

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr. C.M.P. No.162 of 2019

Hotel Aariyas represented by its
Joint Proprietor S.Balakumar ... Petitioner

-vs-

S.Karthigeyan Respondent

Prayer: Petition filed under Section 24 of C.P.C to withdraw and transfer the Suit in O.S. No.241 of 2018 from District Munsif Court at Thirukkoilur to the District Munsif Court at Arani, Thiruvannamalai.

For Petitioner : Mr.V.Manisekaran

For Respondent : Mr.S.Anil Sandeep

O R D E R

Hotel Aariyas, represented by its Joint Proprietor S.Balakumar has filed the Transfer C.M.P. seeking transfer of the pending Suit in O.S. No.241 of 2018 from the file of the District Munsif Court, Thirukkoilur to the file of the District Munsif Court, Arani, Thiruvannamalai District.

2.Learned counsel appearing for the petitioner would further submit that the respondent is the owner of the property situated at No.20, Union Office Road, Thirukkoilur, Villupuram District and the suit property was taken on rent to run a hotel business namely, Hotel Aariyas in the year 2009. After the respondent agreed to let out the suit property to run a hotel, an agreement was entered into between the petitioner and the respondent on 02.07.2009 and in this regard, the petitioner paid an advance of Rs.10,00,000/- and also agreed to pay monthly rent of Rs.30,000/- per month to the respondent herein. Since the suit property was having a small hut, the petitioner removed the hut

and put up a construction measuring 40X 100 totalling about 4000 sq.ft. at the cost of Rs.52,00,000/- and inaugurated the same in the name of 'Hotel Aariyas' on 25.10.2009. After some time, the rent was enhanced to Rs.60,000/- in the year 2012. Later on, in the month of August 2018, the same was enhanced to Rs.90,000/- per month, although there was an objection from the petitioner for further enhancement. As there was a threat that the respondent would take steps to evict the petitioner from the premises, the petitioner was constrained to file the Original Suit in O.S. No.241 of 2018 on the file of the District Munsif Court, Thirukkoilur and also sought for interim injunction restraining the respondent not to vacate the petitioner except by due process of law.

3.Learned counsel appearing for the petitioner would further submit that the learned District Munsif, Thirukkoilur was also pleased to grant an interim injunction in I.A. No.1310 of 2018 in O.S. No.241 of 2018 on 29.08.2018. Even before the said date, the respondent forcibly broke open the Hotel Aariyas on 06.09.2018 and took away the articles. Therefore, the petitioner has given a complaint before the Superintendent of Police on 08.09.2018 by on line. Subsequently, he was prevented by the respondent and his men by threatening that if he attends the Court proceedings before the District Munsif Court, Thirukkoilur, he had to face dire consequences and as such he could not attend the hearing on the date when the matter was posted on 10.09.2018. As a result the case was not called on 10.09.2018, but it was taken up on 11.09.2018 and finally the Court passed an order dismissing the petition. As against the same, the petitioner preferred an Appeal before the Appellate Court.

4.Learned counsel appearing for the petitioner would further submit that in view of the threat faced by the petitioner in prosecuting the Original Suit in O.S. No.241 of 2018 filed for passing permanent injunction restraining the respondent his men, agents, servants or any person claiming under him from any way interfering with peaceful possession and enjoyment of the schedule property, the petitioner, as plaintiff, may not be able to prosecute the pending suit before the file of the learned District Munsif Court, Thirukkoilur and therefore, the same may be transferred to the file of the learned District Munsif Court at Arani, Thiruvannamalai District.

5.A counter affidavit has been filed by the respondent. Learned counsel appearing for the respondent urged this Court to dismiss the petition on the ground that the petitioner has not come to this Court with clean hands. When the petitioner is admittedly a tenant, after vacating his hotel on 16.08.2018, he has filed a suit only on 29.08.2018. Therefore, when the matter

was posted for enquiry on 06.09.2018, the petitioner and his counsel failed to appear and finally on 11.09.2018, the Trial Court dismissed the petition filed by the petitioner by vacating the interim order passed on 29.08.2018. Secondly, when the matter was posted for hearing on 01.09,2018, 03.09,2018 and 06.09.2018 for enquiry in another suit filed against the petitioner before the very same Court,namely the District Munsif Court, Thirukkoilur for permanent injunction in O.S. No.334 of 2018, if the petitioner is really worried about the threat created by the respondent, he should have also sought for transfer of the pending suit in O.S. No.334 of 2018 from the learned District Munsif Court, Thirukkoilur to Arani or any other Court which has not been sought for that shows that the allegation of threat said to have been held against the petitioner is wholly mis-concieved. Thirdly, it is further contended that had there been a real threat faced by him from the hands of the respondent, he should have atleast complained before the Presiding Officer or he should have mentioned the same in the grounds of C.M.A. Fourthly, the petitioner has wrongly mentioned the number of the Transfer C.M.P. as Tr.CMP.102 of 2019 in the notice sent to the respondent and he has also wrongly stated that he has filed C.M.A. No.302 of 2019 on 24.01.2019 against the order passed by the learned District Munsif, Thirukkoilur vacating the order of injunction. Whereas on thorough verification from the case register, it is seen that till date no such C.M.A. No.302 of 2019 has been filed. All these mis-representations clearly indicate that the petitioner has come with this Court with uncleaned hands.

