

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Tr.C.M.P.No.153 of 2020

Indira Gandhi
W/o Paramasivam

.. Petitioner

-vs-

1. Sakunthala
2. Selvi @ Tamilselvi
3. Pushpagandhi
4. Muthusamy
5. D.G.Palanivel
6. Balakrishnasamy
7. Minor Arunkumar
8. Minor Ramu

(Minors 7 & 8 duly represented by
their mother Jeyalakshmi)

9. Jeyalakshmi
- 10.Minor Suruthi
- 11.Minor Sumetha
- 12.Minor Hariharan

(Minors 10 to 12 are represented by
their mother Sangeetha)

- 13.Sangeetha
- 14.Rajendran

.. Respondents

Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code, to withdraw the suit in O.S.No.1 of 2016, on the file of the District and Sessions (Mahila) Court at Perambalur and transfer the same to the Principal District Court at Ariyalur or to any other competent Court in Ariyalur District.

For Petitioner :: Mr.P.Valliappan

For Respondents :: Mr.S.Kamadevan for R5

No appearance for R1 to 4 and 6 to 14

ORDER

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. This transfer civil miscellaneous petition has been filed seeking to withdraw the suit, O.S.No.1 of 2016 from the District and Sessions (Mahila) Court at Perambalur and transfer the same to the Principal District Court, Ariyalur or to any competent Court in Ariyalur District. The petitioner is the sole plaintiff in the pending suit for partition seeking transfer.

3. Mr.P.Valliappan, learned counsel appearing for the petitioner submitted that when the suit has been pending from the year 2016 on the file of the District and Sessions (Mahila) Court, Perambalur seeking partition of 6/20th share from item nos.1 to 24 and 1/4th share in the 25th item. Several adjournments have been granted from the year 2016 and the fifth respondent did not take any steps to file the written statement. Therefore, he was set ex parte on 17.6.2017. Even then, no steps were taken to set aside the ex parte order within a reasonable time and the matter had reached the stage of arguments. Only at this stage, the fifth respondent filed the I.A.No.2 of 2019 in O.S.No.1 of 2016 under Order IX, Rule 7 of the Code of Civil Procedure seeking to set aside the ex parte order along with the written statement. Secondly, the fifth respondent was the Government Pleader at the time when the suit was filed. Bearing in mind that the fifth respondent was the Government Pleader, the learned District Judge also, without considering the scope of the application, erroneously allowed the I.A.No.2 of 2019. Therefore, the petitioner has entertained an apprehension that the same Judge may judicially go against the petitioner/plaintiff. Hence, if the suit is withdrawn from the District and Sessions (Mahila) Court, Perambalur and transferred to any of the competent Court in Ariyalur District, no prejudice would be caused to anyone.

4. A detailed counter affidavit has been filed by the fifth respondent. Mr.S.Kamadevan, learned counsel appearing for the fifth respondent stated that when the suit of the year 2016 has been taken up for final arguments, after completing the trial, if the present prayer for transfer from the Court where the chief examination and the cross examination are mostly over, as all the efforts have been taken by both the petitioner and the respondents as well as the Judicial Officer to dispose of the matter, is entertained, it would cause immense hardship to all the parties. Adding further, it is stated that the fifth respondent was the Government Pleader when the suit was filed. Now he ceased to be the Government Pleader. Secondly, when the fifth respondent was set ex parte, it is his statutory right to move an application to set aside the ex parte order. Therefore, I.A.No.2 of 2019 in O.S.No.1 of 2016 was filed and the same was allowed on 31.7.2019. Taking into account the order dated

31.7.2019 allowing I.A.No.2 of 2019, the petitioner/plaintiff cannot come to the Court saying that the fifth respondent would influence the Court. Thirdly, even the 'A' diary clearly shows that the additional issues were framed on 13.8.2019 and only on the request of the learned counsel appearing for the petitioner/plaintiff, the matter was posted for trial on 16.9.2019. Again the petitioner/plaintiff was called absent on 16.9.2019. Hence, the matter was adjourned for trial on 18.9.2019. Once again the matter was further adjourned to 23.9.2019 as a final chance making it clear that there would not be any further adjournment in future. Thereafter, the plaintiff as P.W.1 filed the additional proof affidavit on 23.9.2019. The matter was posted for cross examination of P.W.1 on 4.10.2019. Again on 4.10.2019, 'A' diary shows that the petitioner was absent. Therefore, the matter was posted for cross examination of P.W.1 on 21.10.2019 with a further indication that no further adjournment would be granted. Thereafter, P.W.1 was cross examined on 4.12.2019 in part and at this stage, the matter was referred to the Lok Adalat. When the matter was not settled in the Lok Adalat on 12.12.2019, the case was taken up for further cross examination on 20.1.2020. Finally, P.W.1 was present and cross examination in part was done on 20.1.2020. Subsequently, when the matter was further adjourned to 11.2.2020, P.W.1 remained absent. Now the matter is posted for further cross examination of P.W.1. If the cross examination is over, the suit would be disposed of easily. Therefore, at this stage, when the matter is transferred from one Court to another Court, it will be highly difficult for the incumbent Judicial Officer to go through all the depositions and get ready with the matter for giving an effective disposal.

