

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tr.C.M.P.Nos.550 and 557 of 2019 and
C.M.P.Nos.15663 of 2019 and 15469 of 2019

G.S.Suresh ... Petitioner in both the petitions

Vs.

1. Shanthi
2. Rajamanohari
3. Sivapriya
4. Shenbagavalli
5. Muthukumaran
6. The Branch Manager
Karur Vysya Bank,
Tiruvarur Town,
Tiruvarur T.M.Taluk,
Tiruvarur.

... Respondents in Tr.C.M.P.No.550 of 2019

1. Annamalai
2. Shanthi
3. Rajamanohari
4. The Sub Registrar
Office of the Sub Registrar
Tiruvarur, Tiruvarur District
5. The District Registrar,
Office of the District Registrar,
Nagapattinam,
Nagapattinam District

... Respondents in Tr.C.M.P.No.557 of 2019

Prayer in both the Petitions:

Transfer Civil Miscellaneous Petitions are filed under Section 24 of the Code of Civil Procedure to withdraw O.S.Nos.38 and 11 of 2018 pending on the file of District Court, Tiruvarur and transfer the same to District Munsif Court, Pondicherry.

For Petitioner : Mr.B.Harikrishnan

For Respondents : Mr.S.Arivazhagan for R1
Mr.Jayasankar for R,4 and 5

C O M M O N O R D E R

Since the issues involved in both the petitions are interlinked, they are taken up together and a common order is being passed.

2. The petitioner herein has filed the present petitions praying to withdraw the O.S.No.38 of 2018 and O.S.No.11 of 2018, pending on the file of District Court, Tiruvarur and transfer to the District Court, Pondicherry.

3. The case of the petitioner is that O.S.No.11 of 2018 was filed by his brother-in-law and sister / 1st and 2nd respondents against him and his mother / 3rd and 2nd respondent in the present petitions seeking permanent injunction restraining the petitioner from interfering with their alleged possession and enjoyment of the suit schedule mentioned properties, which are, (i) land with building measuring 227 Sq.mtrs, situated in T.S.No.85, Ward No.2, Block no.21, SVS Nagar, Tiruvarur, (ii) land measuring 464.63 sq.mtrs, comprised in Survey No.38/5B, Vandabalai Village, Nanilam Taluk, (iii) Motor vehicle bearing registration no.PY 01 BR 7779 - Toyota Etios LIVA GD Diesel.

4. It is the further case of the petitioner that another suit, viz., O.S.No.38 of 2018 was filed by his sister / 1st respondent, against him, his mother, his another sister, his wife and his brother-in-law [wife's brother] and the Branch Manager, Karur Vysya Bank, Tiruvarur Branch / respondents 2 to 6 [Tr.C.M.P.No.550 of 2019] seeking partition and separate possession of the suit schedule mentioned properties. This suit is in respect of four properties and they are (1) land with building measuring 227 Sq.mtrs, situated in T.S.No.85, Ward No.2, Block no.21, SVS Nagar, Tiruvarur, (ii) land measuring 464.63 sq.mtrs, comprised in Survey No.38/5B, Vandabalai Village, Nanilam Taluk, (iii) Land bearing plot Nos.18,19 and 20 with building, measuring 3645 sq.ft., comprised in Re-survey nos.11/1A & 11/1C, Kadastar Nos.6/3/4/1BD, Patta No.259 and Kadastar nos.6/3/4/BD, Patta No.176, measuring 3645 Sq.ft., situated in Uruvaiaru Revenue Village, Villanur Combine Panchayat, Pondicherry, this property is the self acquired property of the petitioner and (iv) 30 Sovereigns of gold lying in the locker of Karur Vysya Bank, Tiruvarur.

5. According to the petitioner, [as a 1st defendant and 2nd defendant in the respective suits], he has filed a written statement and same was adopted by other defendants, except the another sister, viz., Sivapriya [3rd respondent in Tr.C.M.P.No.550 of 2019], who is supporting the cause of another sister, Shanthi [1st respondent and 2nd respondents in Tr.C.M.P.Nos.550 and 557 of 2019] and issues have been framed

and the matter is ripe for trial. At the instance of the respondents, the matter is being adjourned and they are not keen in prosecuting the case. The case in O.S.No.11 of 2018 was adjourned to 16.07.2019 for evidence. In the meanwhile, the plaintiffs therein had filed two applications, viz., I.A.No.62 of 2018 seeking appointment of a guardian for petitioner's mother, viz., Rajamanohari [3rd respondent /2nd respondent] on the ground that she is not mentally fit on account of her old age and I.A.No.63 of 2018 seeking interim injunction restraining the petitioner from alienating / encumbering the plaint schedule mentioned properties and taking possession of the motor car referred to above. When the I.A.No.63 of 2018 was taken up for enquiry, the learned District Munsif, Thiruvarur by an order dated 20.07.2018 has directed the parties to maintain status quo and also ordered the motor vehicle be with the possession and custody of the plaintiffs therein.

