

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tr.C.M.P.No.675 of 2019

1.P.Kesavan
2.K.Vasuki

... Petitioners/Defendants

Vs.

1. A.Srinivasan
2. Minor S.S.Yuvarani

... Respondents/Plaintiffs

Prayer:

Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure to order withdrawal of two suits in O.S.No.224 of 2010 along with connected O.S.No.361 of 2011 from the file of District Munsif Court, Thiruvallur and transfer the same to the Subordinate Court, Thiruvallur with a direction to try the same.

For Petitioner : Mr.P.Manikannan

For Respondents : No appearance

O R D E R

The petitioner herein has filed the present petition praying to withdraw the two suits in O.S.No.224 of 2010 along with connected O.S.No.361 of 2011 from the file of District Munsif Court, Thiruvallur and transfer the same to the Subordinate Court, Thiruvallur with a direction to try the same.

2. The case of the petitioners is that the respondents have filed a suit in O.S.No.224 of 2010 before the District Munsif, Thiruvallur against them seeking relief of declaration that the registered deed of settlement dated 02.06.2010 executed by the 1st petitioner in favour of the 2nd petitioner as null and void and not binding in law on the respondents in any manner and consequential relief of injunction in the said suit and the same is pending on the file of District Munsif Court at Thiruvallur.

3. It is the further case of the petitioners that they have filed a suit before the District Munsif Court,

Thiruvallur in O.S.No.361 of 2011 against the respondents and also other two statutory TNEB authorities seeking for relief of declaration and mandatory injunction before the District Munsif Court at Thiruvallur. In the mean time, the petitioners have filed an application before the said court for joint trial in I.A.No.2861 of 2014 in O.S.No.361 of 2011 along with O.S.No.224 of 2010 pending on the file of the District Munsif, Thiruvallur and the same was allowed on 10.02.2015 at Thiruvallur and accordingly, joint trial was commenced.

4. That apart, according to the petitioners, they have filed another application seeking amendment in the plaint in I.A.No.443 of 2017 in O.S.No.361 of 2011 before the District Munsif Court, Thiruvallur and the same was allowed after full fledged enquiry between the parties, in view of the same, the present valuation of the suit was increased for Rs.1,85,120/- therefore, the District Munsif Court, Thiruvallur has no jurisdiction to try the suit in view of the pecuniary jurisdiction of the suit for more than Rs.1,00,000/-. The suit filed by the parties, which has the valuation more than Rs.1,00,000/- have to be tried before the Subordinate Court only. In view of the same, it is just and necessary to transfer both the suits to be tried by the learned Subordinate Judge Thiruvallur.

5. The learned counsel for the petitioner would submit that since the valuation of the suit is more than Rs.1,00,000/-, the same cannot be adjudicated before the District Munsif, Thiruvallur, hence it is just and necessary to transfer the suits to the learned Subordinate Judge, Thiruvallur and in view of the same, no prejudice would be caused to the respondents herein.

6. Though court notice and private notice were ordered and served on the respondents on 20.09.2019 and 14.09.2019 respectively, there is no representation on the side of the respondent either-in-person or through learned counsel.

7. Heard the learned counsel for the petitioner and perused the documents placed on record.

8. Earlier, a reference was made by the learned single Judge of this Court expressing disagreement with the earlier order passed by another learned single Judge in the case of Reshma Begam and Others V. Syed Nawab Jan and Others [2016 (6) CTC 703] wherein in the said case, the learned single judge was pleased to hold that the litigant cannot choose a forum, as his choice and the power of transfer is vested with District Court or its Subordinate Courts cannot be usurped by the High court. In consequence, the Hon'ble Division Bench of this Court in Tr.CMP (MD) No.371 of 2017 on

26.10.2018 at paragraph no.4, among other things has held as under:

'4..... That is the reason why these two Courts have been given the power of administration and the High Court has given power of transfer. Power of transfer is given along with the power of withdrawal. This provision also gives sufficient power to the District Court and the High Court by way of transfer and withdrawal of any suit pending before the Court of subordinate Court on own motion and without any notice. Such a power can be exercised at any stage. It cannot be restricted to suit alone, but also to appeal and other proceedings. Therefore, on a literal interpretation to Sections 22 and 223 C.P.C., Section 24 stands apart....'

and the Hon'ble Division Bench has further held that the learned Single Judge has misconstrued the scope of Sections 22 and 23 C.P.C., on one hand and Section 24 C.P.C., on the other hand, by wrongly applying the ratio laid down by the Hon'ble Apex Court in Durgesh Sharma's case and thereby held that an application under Section 24 CPC., can very well be maintained before this Court.

