

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE R. PONGIAPPAN

C.R.P.(PD).No.3468 of 2019
and C.M.P.No.22827 of 2019

Balasubramaniam

... Petitioner

vs.

1.Mayilathal
2.Manickavasagam
3.Balakrishnan

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 24.09.2019 passed in Tr.O.P.No.36 of 2019 on the file of the learned Principal District Judge, Tiruppur.

For Petitioner : Mrs.C.Jayachithra

ORDER

Aggrieved over the order dated 24.09.2019 passed in Tr.O.P.No.36 of 2019 on the file of the learned Principal District Judge, Tiruppur, the petitioner in the said Transfer Original Petition has filed this civil revision petition and prayed to set aside the dismissal order dated 24.09.2019 and to allow the transfer original petition.

2. The case of the petitioner before the court which passed the impugned order is as follows:

(i) On 09.02.2009, the petitioner and the respondents were entered into sale agreement for the purchase of property belonging to the respondents. At the time of entering into sale agreement, the petitioner/plaintiff paid Rs.1,00,000/- as advance to the respondents. Subsequent to that, on 05.08.2009, the defendant/respondent received further sum of Rs.1,00,000/- and made an endorsement in the sale agreement. Thereafter, on 09.03.2010, another sum of Rs.1,00,000/- was received by the respondents/defendants. According to the petitioner, totally 3,00,000/- was paid as advance amount by him to the respondents/defendants. However, since the defendants/respondents were refused to execute the sale deed, the petitioner herein filed a suit in O.S.No.70 of 2014 before the Sub Court Udumalpet.

(ii) After heard the case in detail, the case was posted for pronouncing judgment on 07.03.2019. While examining the witnesses on the side of the petitioner/plaintiff, the learned Sub Ordinate Judge,

declared that there is chance for ordering to refund of advance amount and the respondents/defendants were replied that they are ready to refund the advance amount. Apart from filing of the above referred O.S.No.70 of 2013, the petitioner herein filed an another suit in O.S.No.63 of 2011 against one Lakshmi and others for the relief of specific performance and the same was dismissed.

(iii) In the said circumstance, the petitioner/plaintiff filed applications to recall the PW1, to receive additional document and to reopen the plaintiff evidence. All the three applications were allowed on payment of Rs.6,000/- as costs. The said amount was paid by the petitioner. Thereafter, since the petitioner has not come forward for entering into compromise with the respondents, the learned Subordinate Judge, Udumalpet got angry against the petitioner and if the case is continued to be conducted by the learned Sub Ordinate Judge, Udumalpet, there will be a chance for adverse finding against the petitioner. Hence, transfer of suit O.S.No.70 of 2013 to any other court situated at Tiruppur district is a remedy to the petitioner.

3. In the transfer petition filed by the petitioner, the respondents filed a counter stating that there is no such occurrence had happened before the learned Subordinate Court, Udumalpet as the presiding officer did not insisted the petitioner to compromise the dispute. When the case is posted for pronouncing judgment, the petitioner filed applications to recall, reopen and receive additional documents. Even after allowing the same in favour of the petitioner, he has approached the court below for transfer the same is unwarranted.

4. Having considered all the materials placed before the court, the learned Principal District Judge, Tiruppur in its order dated 24.09.2019 dismissed the application observing that the transfer original petition has not been filed with a bonafide intention but it has been filed with an malafide intention of protracting the proceedings and such kind of attitude cannot be allowed.

5. Today, when the petition is came up for hearing the learned counsel appearing for the petitioner is present and made a submission that without any reason, the learned Subordinate Judge, Udumalpet, threatened the petitioner for entering into compromise with the

respondents. The said attitude is unwarranted. Thereby if the suit is continued before the said court, the petitioner will not get substantial justice.

6. The submission made by the petitioner is taken into consideration. It is settled position that the transfer should not be ordered for reasons of sentimentality. Further in order to prove the allegation levelled against the presiding officer, the petitioner has not filed any affidavit before the competent authority. Furthermore, it is evident from the affidavit that the petitioner filed the applications only at the verge of pronouncing the Judgments.

7. In the said circumstances, it is clearly established the fact that something was hidden by the petitioner. However, discloses the fact that he is having apprehension over the presiding officer who presided over the learned Sub Court, Udumalpet.

8. It is also settled position that whether apprehension cannot be a ground for transfer the suit from one court to another court.

Transfer can be ordered only when the party has reasonable apprehension that justice will be denied to him. The mere fact that the party has suspicion in this regard would not constitute a valid ground. A mere apprehension of the petitioner in imaginary grounds cannot be accepted.

9. In this case also, without producing any sufficient cause, after made allegation against the presiding officer, he has approached the trial court for transfer the matter. The Principal District Judge, Tiurppur has also decided the issue against the petitioner by saying that the petitioner has approached the court with malafide intention which is perfectly not within the purview of law. So the reasons set out by the petitioner for allowing this civil revision petition is not within the principles of law.

