

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 07.01.2019

JUDGMENT PRONOUNCED ON : 28.01.2019

Coram

THE HON'BLE MR. JUSTICE R. PONGIAPPAN

Tr. C.M.P. No. 530 of 2018 and
CMP No.13034 of 2018

V. Mangammal Petitioner / Defendant

Vs.

O.V. Krishnan Respondent / Plaintiff

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of Code of Civil Procedure to withdraw OS No.305 of 2017 from the file of District Munsif Court, Chengalpat and to transfer the same to any other competent Court at Chennai.

For Petitioner : Mr. K. Veeraraghavan

For Respondent : Mr. T. Ayyasamy

O R D E R

The petitioner is the defendant in OS No.305 of 2017 pending on the file of District Munsif, Chengalpat. He has filed this application under Section 24 of Code of Civil Procedure for the relief to withdraw the above mentioned Suit from the file of District Munsif, Chengalpat and to transfer the same to the file of any other Competent Court at Chennai.

2. The case of the Petitioner is as follows:

The father of the respondent/ plaintiff namely Venkatavaradha Reddy had written a Will in the year of 1990 in favour of the petitioner/defendant. In the alleged Will, the respondent/ plaintiff and his siblings had signed as witnesses. After executing the Will, the said Venkatavaradha Reddy had passed away in the year 1991. Thereafter, Patta pertaining to the disputed property was issued in favour of the petitioner and thereafter, the said property was in continuous possession of the petitioner.

3. In the year of 1999, the respondent/plaintiff had filed a Suit before District Munsif, Madurantakam for the relief of declaration and injunction pertaining to the above said property. After numbering the Suit, during the course of trial proceedings, the plaintiff filed an application for amending the prayer and the same was allowed. Subsequently, the very same Court passed an order of exparte against this petitioner. When at the time of setting aside the exparte order, the learned District Munsif has observed that the defendant has not come with clean hands and after seeing the order passed by the learned District Munsif, the petitioner filed an application before the Principal District Judge, Chengalpat for the relief to withdraw the said Suit from the file of District Munsif, Madurantakam and to transfer the same to District Munsif, Chengalpat. The said petition is ended in favour of the petitioner and thereafter the said Suit was numbered in District Munsif Court, Chengalpat as OS.No.305 of 2017.

4. The learned District Munsif after taking cognizance, did not fix the date for the appearance of the parties. Further in the absence of defendant, the plaintiff was appeared before the District Munsif and pressing for disposal of the said Suit. The learned District Munsif had thus agreed to the plea of the Advocate for conducting the trial and refused to give necessary adjournments. The learned District Munsif, by breaking all norms and compelled the petitioner to go on with trial. But, at the same time, he was liberally granting adjournments in most of the other cases by-passing the fundamental principles of law and ignoring the natural justice. Thus, the petitioner reasonably apprehends about the attitude of the District Munsif, Chengalpat and filed this application.

5. Opposing the claim of the petitioner, the respondent/plaintiff filed a Counter and stated that before the District Munsif, Madhurantakam, after allowing the amendment application in IA No.1252 of 2013, the petitioner herein filed a revision petition before this Court in CRP (PD) No.1464 of 2013 and the same was dismissed as early as on 05.12.2014. Thereafter, the case was regularly posted for Additional written statement of the petitioner. But, the petitioner did not choose to file any Additional written statement and hence issues were framed on 30.06.2015. Subsequently, when the case was posted for cross examination of PW 1, for the reason that the petitioner has not appeared before the District Munsif, Madurantakam. The said Court passed an exparte order against the petitioner.

6. Subsequently, the petitioner filed an application for setting aside the exparte order and the same was allowed. As a second time, the very same Court passed an exparte order on 27.01.2016 for the very same reason that the petitioner has not

appeared before the trial Court for completing the trial proceedings. The petitioner had filed another application under Order IX Rule 13 of CPC as a second time for setting aside the said exparte Order. Since, the learned District Munsif dismissed the said application, the petitioner preferred an appeal before the Subordinate Judge at Madhurantagam in CMA No.11 of 2016. While at the time of disposing the Civil Miscellaneous Appeal, the learned Subordinate Judge, Madhurantagam issued a direction to the District Munsif, Madhurantagam to dispose the Suit as early as possible preferably within 3 months from the date of receipt of copy of Order. At this juncture, the case was transferred to the Court of District Munsif, Chengalpat. In the said Court, the petitioner entered appearance and asked time for filing Additional Written Statement. Further, in the said circumstances, the petitioner forwarded a complaint by making false allegations against the District Munsif on 18.07.2018 to this Court. However, the learned Counsel Mr. K. Veeraraghavan is none other than the father of petitioner's son-in-law and he repeatedly filed a transfer applications and successfully dragging on the Suit without cross examining the PW 1 for nearly 3 years. Accordingly, the reason stated in the petition for transferring the said Suit is invented only for the purpose of this petition.

