



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2019

CORAM

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

TR.C.M.P(MD)No.152 of 2019
and
C.M.P(MD)No.3222 of 2019

1.M.Kalanjiam

2.M.Thangapandian

3.M.Kalipandian

4.M.Seenivasan (M.Manivasagam)

5.M.Thangavelpandian .. Petitioners/Defendants 12 & 15 to 18

Vs.

Mariappan (died)

Shanmugaiah (died)

1.Thamba

2.Muniyammal .. Respondents 1 & 2/Plaintiffs 1 to 4

3.Rajamani

Seeniappan (died)

4.Muthu Mari

5.Shanmugakani

6.Thenraj

7.Thangammal

8.Vetrivelraj

9.Paulraj

10.Muniasamy



M.Kasiammal (died)

12.R.Meena

13.T.Pandeeswari

.. Respondents 3 to 13/
Defendants 1 to 11, 13 & 14

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PRAYER:- Transfer Civil Miscellaneous Petition filed under Section 24(1) and 151 of the Civil Procedure Code, 1908, praying to transfer the suit in O.S.No.136 of 2006 pending on the file of the Sub Court, Thoothukudi to the file of the some other Court.

For Petitioners : Mr.S.C.Herold Singh

ORDER

This Transfer Civil Miscellaneous Petition has been filed by the petitioners / defendants 12 and 15 to 18 seeking transfer of O.S.No.136 of 2006 from the file of the Sub Court, Thoothukudi to the file of some other Court.

2.Learned counsel for the petitioners would state that the respondents 1 and 2 herein along with the deceased Mariappan and Shanmugaiah, filed O.S.No.136 of 2006 for the relief of partition. The petitioners herein are the legal representatives of the deceased plaintiff Mariappan. The petitioners filed I.A.No.944 of 2018 seeking to reject the plaint. During the hearing in I.A.No.944 of 2018, the learned Judge expressed his opinion that the petitioners have got no case in the suit and also dismissed the petition on 08.01.2019. The learned Judge has also set them exparte on the next date of hearing. Therefore, the petitioners filed I.A.Nos.1 to 3 of 2019 seeking to set aside the exparte order, condone the delay of 69 days in filing written statement and also to frame additional issues respectively. The learned Judge by order dated 15.02.2019 allowed the said applications on condition that they shall not recall and cross-examine the witnesses, which would affect the right of the petitioners to disprove the case of the plaintiffs by adducing evidence and also cross-examining the other side witnesses. Thus, they prayed to transfer O.S.No.136 of 2006 from the file of the Sub Court, Thoothukudi, to some other Court.

3.Heard the learned counsel for the petitioners and perused the materials available on record.

4.This petition has been filed by the legal heirs of the deceased plaintiff seeking transfer stating that the learned Judge has expressed his mind before the court stating that the petitioners have got no case and therefore making various allegations, the petitioners have sought for transfer. The suit is of the year 2006. Even perusal of record shows that I.A.No.944 of 2018 filed by the petitioners has been dismissed on 08.01.2019 and the petitioners were set exparte on 11.01.2019 and according to the



petitioners, they were set exparte without affording opportunity to file written statement in the above case. It is pertinent to note that the case is of the year 2006 and the petitioners had filed I.A.No.1 of 2019 along with the written statement in I.A.No.2 of 2019 to condone the delay of 69 days in filing the written statement and another I.A.No.3 of 2019 to frame additional issues in O.S.No.136 of 2006. It appears that even those petitions were allowed on certain conditions, as the suit is of the year 2006. The petitioners have raised very many allegations. The petitioners have stated that they need not go by the statements which had been made by their deceased father. The manner in which the petitioners conduct the case is with the intention to protract the proceedings. In my considered opinion, it is a clear abuse of process of the court. Therefore, I am not inclined to allow this petition.

Hence, this Transfer Civil Miscellaneous Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Sub Judge,
Thoothukudi.

+1CC TO MR.S.C.HEROLD SINGH, Advocate Sr. No. 57126

ORDER MADE IN
TR.C.M.P (MD) No.152 of 2019
and
C.M.P (MD) No.3222 of 2019
27.03.2019

TR (22.04.2019) 3P 3C