



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.03.2021

DELIVERED ON : 15.07.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.800 of 2019

and

CMP(MD) .Nos.4900 and 4901 of 2019

1.Uma Maheswari

2.N.Sivasamy

:Petitioners/Respondents 1 & 2

Vs

1.M.Thavamani

:First Respondent/Petitioner

2.Amaravathy

3.Prakash

:Respondents 2 and 3 /
Respondents 3 and 4

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the transfer petition in Tr.O.P.No.45 of 2019 on the file of the Principal District Court, Madurai and reject the transfer petition.

For Petitioner : Mr.J.Barathan

For R.1 : Mr.V.Vijay Sethupadhi

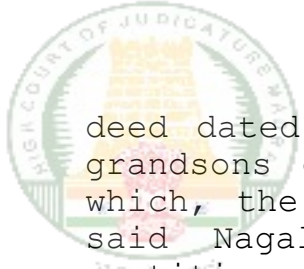
For R.2 : No appearance

ORDER

This Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the transfer petition in Tr.O.P.No.45 of 2019 on the file of the Principal District Court, Madurai and reject the transfer petition.

2. For the sake of convenience the parties are referred to as per the rank mentioned in this Civil Revision Petition. The petitioners herein are the owners of the property and the respondents herein are the tenant.

<https://hcservices.ecourts.gov.in/hcservices/> 2.1 The petitioners would aver among other things that originally, a larger extent of lands belonged to one Kaleeswaram Pillai and he sold it to Amaravathi Ammal through registered sale



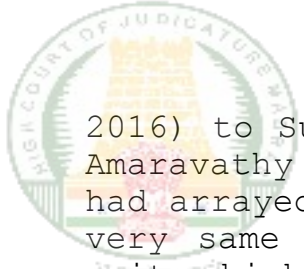
deed dated 11.07.1949. The said Amaravtahi Ammal and her sons and grandsons entered into registered partition deed on 15.07.1965 in which, the subject property was allotted to Nagalingam Pillai. The said Nagalingam Pillai and his sons entered into registered partition deed dated 15.07.1985 in which, the subject property was allotted to Sivasamy, who is the second petitioner herein. The said sivasamy settled the subject property through registered settlement deed dated 12.04.2010 in favour of his daughter, Uma Maheswari, who is the first petitioner herein. The first respondent, Thavamani is a tenant in a portion of subject property measuring just 135 sq.ft.

2.2. Originally, Thavamani's father, Malaicchamy was a tenant under Nagalingam Pillai. After the death of Nagalingam Pillai, Malaichamy continued as tenant under Sivasamy. The said sivasamy and Uma Maheswari asked the first petitioner to vacate and handover the possession of 135 sq.ft. As a result, he filed O.S.No.36 of 2016 before the District Munsif, Madurai Taluk, for permanent injunction not to evict him except under due process of law.

2.3. Similarly, the first petitioner, namely, Uma Maheswari (owner of the property), filed O.S.No.84 of 2016 before the District Munsif, Madurai Taluk for eviction. It is averred that the said thavamani (tenant) filed written statement admitting tenancy and description of property. The trial commenced in O.S.No.84 of 2016 on 12.09.2017; The said Sivasamy was examined as P.W.1; The said thavamani was examined as D.W.1 on 13.06.2018. He admitted tenancy and the extent of property. The said thavamani further admitted that he has no proof to show payment of rent after August, 2013. He is squatting over the property for the past seven years without paying a single penny as rent.

2.4. Further, the arguments on the side of Sivasamy and Uma Maheswari were heard on 23.11.2018. The said thavamani took adjournments for arguments and till date, has not made arguments. The said thavamani's wife, the second petitioner filed O.S.No.840 of 2018 before the II Additional Sub-Court, Madurai for injunction in respect of 2206 sq.ft claiming that she is in exclusive possession without intervention since 1993.

2.5. It is further averred that in O.S.No.840 of 2018 filed by Amaravathy, fictitious person namely, Prakash was impleaded to delay the service of summons. According to the petitioners, there is no such person. The simple suit for bare injunction can be filed before the Munsif Court. But, the second respondent purposely over-valued the relief and filed it before the Sub-Court. Sensing the illegal motive of the respondents 1 and 2 herein, the petitioners filed caveat petitions before the Principal District Court, Madurai anticipating transfer petition to transfer the suit for eviction (O.S.No.84 of 2016) to Sub-Court with an intention of delaying and dragging on eviction suit. Similarly, the first respondent herein filed Tr.O.P.No.45 of 2019 to transfer eviction suit (O.S.No.84 of



2016) to Sub-court or in the alternative, to transfer suit filed by Amaravathy (O.S.No.840 of 2018) from Sub Court to Munsif Court. He had arrayed his wife, amaravthy as the third respondent therein. The very same address is given to Thavamani as well as Amaravathy. A suit which is pending before a superior Court, namely, the Sub-Court, cannot be transferred to an inferior Court, namely, the Munsif Court. But such a prayer had been entertained by the District Court in Tr.O.P.No.45 of 2019. Though the eviction suit against Thavamani (O.S.No.84 of 2016) was argued by Uma Maheswari and Sivasamy on 23.11.2018, till date, Thavamani is getting adjournment by repeatedly filing adjournment petitions. The said thavamani has filed reopen and recall petitions on two occasions and to avoid further delay, the petitioners herein did not oppose those applications. (I.A.Nos.404 & 405 of 2016). But, thavamani was unscrupulously taking adjournment after adjournment. The said Amaravathy filed an application in I.A.No.45 of 2019 in O.S.No.84 of 2016 to implead her as party in eviction suit and it was dismissed by district munsif on 05.02.2019. There is no civil revision petition filed by her and the order attained finality. The said thavamani filed application in I.A.No.433 of 2019 to summon Tahsildar to give evidence and it was dismissed by district munsif on 16.02.2021. Amaravathy filed a commission petition in I.A.NO.356 of 2019 in O.S.No.840 of 2018 and it was dismissed by Sub-Court on 07.01.2021. There is no civil revision petition filed by her and the order attained finality. The repeated attempts of the respondents in filing case after case are to abuse the process of law by playing fraud which is evident from above facts. Despite the above factual aspects of the matter, the Court below erroneously allowed the application filed by the respondents herein in Tr.O.P.No.45 of 2019. Aggrieved over the same, the petitioners are before this Court for the relief stated supra.