6. The case of the petitioner is against against his own sister and brother-in-law. The matter was referred to Lok adalat for possibility of settlement and no settlement was arrived at and the suit is posted for trial. After the death of the father of the petitioner, on 06.01.2018, his sister and brother-in-law wanted to inspect the properties. Further, the petitioner's father had sold one of his immovable property for Rs.90,00,000/-, the said money and the jewels of Rajamanohari, [mother of the petitioner] were also misappropriated by the petitioner's sisters and they had taken away the car bearing regn. no.PY 01 BR 7779.

7. That apart, Rajamanohari, mother of the petitioner was residing with him after the denial of his father and she is aged about 78 years. Both her knees were operated on 24.04.2011 and on 30.04.2011 and after an earlier attempt to replace her knees at Sri Ramachandra Hospital, Porur, Chennai failed, the Doctors have advised her not to travel. Besides this, she is also suffering from other age related ailments, for which she is under constant medication. As such, it will be extremely difficult for his mother to travel from Pondicherry to Tiruvarur to attend the hearing in O.S.Nos.11 and 38 of 2018 pending on the file of District Munsif Court, Tiruvarur and to depose as a witness and the distance from Pondicherry to Tiruvarur is about 150 Kilometers. Further, the petitioner also suffers from age old ailments, therefore, he seeks to allow this petitions.

8. The respondents have filed counter affidavits stating that the petitioner without facing the trial, has filed these transfer petitions with a malafide intention to drag the proceedings and thereby the trial has been stalled by the petitioner. Further, the reasons stated in the affidavits of the petitioner are not bonafide and no iota of truth, hence,

they sought to dismiss the present transfer petitions.

9. The learned counsel for the petitioner submitted that the petitioner is aged about 52 years and he suffered left side paralytic attack on 15.07.2015. He also suffers from diabetics and accelerated hyper tension. The petitioner has to undergo physiotherapy training everyday and he cannot walk properly. The petitioner finds extremely difficult to attend even his normal activities, and seeks help from his wife or his son. As such, it is equally difficult for the petitioner to travel from Pondicherry to Tiruvarur to attend the hearing in both the suits pending on the file of District Court, Tiruvarur.

10. The learned counsel for the respondents submitted that all the witnesses are to be examined in suit for partition, those who had knowledge with regard to certain transactions of the suit properties and it is very difficult if the case is transferred to Pondicherry. Further, the learned counsel contended that in order to protract the proceedings with the mala fide intention, the petitioner, who is shy and scared of facing the trial, has filed the present petitions for transferring the said suits, as his intention is to stall the trial.

11. The learned counsel for respondents submitted that since the cases are posted for trial, the matter can be decided only by the Jurisdictional court. He also read out the provisions contemplated under Order XXVI Rule 4 of CPC and submits that if a party is not residing within the jurisdiction, he can seek leave of the court and can file an application for appointment of Commissioner for recording evidence and hence submitted that the authorities, who are 4 and 5 respondents would find it difficult to contest the case, if the case is transferred to Pondicherry.

12. The counsel for the respondent also relied on the Judgment of Hon'ble First Bench of this Court reported in 2014 (6) CTC 241 [Fathima Bathool V. M.M.Zulaiha and Others] wherein the 'plaintiff filed suit for partition before the Original Side of Madras High Court in respect of properties situated at Chennai and Tuticorin district. Seventeen items of properties out of 19 items of Schedule of Suit properties are situated at Tuticorin and Tirunelveli District. Plaintiff filed an application under Clause 12, Letters Patents seeking Leave of Court to institute Suit before Original side of Madras High Court. Learned Single Judge granted Leave to institute the Suit. Hence defendant filed OSA before the Division Bench challenging order of learned single Judge. The said OSA was allowed and the order of the learned Single Judge was revoked.

13. Heard the learned counsel on either side and perused the documents placed on record.

14. Admittedly, the suit mentioned properties are situated at Tiruvarur as well as Pondicherry. From the averments of the plaintiffs [1st and 2nd respondents in Tr.C.M.P.No.557 of 2019 and 1st respondent in Tr.C.M.P.No.550 of 2019] in the Plaints in O.S.Nos.11 and 38 of 2018, it is clear that the petitioner is suffering from ill health and due to the same, he cannot earn any income and all the requirements of the petitioner were taken care by the 1st and 2nd respondents only. It is also averred in the plaint that since the petitioner is not earning any income, the petitioner and his wife are living separately. It is also stated that the mother of the petitioner, viz., Rajamanohari, who is aged 78 years is also not well and the same is evident from I.A.No.62 of 2018 filed 1st respondent, wherein she has asked for appointment of a guardian for the said mother.

15. Taking into consideration of the physical disability of the petitioner, who needs support to walk and other ailments and the mother's old age and her health condition, this Court is inclined to consider the prayer for transfer. Further, the decision relied on by the learned counsel for the respondent will not be applicable to the present case on hand, because, the properties are situated faraway in that case, whereas in this case, the properties are situated at Tiruvarur, which is nearer to Pondicherry. Further, the properties are also situated at Pondicherry.

16. In view of the averments, counter averments and submissions made on either side, this Court is of the view that it will be difficult for the petitioner as well as his mother to travel to Tiruvarur and attend the case proceedings.