7. Heard the arguments of Mr. K. Veeraraghavan, learned Counsel for the petitioner and Mr. T. Ayyasamy, learned Counsel for the respondent.

8. The learned Counsel appearing for the petitioner would contend that the attitude, for example, non granting of adjournment for the petition mentioned Suit alone create a reasonable apprehension against the District Munsif, Chengalpat. Further, the petitioner is a age old person having a difficulty in attending the Court proceedings at Chengalpat. Thereby, the prayer sought for by the petitioner is reasonable and genuine one and accordingly he prayed for allowing this application.

9. Per contra, the learned Counsel appearing for the respondent would contend that only for the purpose of dragging on the Suit, the petitioner repeatedly filed transfer petitions. Further, he submitted that this application has been filed for the convenience of the party as well as to the convenience of Advocate.

10. Now, on considering either side submissions, it is an admitted fact that the petition mentioned Suit was initially filed before the District Munsif, Madhurantakam in the year of 2013. After 4 years, when the case is posted for cross examination of PW 1, the petitioner filed an application before Principal District Judge, Chengalpat for the relief of

transferring the Suit from the file of District Munsif, Madhurantakam to the file of District Munsif, Chengalpat. In the said application, the petitioner raised so many allegations against the District Munsif, Madhurantakam, even after transferring the said Suit from the file of District Munsif, Madhurantakam, the petitioner seeks relief to transfer the Suit from the file of District Munsif, Chengalpat to the file of any competent Court at Chennai by mentioning the allegation against the District Munsif, Chengalpat, he again doubted about the attitude of the District Munsif, Chengalpat and filed this application.

11. In general, it is the duty of the Subordinate Officer to obey the order passed by the Higher Court. In this case, particularly, while at the time of disposing the Civil Miscellaneous Appeal, the learned Subordinate Judge, Madhurantakam is directed the District Munsif to dispose the Suit within 3 months. So it is obvious on the part of the District Munsif, Madhurantakam or by District Munsif, Chengalpat to obey the order passed by the Subordinate Court. So it may be proper on the part of the District Munsif, to give short adjournments for the said Suit and made attempt to dispose the Suit only for the purpose of obeying the order passed by the Subordinate Judge. In the said circumstances, we can not hold that District Munsif, purposely refusing to give adjournments as per whims and fancies of the petitioner. So, it is not necessary for the petitioner in raising apprehension against the District Munsif, Chengalpat.

12. However, transfer should not be ordered for the reasons, for example merely because a Judge had given a adverse findings in other similar cases. Moreover, mere apprehension of the petitioner, particularly imaginary ground for transferring the case from one Court to another Court cannot be accepted. Moreover, transfer can only be ordered when the party has reasonable apprehension that justice will be denied to him.

13. Now, on a careful perusal of materials supplied on either side, it appears that the defendant/petitioner is aged about 82 years. Further, the Suit is pending from year of 2013. So, it will be appropriate that some direction has to be issued for disposing the above Suit within a stipulated period. Further, since the petitioner has already sent a petition to this Court after making allegation against the District Munsif, Chengalpat. if the said Suit is continued in the same Court, it will cause embracing position to both the parties. Therefore, this Court decided to allow this Transfer petition with the following directions.

14. Accordingly, OS No.305 of 2017 is ordered to be withdrawn from the file of District Munsif Court, Chengalpat and to transfer the same to the file of Additional District Munsif Court, Alandur. The learned District Munsif, Chengalpat is directed to transmit the case records pertaining to OS No.305 of 2017 to the Additional District Munsif Court, Alandur, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such records, the Additional District Munsif, Alandur, is directed to dispose the Suit, after assigning a new case number, if necessary, within 4 months from the date of receipt of this Order. No costs. Subsequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vrn

To

1. The District Munsif, Chengalpat.

2. The Additional District Munsif, Alandur.

+2 cc's to Mr.R.Chellamuthu, Advocate Sr.No.6325

Order in Tr. C.M.P. No.530 of 2018
and CMP.No.13034 of 2018

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