5. This Court also finds merit on the submissions made by the learned counsel appearing for the fifth respondent. The reason being that the fifth respondent was the Government Pleader on the date of filing of the suit in the year 2016. As alleged by the learned counsel appearing for the petitioner, had the fifth respondent enjoyed any sway, he would not have been set ex parte on 17.6.2017 and there would have been no occasion for moving the I.A.No.2 of 2019. That shows whether he was the Government Pleader or the General Pleader, the Court was not bothered to show any significance. Secondly, he ceased to be the Government Pleader as of now. Thirdly, the matter has been posted for further cross examination of P.W.1/plaintiff. Hence, at this stage, the petitioner cannot come to this Court seeking for transfer of the pending suit, as that would cause immense problem, hardship and discomfort not only to the counsel appearing for the respective parties, but also to the Court which has done most of the exercise. Therefore, the prayer for transfer is refused and the transfer civil miscellaneous

petition stands dismissed. Consequently, C.M.P.No.5162 of 2020 is also dismissed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

ss

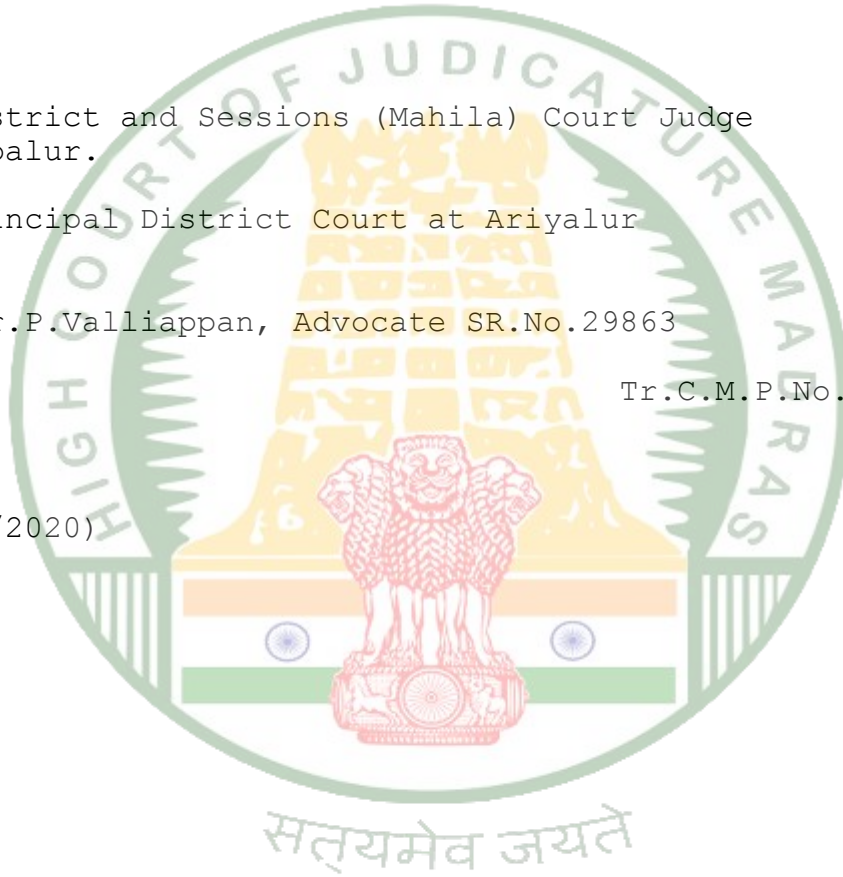
To

1. The District and Sessions (Mahila) Court Judge
Perambalur.
2. The Principal District Court at Ariyalur

+1cc to Mr.P.Valliappan, Advocate SR.No.29863

Tr.C.M.P.No.153 of 2020

VG II(CO)
GMY(19/10/2020)



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