

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.156 of 2019

Subbramani Chettiar (died)

Chakammal (died)

1. S.Selvakumar

Pazhaniammal (died)

2. Dhanalakshmi

3. V.K.Rangaswamy

4. A.Devi

5. R.Gopalakrishnan

6. V.Lakshmi

7. R.Balaji

.. Petitioners

-vs-

P.Parameswaran

.. Respondent

Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure to withdraw the suit in O.S.No.5 of 2012 pending on the file of Hon'ble Additional District Court, Vellore at Thirupattur and transfer the same to any other Hon'ble Court in Krishnagiri District or any other District Court.

For Petitioners :: Mr.K.Thiruvengadam

For Respondent :: Mr.PA.Sudesh Kumar

ORDER

This transfer civil miscellaneous petition has been filed by the defendants before the trial Court, who are contesting the suit in O.S.No.5 of 2012 filed by the respondent/plaintiff for specific performance on the file of the learned Additional District Judge, Vellore at Thirupattur, seeking for transfer of the suit from the said Court to any other Court.

2. Learned counsel for the petitioners/defendants submitted that when the case was posted for examination of the witnesses, the Court is conducting the case in a biased manner, as the statement of the defendants side witnesses was not at all considered, because the learned Presiding Officer is openly

declining to record the main evidence of the defendants' side. Sometimes, the learned Presiding Officer also openly uttered that he is going to allow the suit in favour of the plaintiff and not allowing the defendants' side to conduct the trial in a fair manner. At one point of time, when an application was moved for furnishing the certified copies of certain documents which are very much necessary for the defendants' side to conduct the case, the learned Judge refused to entertain any such application. Therefore, the petitioners/defendants are of the view that they may not be able to get fair justice, if the trial is allowed to take place in the same Court. Hence, the suit in O.S.No.5 of 2012 pending on the file of the Additional District Court, Vellore at Tirupattur may be transferred to any other Court. After some arguments, learned counsel for the petitioners sought time to file an additional affidavit. Accordingly, an additional affidavit has been filed raising a new allegation that at one point of time, the learned Judge also openly informed that since he knows the plaintiff very well, he is of the view that the plaintiff is not such a type of person and the defendants are lying before the Court. Based on the additional affidavit, it is further argued that when the learned Judge has openly uttered that the plaintiff is known to him, fairness demands that he should have recused from hearing the matter and should have passed an order for posting the case before any other Court, which has not been done. Therefore, entertaining such apprehension, the petitioners/defendants have come to this Court seeking for transfer of the suit to any other Court.

3. A detailed counter affidavit has been filed by the respondent/plaintiff. Learned counsel for the respondent submitted that when the respondent/plaintiff filed the suit for specific performance of the agreement dated 16.2.2007 directing the defendants 3 to 5 to execute the sale deed in favour of the respondent/plaintiff as per the agreement dated 16.2.2007 after receiving the balance sale consideration with a further direction to deliver possession of the schedule mentioned property, the matter has been pending from 2012. When the trial of the case has been proceeding from 2012 and the evidence from the plaintiff's side was recorded on 16.7.2015, if the petitioners/defendants had an apprehension that the learned Judge is not obliging to allow the genuine request of the defendants to mark some essential documents with an ulterior motive, they should have moved an application, which they have not done. Secondly, in the additional affidavit, a new plea has been raised stating that the learned Judge also uttered a serious statement that the plaintiff is known to him. But no date whatsoever has been mentioned. That clearly shows that it is only an after-thought. Thirdly, if the petitioners/defendants had any apprehension against the learned Presiding Officer, they

could have come to this Court immediately. Moreover, even in the additional affidavit, no date, month or year has been mentioned about the alleged incident. On the other hand, when the plaintiff's evidence was over after examining four witnesses on 16.7.2015, which is about four years ago, the trial Court has proceeded further by examining the defendants' side witnesses and as on 5.12.2018, DW7 has been examined. In the meanwhile, an application also was filed on 4.1.2019 to recall DW6 and the learned Judge, accepting the request made by the petitioners/defendants, allowed the said application on the said date and the defendants also examined DW6. Again some more documents were also allowed to be marked on 4.1.2019. When the petitioners/defendants have come to this Court trying to make out a case that the learned Presiding Officer has uttered a statement that the plaintiff is known to him, then the learned Presiding Officer would not have entertained any application to recall DW6 and moreover, he would not have again allowed the defendants to mark the documents in the midst of the way, i.e., on 4.1.2019. Fourthly, when the suit for specific performance has been pending for the last seven years, without even mentioning on what date, month or year the learned Presiding Officer has uttered that the plaintiff is known to him, the new case sought to be made by the petitioners/defendants is wholly unacceptable and unbelievable. As the petitioners/defendants have been trying to procrastinate the trial, this type of trick has been adopted knowing pretty well that the case is pending. Therefore, after completion of the evidence of the plaintiff's witnesses on 16.7.2015 and thereafter when DW7 was also examined from the side of the defendants on 5.12.2018, the transfer plea made by the petitioners should not be entertained. If it is entertained, the matter would not see the light of the day for another few years that would definitely jeopardize the prayer for specific performance. Hence, a direction should be given to the Court below to dispose of the suit without entertaining any plea for adjournment from either side.

4. This Court also finds merit on the submissions made by the learned counsel for the respondent/plaintiff. The reason being that when the suit for specific performance filed by the plaintiff on the file of Additional District Court, Vellore at Tirupattur was numbered in 2012 and taken up, after three years of trial, four witnesses were examined on the side of the respondent/plaintiff on 16.7.2015. Thereafter, the trial Court started to record the evidence from the defendants side and in that process, the trial Court has also examined seven witnesses including DW7 who was examined on 5.12.2018. After examination of DW7 by the petitioners/defendants, an application was moved on 4.1.2019 to recall DW6 and the trial Court, accepting the request, also allowed the prayer and DW6 was also recalled and examined. Moreover, the trial Court accepting one another

prayer also allowed the defendants to mark certain documents on 4.1.2019. Therefore, the allegation made against the learned Presiding Officer that he uttered a statement that the plaintiff is known to him, is wholly an after-thought and an unbelievable allegation. Hence, this Court, finding the said allegation as a trick to procrastinate the pending trial, keeping in mind that the suit numbered in the year 2012 has also reached the final stage, is not inclined to entertain the prayer for transfer of the pending suit at the tail end. Accordingly, the transfer civil miscellaneous petition fails and it is dismissed. The Court below is directed to proceed with the trial and dispose of the suit in the manner known to law. Consequently, interim order stands vacated and the C.M.P.No.5013 of 2019 is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Additional District Judge,
Vellore at Tirupattur.

+1cc to M/s.K.Thiruvengadam, Advocate Sr.65651
+1cc to M/s.P.A.Sudeshkumar, Advocate Sr.65836

Tr.C.M.P.No.156 of 2019

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srg 18/09/2019