9. From the perusal of documents available on record, it is seen that the suit value is more than Rs.1,00,000/- and the petitioners seek for transfer of the suits only to the same place, viz., Thiruvallur. Since the existing place of proceedings and place to be transferred is also Thiruvallur court, this Court is of the view that the respondents would not be prejudiced due to the said transfer.

10. Considering the facts and circumstances of the case and taking note of the decision laid down by the Hon'ble Division Bench of this Court cited supra, coupled with the fact that the value of the suits are more than Rs.1,00,000/- and to avoid multiplicity of proceedings, this Court is inclined to allow this petition.

Accordingly, the present Transfer Civil Miscellaneous Petition stands allowed and the suits in O.S.No.224 of 2010 and O.S.No.361 of 2011 on the file of District Munsif Court, Thiruvallur are withdrawn and the same are transferred to Subordinate Court, Thiruvallur. No costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

ssd
To

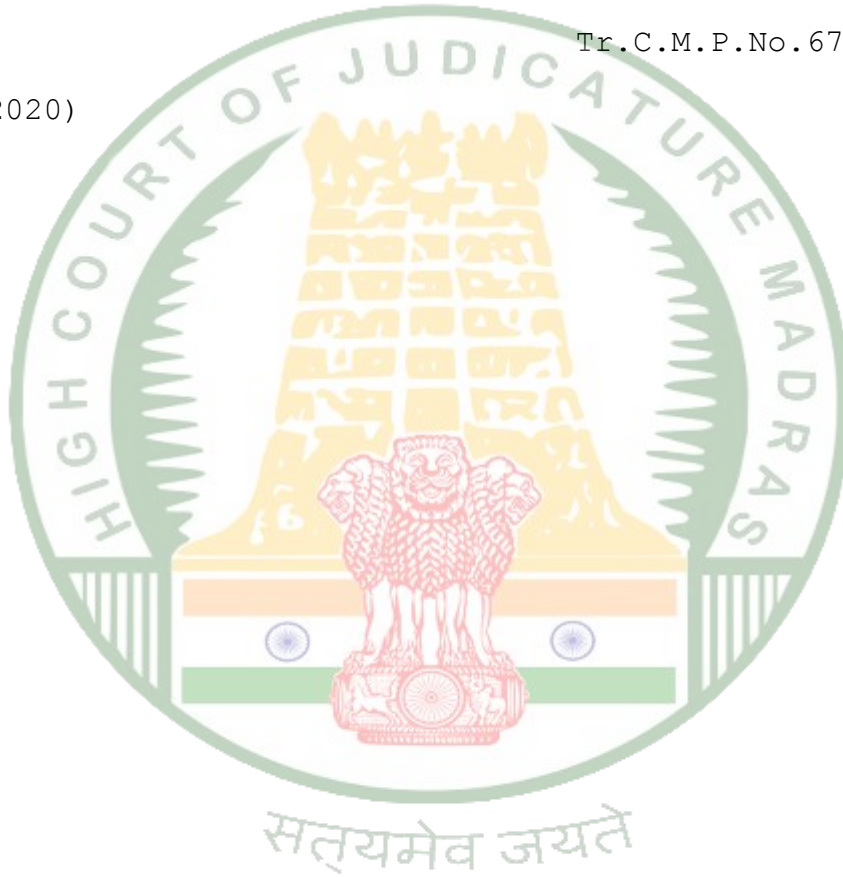
1.The District Munsif Court,
Thiruvallur.

2.The Subordinate Court,
Thiruvallur.

+lcc to Mr.P.Mani Kannan, Advocate SR.102806

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PVS (CO)
CB (20/02/2020)



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