



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2020

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

Tr.C.M.P (MD)No.503 of 2019

I.Hakkim

... Petitioner/Plaintiff

Vs.

1.I.Sarkarai Beer

2.Jancy Rani @ Shameim

... Respondents/Defendants 1 and 2

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of Civil Procedure Code to withdraw the case in O.S.No.128 of 2016 pending on the file of the learned I Additional District Judge, Madurai and transfer the same to some other court.

For Petitioner : Mr.R.Alagumani

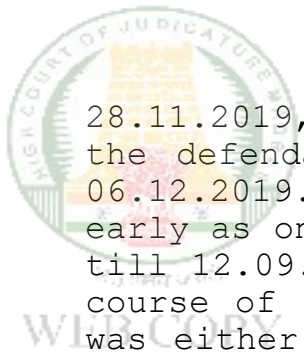
For Respondents : Mr.H.Arumugam

J U D G M E N T

The plaintiff in O.S.No.128 of 2016 seeks transfer of the said suit to some other court from the file of the I Additional District Court, Madurai.

2. The facts which impelled the plaintiff to seek transfer is that the I Additional District Judge, showed undue haste in closing the evidence of the plaintiff and also the evidence of the defendants without giving opportunity to the plaintiff to examine further witnesses or to cross examine D.W.1. Considering the nature of the allegations, I have called for the records from the I Additional District Court, Madurai.

3. A perusal of the records reveals that the evidence of P.W.2 was completed on 12.09.2019 and the suit was adjourned on 20.09.2019 for further evidence on which date the suit was adjourned to 30.09.2019. On 30.09.2019, the Presiding Officer happened to be on leave and the case was posted on 22.10.2019. On the said date, since no further witnesses were present, the evidence of the plaintiff was closed and the case was adjourned to 31.10.2019 for the defendant's evidence. Eventually, the D.W.1 was examined in chief on 20.11.2019 and the suit was adjourned for cross-examination of D.W.1 on 26.11.2019, on 27.11.2019 and on 28.11.2019. On



28.11.2019, the evidence of defendants was closed. The arguments of the defendants was heard and the suit was posted for judgment on 06.12.2019. It is also seen that the trial of the suit commenced as early as on 07.12.2019 and the evidence of the plaintiff had gone on till 12.09.2019 nearly a 1 ½ years. It is also seen that during the course of the said evidence, for many of the hearings, the witness was either not present or cross-examination was conducted in part. It is also stated that the first defendant, being a resident of Singapore, had to come from Singapore and hence, the learned Additional District Judge, Madurai closed the evidence of the first defendant as D.W.1 after two adjournments.

4. May be the plaintiff has not been co-operating with the court for disposal of the suit and the conduct of the plaintiff is not fair. But at the same time, the manner in which the evidence of the plaintiff was closed on 22.10.2019 and the manner in which the evidence of the defendants was closed on 28.11.2019 creates an impression that there was undue haste shown by the I Additional District Judge, Madurai particularly during the period between 22.10.2019 and 28.11.2019. After the evidence of D.W.1 was closed on 28.11.2019, the learned I Additional District Judge, Madurai, chose to hear the defendants and reserved the suit for judgment.

5. These actions, in my considered opinion, are not very desirable. Once evidence in a suit is closed, the plaintiff should have been given an opportunity for arguing the suit. That being so, the I Additional District Judge proceeded to hear the defendants and reserved the suit for judgment on the same day. This, in fact, justifies the apprehension of the plaintiff. I am not granting a certificate of good conduct to the plaintiff, but, at the same time the court should also bear in mind that justice should not only be done but it should also appear to be done.

6. Considering the apprehension expressed, I am of the considered opinion that it will be in the interest of justice to transfer the suit to some other District Court within the same campus with directions for early disposal of the suit.

7. Mr.H.Arumugam, learned counsel appearing for the respondents would submit that since his client is residing at Singapore and he has to travel again, costs for travel must be borne by the plaintiff. He would also submit that he has no objection for the evidence of the plaintiff being re-opened allowing the plaintiff to examine P.W.3. He would further submit that this should be done within a time frame. He has also expressed willingness of D.W.1 to appear before the court at Madurai on 16.02.2020 and present himself for cross-examination.

8. Taking into account the overall circumstances, the suit in O.S.No.128 of 2016 is withdrawn from the file of the I Additional District Judge, Madurai, and transferred to the file of the



III Additional District Court, Madurai, with the following directions:

Plaintiff's side evidence will stand re-opened. The plaintiff shall examine P.W.3 on any day on or before 10.02.2020. Cross-examination shall be completed by 14.02.2020. The evidence of the defendant is also re-opened. D.W.1 is recalled and he shall be examined in chief if necessary on 17.02.2020 and his cross-examination shall be completed by 21.02.2020.

9. The above time line is fixed as agreed to between the learned counsel for the parties and there will be no extension of time line fixed. The I Additional District Judge, Madurai, is directed to forward the papers to the III Additional District Court, Madurai forthwith. The I Additional District Judge, Madurai, is also directed to ensure that the papers reach the III Additional District Court, Madurai on 03.02.2020. The parties are directed to appear before the III Additional District Court, Madurai on 06.02.2020. In view of the exercise of power under Article 227 of Constitution of India to re-open the evidence of the defendants, I.A.Nos.461 and 462 of 2019 pending before the I Additional District Court, Madurai will stand allowed. The learned III Additional District Judge, Madurai, shall dispose of the suit by 15.04.2020.

10. In fine, this Transfer Civil Miscellaneous Petition is allowed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The I Additional District Judge, Madurai.

2.The III Additional District Judge, Madurai.

+1 CC to M/s.R.ALAGUMANI, Advocate (SR-3277[F] dated 27/01/2020)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-3296[F] dated 28/01/2020)

Tr.C.M.P(MD)No.503 of 2019

27.01.2020

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