



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.367 of 2019

Tmt.Govindammal .. Petitioner/Defendant

-vs-

1. Tmt.P.Saroja Ammal
2. Tmt.P.Gandhimathy
3. Tmt.P.Anbuchelvi .. Respondents/ Plaintiffs

Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure to withdraw the O.S.No.293 of 2018 on the file of the learned Subordinate Judge at Kancheepuram and transfer the same to any other court having jurisdiction.

For Petitioner :: Mr.Prakash Adiapadam

ORDER

This transfer civil miscellaneous petition has been filed by the petitioner/defendant Tmt.Govindammal seeking to withdraw the O.S.No.293 of 2018 pending on the file of the learned Subordinate Judge, Kancheepuram and transfer the same to any other Court having jurisdiction.

2. Learned counsel for the petitioner/defendant submitted that when the Advocate Commissioner has not mentioned any encroachment made by the petitioner/defendant in his interim report in I.A.No.1438 of 2018, the Court below ought not to have granted temporary injunction, because there was no necessity for that order. Besides, the interim report filed by the Advocate Commissioner is very clear that when he inspected the ABCD portion, there was no obstacle in the ABCD portion mentioned in the plaint and there was no construction taking place in the ABCD portion. However, there is no final report filed. Therefore, till the filing of the final report and the Surveyor sketch, no conclusion can be arrived at. Whereas, the learned Subordinate Judge, Kancheepuram has rushed to pass the interim order, which has given some apprehension in the mind of the petitioner/defendant. Hence, he has been advised to come to this Court seeking for transfer of the pending matter from the file of Sub Court, Kancheepuram to any other Court.



WEB COPY

3. But this Court is unable to accept the argument advanced by the learned counsel for the petitioner stating that when there was no encroachment made by the petitioner/defendant, there is no need for granting the temporary injunction. But a reading of the unnumbered paragraph-3 of the interim report filed by the Advocate Commissioner enclosed at page 55 of the typedset of papers clearly shows that the defendant has encroached in the ABCD portion of the plaint and moreover the sun shade of the building, which belongs to one Thirugnanam was also extended in the ABCD portion of the plaint to an extent of North to South 1.3 feet. Therefore, the learned Subordinate Judge, Kancheepuram, rightly considering the interim report filed by the Advocate Commissioner, has granted the order of injunction. Hence, this Court finds no justification in the prayer of the petitioner. Accordingly, the transfer civil miscellaneous petition is dismissed and the request made by the learned counsel to withdraw the transfer civil miscellaneous petition is rejected. Consequently, C.M.P.No.10369 of 2019 is also dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Subordinate Judge
Kancheepuram

+1cc to Mr.Prakash Adiapadam , Advocate SR.No. 60289

Tr.C.M.P.No.367 of 2019

A.SK(13/08/2019)