6. As rightly canvassed by the learned counsel appearing for the respondent, when the petitioner is before this Court seeking transfer of the pending suit in O.S. No.241 of 2018 from the file of the learned District Munsif, Thirukkoilur to the file of the District Munsif, Arani, making some allegations against the respondent, he should have atleast given a complaint to the Presiding Officer that he was prevented by the respondent from appearing before the Court, but no such complaint has been given. Secondly, the petitioner has not placed before this Court a copy of the C.M.A. No.302 of 2019, said to have been filed, to peruse any such ground has been taken. Thirdly, when the petitioner has filed another suit in O.S. No.334 of 2018 before the very same District Munsif Court, Thirukkoilur, he has not sought for transfer of the said suit, which clearly shows that the petitioner is attempting to drag on the mater. Fourthly, if there is a threat to him in the present suit, it is needless to say that there must be a threat to him to appear before the same Court in the another pending suit also. Fifthly, a report dated 14.03.2019 sent by the Principal District Munsif, Tirukoilur clearly shows that all the allegations of the petitioner made against the respondent is proved to be baseless without any

merit. Therefore, finding no substance or merit in the petition, this Court is unable to entertain the same filed by the Hotel Aariyas. Accordingly, the Tr.C.M.P. is dismissed. No costs.

vga

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

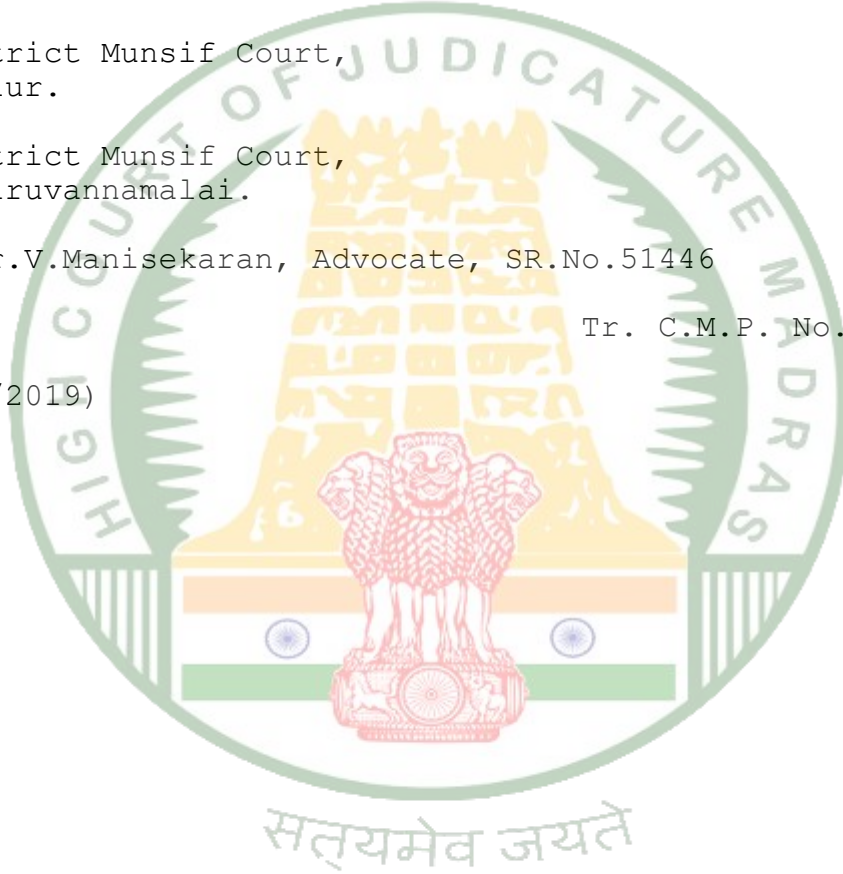
1.The District Munsif Court,
Thirukkkoilur.

2.The District Munsif Court,
Arani, Thiruvannamalai.

+1cc to Mr.V.Manisekaran, Advocate, SR.No.51446

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Kak (24/09/2019)



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