

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28.11.2018
JUDGMENT PRONOUNCED ON : 13.12.2018

Coram

THE HON'BLE MR. JUSTICE R. PONGIAPPAN

Tr. C.M.P. Nos.576 of 2018 & 577 of 2018
and
CMP.Nos.13973 of 2018 & 13974 of 2018

B.V. Raghupathy Petitioner/Defendant
(in Tr.CMP Nos.576,577/2018)

Vs.

K. Govindarajan Respondent / Plaintiff
(in Tr.CMP No.576/2018)

S. Ashok Kumar Respondent / Plaintiff
(in Tr.CMP No.577/2018)

Prayer in Tr. C.M.P. No.576 of 2018: The Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure to withdraw the Suit OS No.29 of 2010 pending on the file of Subordinate Court, Dharmapuri and to transfer the same to Subordinate Court, Krishnagiri.

Prayer in Tr. C.M.P. No.577 of 2018: The Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure to withdraw the Suit OS No.31 of 2010 pending on the file of Subordinate Court, Dharmapuri and to transfer the same to Subordinate Court, Krishnagiri.

For Petitioner in both Tr.CMPs : Mr. K.S. Kumar

For Respondent in both Tr.CMPs : Mr. P. Valliappan

COMMON ORDER

Both the Transfer Civil Miscellaneous Petitions are filed under Section 24 of Code of Civil Procedure, seeking the relief to withdraw the Suits OS No.29 of 2010 and OS No 31 of 2010 pending on the file of Subordinate Court, Dharmapuri and to transfer the same to Subordinate Court, Krishnagiri.

2. The petitioner in both the Transfer CMPs are one and the same person and he is the defendant in the above suits. The respondents in both the Tr.CMPs are plaintiffs in the said

suits. Before the trial Court, both the suits have been filed by the respondents/plaintiffs, for the relief of recovering the money from the petitioner/defendant. Now, both the suits are pending in the stage of trial.

3. The learned Counsel appearing for the petitioner would contend that the petitioner/defendant did not avail any loan and he was residing in the jurisdiction of Krishnagiri. Further, the respondents/ plaintiffs in both Tr.CMPs was residing in the jurisdiction of Dharmapuri. The learned Special Judge without deciding the issue of jurisdiction, attempted to proceed with the case. According to the petitioner, if the Suit is disposed in Subordinate Court, Dharmapuri, it will cause much inconvenience to him.

4. Per contra, the learned counsel appearing for the respondents would submit that before the trial Court, the petitioner did not raise any plea in respect to the jurisdiction. Even after knowing the fact that the suit has been filed in the year of 2010, now only he had filed application before the trial Court, for the relief of sending the documents for chemical examination. According to him, both the transfer CMPs are filed by the petitioner only in order to drag on the petition mentioned proceedings.

5. Now considering the submissions of either side, it is true, if the petitioner is residing within the jurisdiction of Krishnagiri, Section 20 of Civil Procedure Code contemplates that only the Court at Krishnagiri is vested with the jurisdiction. But in this case, it is an admitted fact that no such plea was raised by the petitioner before the trial Court. So, instead of approaching the appropriate forum for deciding the said issue, rising the plea in transfer Civil Miscellaneous application by the petitioner is not at all warranted. So, the first ground raised by the petitioner is not having any merits.

6. In respect to the 2nd submission, it is an admitted fact that the suit required to transfer is pending before the Subordinate Court, Dharmapuri from the year of 2010. Only in 2015, the petitioner filed an application, before the trial Court, seeking the relief of sending the documents for chemical examination. In Civil Suit, it is necessary for the plaintiffs and the defendants to approach the Court with clean hands. If really the petitioner intended to transfer the suit, as stated in the petition, nothing was prevented him to raise a plea of jurisdiction, in the earliest stage. But in this case, filing of an application after 5 years from the date of Suit itself, is sufficient to hold that the petitioner is attempted to prolong the proceedings now pending before the trial Court. So, the 2nd submission raised by the petitioner is also devoid of merits. Transferring the proceedings after 5 years from one place to

another place is nothing but great injustice to the respondent. If really the Court, in which the Suit is now pending is not having any jurisdiction, it is very easy to the petitioner to file an appropriate application before the said Court with a prayer now stated by him. In the matter of transfer of the case from one Court to another Court, the main consideration is, if any failure of justice and a reasonable apprehension that the justice will be denied to a person.

7. In the light of the above discussions, the reasons stated by the petitioner is not having any merits and hence, both the applications filed by the petitioner are dismissed. No costs. The Connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vrn

To

1.The Subordinate Court,
Dharmapuri

2.The Subordinate Court,
Krishnagiri.

+1cc to Mr.K.S.Kumar, Advocate, S.R.No.86057

+2ccs to Mr.P.Valliappan, Advocate, S.R.No.86493

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and
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SJ(CO)

rrs 09/01/2019

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