



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2018

CORAM

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**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN**

C.R.P.(PD) (MD) No.2234 of 2016

and

C.M.P. (MD) No.10346 of 2016

M.Ponniah

...Revision Petitioner/  
Respondent/Defendant

**-Vs-**

P.Jaesammal

...Respondent/Petitioner/Plaintiff

**Prayer:** Civil Revision Petition is filed under Article 227 of the Constitution of India against the order passed in I.A.No.71 of 2016 in O.S.No.349 of 2015 on the file of the Principal Sub-Court, Nagercoil dated 24.02.2016.

For Petitioner: Mr.C.K.M.Appaji

For Respondent: Mr.K.P.Narayanakumar

### **ORDER**

The defendant in O.S.No.349 of 2015 on the file of the Principal Sub Court, Nagercoil is the revision petitioner herein. The respondent filed O.S.No.572 of 2010 before the District Munsif Court, Nagercoil seeking the relief of bare injunction. The revision petitioner had filed O.S.No.200 of 2013 before the Principal Sub Court, Nagercoil. The suit filed by the respondent herein before the District Munsif Court, Nagercoil was transferred to the Principal Sub Court, Nagercoil and renumbered as O.S.No.349 of 2015. The suit filed by the revision petitioner is a comprehensive one. Therefore, the respondent herein filed I.A.No.71 of 2016 to eschew the evidence, which was already adduced by her before the court. The said petition was allowed by the trial court by order dated 24.02.2016. Questioning the same, this Civil Revision Petition has been filed.

2. The learned counsel appearing for the revision petitioner drew the attention of this Court to Order 18 Rule 15 of C.P.C and contended that the court, to which the case has been transferred,



shall proceed with the suit from the stage at which it was transferred.

3. No doubt, the submission made by the learned counsel for the revision petitioner on the strength of Order 18 Rule 15 C.P.C is attractive.

4. Order 18 Rule 15 C.P.C reads as follows:

Power to deal with evidence taken before another Judge: (1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-rule(1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under Section 24.

5. But then, Section 24(2) of C.P.C states that where the suit has been transferred or withdrawn under sub section(1), the Court which (is thereafter to try or dispose of such suit or proceeding) may, subject to any special directions in the case of an order of transfer, either re-try it or proceed from the point at which it was transferred or withdrawn.

6. In this case, when the suit filed by the respondent was transferred, no special direction was issued. Therefore, the Principal Sub Court has discretion either to re-try the suit or proceed from the point at which it was transferred.

7. There is obviously some dissonance between Section 24(2) of C.P.C and Order 18 Rule 15 C.P.C. Order 18 Rule 15(2) C.P.C states that the provisions of sub-rule(1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under Section 24. But then, Section 24(2) will prevail over Order 18 Rule 15 C.P.C. The power of the court to which the suit or proceedings is transferred to re-try instead of proceeding from the point at which it was transferred cannot be whittled down by invoking Order 18 Rule 15 C.P.C.

8. In this view of the matter, the trial court cannot be said to have acted without jurisdiction in eschewing the evidence adduced by the respondent herein before the court from which the suit was originally transferred. I am of the view that no ground is made out to interfere with it. The same is sustained. This Civil Revision Petition is dismissed. No costs. Consequently, connected C.M.P. (MD) No.10346 of 2016 is also dismissed.



9. The Court below is directed to dispose of both the suits within a period of six months from the date of receipt of a copy of this order.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS-IV)

To

The Principal Subordinate Judge, Nagercoil.

+ 1 CC TO MR.K.P.NARAYANAKUMAR , ADVOCATE IN SR NO.84967

CM

BU/NM/RP/SAR-IV :14.11.2018 : 3P/3C

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