

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tr.C.M.P.No.748 of 2019

and

C.M.P.No.20958 of 2019

P.Saravanan

... Petitioner / Plaintiff

Vs.

1. A.Saminathan
2. S.Dhanapal
3. K.Mohanapriya
4. E.Sivashankar
5. E.Mahalingam

... Respondents / Defendants

PRAYER: This Transfer Civil Miscellaneous Petition is filed under Section 24 of CPC with a prayer to pass an order to withdraw and transfer suit in O.S.No.156 of 2016 on the file of I Additional District Court at Tiruppur to the file of the Additional District Judge, Tiruvannamalai.

For Petitioner : Mr.N.Senthilkumar

For Respondents : Mr.T.M.Hariharan [R1]

Mr.G.R.Deepak [R4 & R5]

O R D E R

The case of the petitioner/plaintiff is that he has filed a suit for specific performance in O.S.No.156 of 2016 before the II Additional District and Sessions Judge, Tiruppur. The petitioner has submitted that he and his brother-in-law viz., one Mr.S.Murugesan are threatened by the respondents/defendants and their henchmen to withdraw the said suit, failing which there will be a danger for their life and limb. The petitioner's brother-in-law had given a complaint before the 2nd respondent police and the same was taken on file in CSR No.336 of 2019 on 20.07.2019 and no action was taken by the said police. Hence, he filed a memo before the Court below that he faces the threat by the defendants and his henchmen.

2. The further case of the petitioner is that the respondents/defendants are threatening the petitioner which is not fair and the trial will be conducted in the said suit and the petitioner sought police protection to ensure that he can attend the Court proceedings peacefully and a fair trial may be conducted. No steps have been taken by the police and therefore, the petitioner and his brother-in-law had filed Crl.O.P.No.21524 of 2019 before this Court for transfer of investigation and this Court, on 19.08.2019, passed an order stating that the complaint which was closed by the police in CSR No.336 of 2019 was set aside and the said complaint was directed to be kept alive and the II Additional District and Sessions Judge, Tiruppur, was directed to entertain the memo filed by the plaintiff in O.S.No.156 of 2016 and also directed to conduct an enquiry and find out if there is any threat to the petitioner, his brother-in-law and his counsel. It was further directed that if there is any such threat, direction shall be given to the 2nd respondent/police and to proceed further in the suit in accordance with law and the Court below shall ensure a safe and peaceful atmosphere and the Court below was also directed to dispose of the matter in O.S.No.156 of 2016, within a period of three months from the date of receipt of a copy of the order.

3. In the meanwhile, the defendants therein had filed a clarification petition.

4. The learned counsel for the 1st respondent submitted that there was no threat caused to the petitioner and he has obtained the order behind their back as they are the defendants in the suit who are the rival parties. He also submitted that time limit shall be fixed for completion of the said enquiry. This Court has finally passed the order dated 26.09.2019 in Crl.O.P.No.21524 of 2019, wherein, at paragraph No.5 reads as follows:-

'5. Taking into consideration the facts and circumstances of the case and the submissions made on either side, this Court wants to clarify paragraph No.10 of the order, dated 19.08.2019, as follows:

'The Court below shall conduct the enquiry as directed by this Court to find out if there is any threat to the petitioner, or any of the other parties in the suit. Parallely the Court shall also proceed further to permit the plaintiff to recall witness and adduce evidence, if any. Both these can proceed parallely. The enquiry shall be completed and a decision shall be arrived at within a period of two weeks from the date of receipt of a copy of this order. This will have nothing to do with the

disposal of the suit in O.S.No.156 of 2016 and the civil proceedings shall carry on parallely and shall be completed on or before 18.10.2019.''

5. After receiving the said order, the petitioner herein had filed a memo before the said Court on 14.10.2019. The learned counsel did not accept the same and stated that the memo cannot be received as it is given with falsehood and the brother-in-law of the petitioner was a third party. In the meanwhile, the Court has directed the defendants to file their counter. It was learnt that the counter was filed by the defendants 4 and 5 before the learned I Additional District and Sessions Judge, Tiruppur on 14.10.2019 itself. The matter was also allowed subsequently and the learned counsel for the petitioner submitted that the Court below has not considered the other part of the issues regarding conducting an enquiry about threat by the respondents.

6. This Court is not inclined to decide the said issue at this stage, because the said order was passed in criminal original petition. If at all the petitioner is aggrieved, he can approach the appropriate Court. Regarding completion of suit on or before 18.10.2019, the same cannot be completed because the order copies were made ready and the petition for recalling and adducing evidence was filed only on 14.10.2019. After hearing the matter, this Court is of the view that the Court has already allowed the petition for recalling witness and adducing oral and documentary evidence. There is no question of transferring the said matter to some other Court and the concerned Judge has recently joined and it is made clear that the said District and Sessions Judge shall hear the matter and accordingly, the following order is passed:

i) The petitioner is hereby directed to examine the witness viz., Mr.S.Murugesan who was alleged to have been threatened by the respondents in the earlier proceedings and was not able to adduce evidence. The said S.Murugesan is further directed to file his proof affidavit as a witness along with the documents which are relevant within a period of one week i.e., on or before 05.11.2019. The Respondents herein are directed to cross-examine him on or before 15.11.2019 and the concerned Court is directed to proceed further and decide the original suit in O.S.No.156 of 2016 on or before 20.12.2019.

ii) At present, the suit has not been withdrawn and as such, it is still pending before the said Court. Regarding other issues, the same can be raised before the said Court.

7. This Transfer Civil Miscellaneous Petition is disposed of accordingly. The petitioner and the respondents are directed to co-operate in the said proceedings and facilitated disposal of the matter within a time frame fixed by this Court. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The First Additional District Judge,
Tiruppur.
2. The Additional District Judge,
Tiruvannamalai.

+1 cc to Mr.N.Senthil Kumar, Advocate, S.R.No.88293

+1 cc to Mr.G.R.Deepak, Advocate, S.R.No.88421

+1 cc to Mr.T.M.Hariharan, Advocate, S.R.No.88591

Tr.C.M.P.No.748 of 2019
and
C.M.P.No.20958 of 2019

VBA(CO)
SSM(31/10/2019).