17. Accordingly, the present Transfer Civil Miscellaneous Petitions stand allowed and the suits in O.S.No.38 and O.S.No.11 of 2018 pending on the file of District Court, Tiruvarur are withdrawn and transferred to the District Munsif Court, Pondicherry. Further, the learned District Munsif Court, Pondicherry is directed to dispose of the suits as early as possible, if the same is ripe for trial. Consequently connected miscellaneous petitions are closed. No costs.

SSD

20.11.2019

For Being Mention Spoken to

This matter having been listed under the Caption for Being Spoken to on (05/02/2020) Wednesday the fifth day of February 2020 pursuant to the order of this Court dated 20/11/2019 and made herein in the Presence of the aforesaid Consels on the either side the Court made the following order

Today, the matter is listed under the caption "for being spoken to".

2. In continuation of the earlier order of this Court dated 20.11.2019, paragraph 17 of the said order shall stand modified as follows:

"17. Accordingly, the present Transfer Civil Miscellaneous Petitions stand allowed and the suits in O.S.No.38 of 2018 pending on the file of the District Court, Tiruvarur is withdrawn and transferred to the District Court, Pondicherry and O.S.No.11 of 2018 pending on the file of the District Munsiff Court, Tiruvarur is withdrawn and transferred to District Court, Pondicherry. Further, the District Court, Pondicherry is directed to dispose of the suits as early as possible, if the same is ripe for trial. Consequently, connected miscellaneous petitions are closed. No costs."

3. All other observations made in my earlier order dated 20.11.2019, shall remain unaltered.

Sbn

05.02.2020

Sd/-

Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

ssd
To

1. The Sub Registrar
Office of the Sub Registrar
Tiruvarur, Tiruvarur District
2. The District Registrar,
Office of the District Registrar,
Nagapattinam,
Nagapattinam District

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3. The Branch Manager
Karur Vysya Bank,
Tiruvarur Town,
Tiruvarur T.M.Taluk,
Tiruvarur.

4. The District Court,
Tiruvarur

5. The District Munsif Court,
Pondicherry.

6. The Subordinate Court,
Devakottai

7. The Family Court,
Chennai.

+2cc to Mr.S.Arivazhagan, Advocate, S.R.No. 96760, 96761

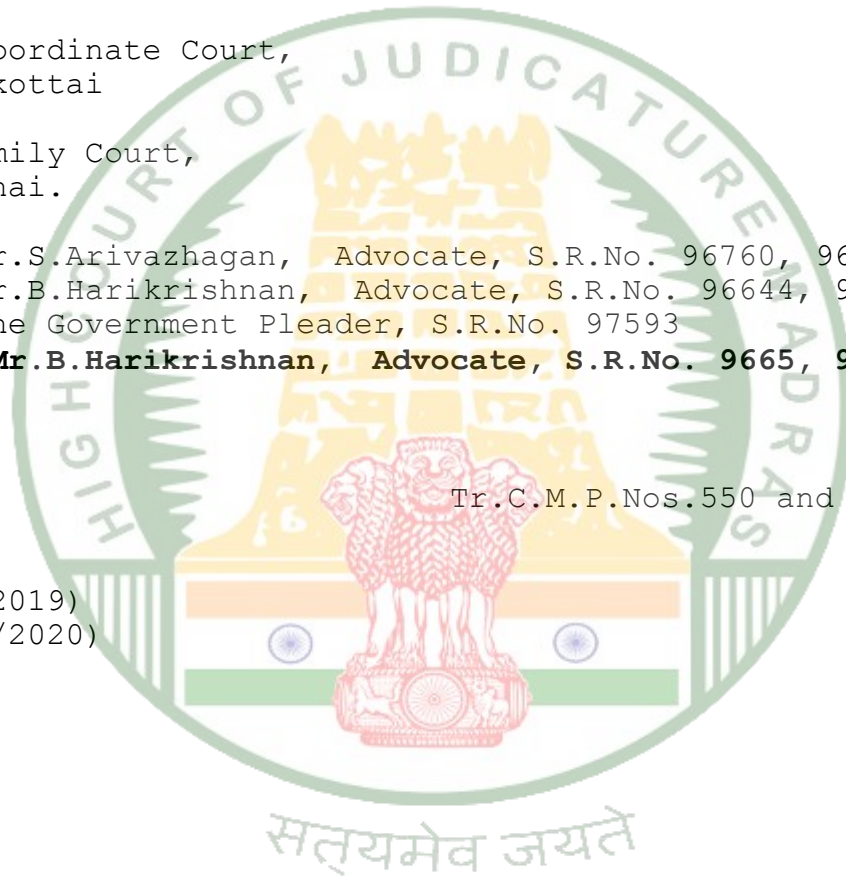
+2cc to Mr.B.Harikrishnan, Advocate, S.R.No. 96644, 96643

+1cc to the Government Pleader, S.R.No. 97593

***+2cc to Mr.B.Harikrishnan, Advocate, S.R.No. 9665, 9666**

Tr.C.M.P.Nos.550 and 557 of 2019

PP(CO)
GN(31/12/2019)
GMY(04/03/2020)



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