10. In the light of the above, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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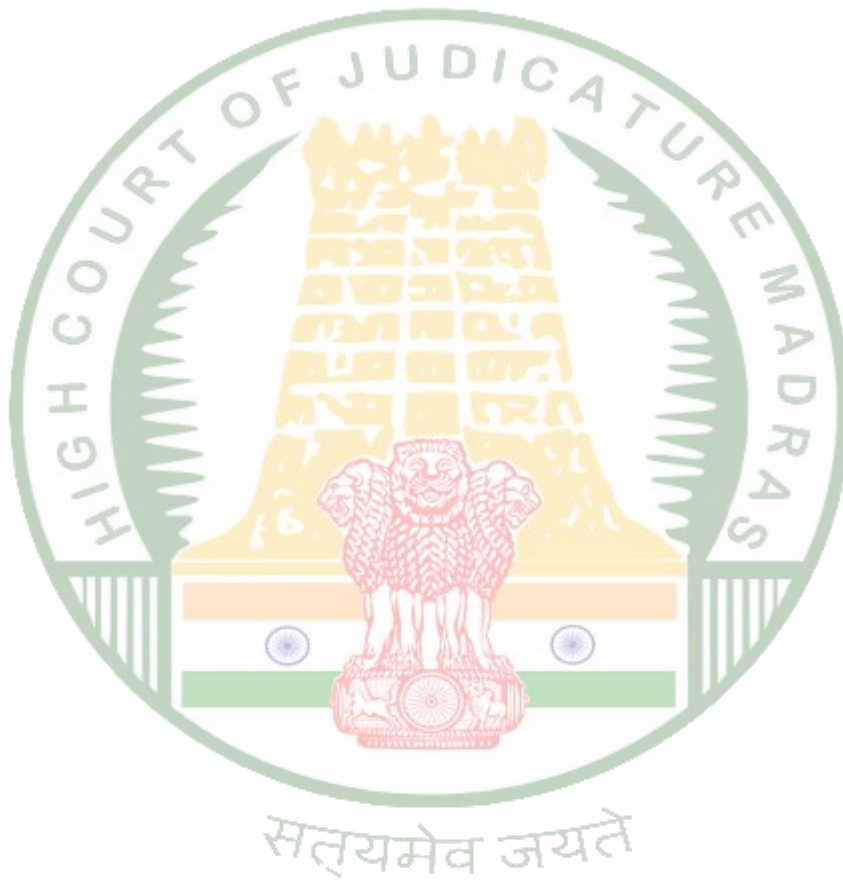
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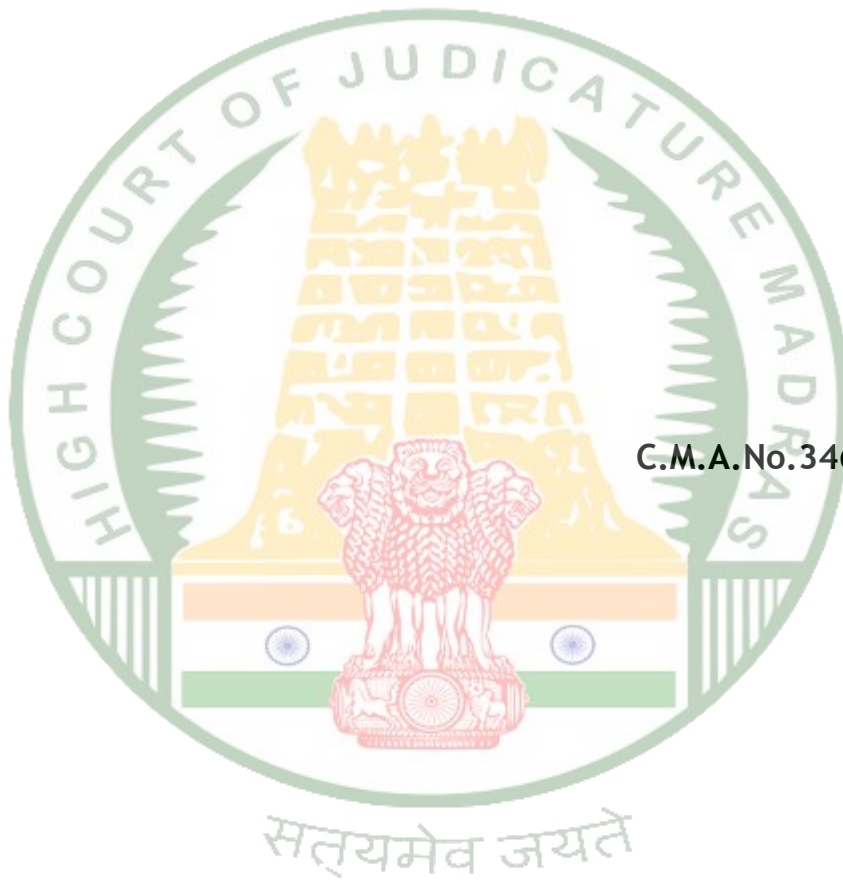
1.The Principal District Judge, Tiruppur.



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