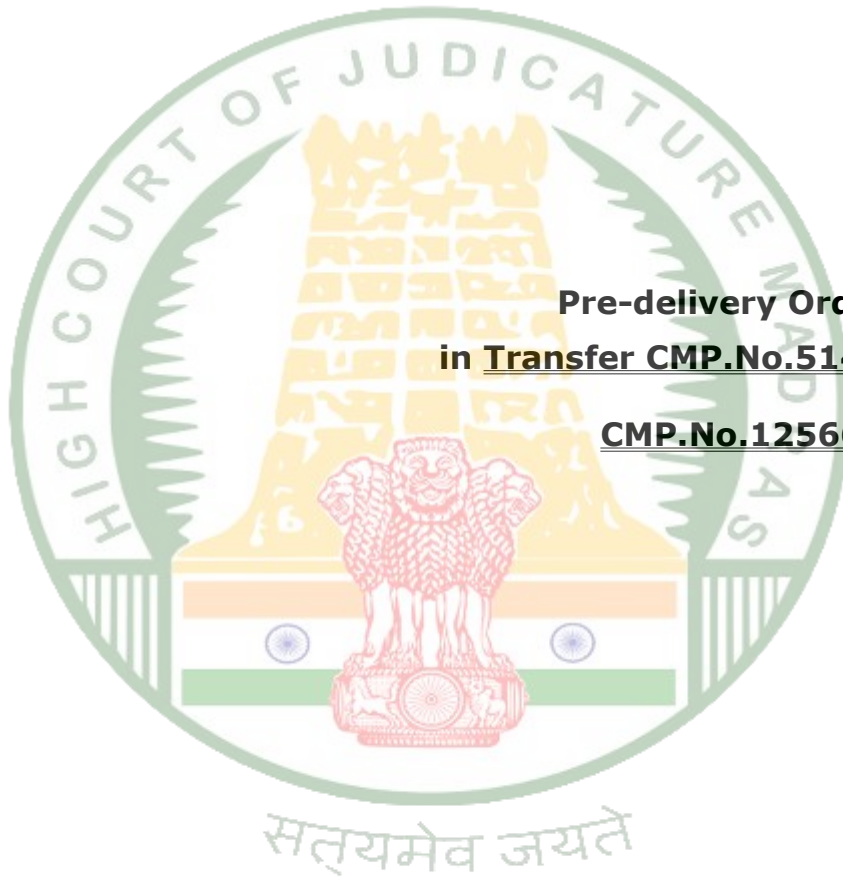
- 1.The II Additional District Judge, Thiruppur.
- 2.The Additional District Court at Coimbatore.



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T.RAVINDRAN, J.

sms



**Pre-delivery Order made
in Transfer CMP.No.514 of 2018
and
CMP.No.12566 of 2018**

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**Pre-delivery Order made
in Transfer CMP.No.514 of 2018
and
CMP.No.12566 of 2018**

**To
The Hon'ble Mr.Justice T.RAVINDRAN**

**Most respectfully submitted
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P.A.to the Hon'ble Judges**



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