3. The learned counsel for the petitioners contends that despite the petitioners are able to trace out the title of the property through their vendors, in order to drag on the matter, the respondents filing petition after petition and did not co-operate to complete O.S.No.84 of 2016 even though the trial commenced on 12.09.2017. Despite admitting tenancy, the respondents are squatting over the property for the past seven years without paying a single penny as rent. The arguments on the side of petitioners were over, however, the respondents took adjournments for arguments and till date, has not made arguments. Apart from that, the simple suit for bare injunction can be filed before the Munsif Court. But, the respondents purposely over valued the relief and filed it before Sub-Court to drag on the matter. A suit which is pending before a superior Court, namely, the Sub-Court, cannot be transferred to an inferior Court, namely, the Munsif Court. But, such a prayer had been entertained by the District Court in Tr.O.P.No.45 of 2019. Though the eviction suit against the first respondent herein (O.S.No.84 of 2016) was argued by the petitioners herein on 23.11.2018, till date, the first respondent herein is getting adjournment by repeatedly filing adjournment petitions. The repeated



attempts of the respondents are to abuse the process of law by playing fraud is evident from above facts. Therefore, he prays for allowing this Civil Revision Petition.

4. *Per contra*, the learned counsel for the respondents through his counter affidavit as well as through his written submissions contend that the Court below after going through the materials and connected papers available that to avoid volume of evidence; that to minimize the evidence and to save the precious time of the Court, have rightly allowed the transfer application in Tr.O.P.No.45 of 2019 filed by the respondents, in which no infirmity or illegality could be found and he prays for the dismissal of this Civil Revision Petition.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

6. It is seen from the records that in O.S.No.84 of 2016, the respondents, more particularly, the first respondent had admitted in his deposition that his father, Malaisamy was a tenant of the property on an oral lease agreement. After his demise, he was continuing his business. He had also admitted about his status as tenant. When the matter stood thus, peculiarly, the second respondent who is the wife of the first respondent filed an application O.S.No.840 of 2018 from the file of the Second Additional Sub-Court, Madurai for injunction in respect of 2206 Sq.ft. In the meanwhile, her husband filed the transfer petition in Tr.O.P.No.45 of 2019 on 12.12.2019 to transfer the suit in O.S.No.84 of 2016 filed by the petitioners herein from the file of the District Munsif, Madurai Taluk to the file of the Second Additional Sub-court, Madurai or alternatively to transfer the suit in O.S.No.840 of 2018 from the file of the Second Additional Sub-Court, Madurai to the file of the District Munsif, Madurai Taluk. First of all, the Court below has failed to note that a suit which is pending before the Sub-ordinate Court cannot be transferred to the file of the District Munsif, since the District Munsif Court is inferior than the Subordinate Court in pecuniary jurisdiction. Secondly, there is no need to transfer the suit in O.S.No.84 of 2016 from the file of the District Munsif, Madurai Taluk to the file of the II Additional Sub-court, Madurai or alternatively to transfer the suit in O.S.No.840 of 2018 from the file of the II Additional Sub-Court, Madurai to the file of the District Munsif, Madurai Taluk, as contended by the respondents herein for the simple reason that in the case of O.S.No.84 of 2016 already, the trial had commenced and arguments on the side of the petitioners were over and the said suit is pending for want of co-operation from the respondent's side. That apart, the suit is ripe for trial and it is for larger relief too. The simple suit for bare injunction can be filed before the Munsif Court and not as done by the respondents herein. Thirdly, as far as O.S.No.840 of 2018 filed by the first respondent's wife is concerned, it has to be adjudicated separately on account of the fact that her husband already admitted in his deposition that he is



the tenant under the first petitioners. In any event, either the petitioner or the respondents cannot be allowed to drag on the matter either one way or the other.

7. In the light of the above and to give quietus to the issue on hand and in view of the inherent powers conferred under Article 227 of the Constitution of India, this Court has no hesitation to strike of the transfer petition in Tr.O.P.No.45 of 2019 on the file of the Principal District Court, Madurai and rejects the prayer of the respondents made therein and this Court issues the following directions:-

a) In the light of the foregoing reasons and discussions, this Court strikes of the transfer petition in Tr.O.P.No.45 of 2019 on the file of the Principal District, Madurai;

b) Since the trial in O.S.No.84 of 2016 has already started and it is riped for trial, the Court below is directed to dispose of O.S.No.84 of 2016 pending on the file of II Additional Subordinate Court, Madurai, within a period six months from the date of receipt of a copy of this order. The parties are directed to co-operate for the disposal of the suit; and

c) Since the first respondent admitted in his deposition that he is the tenant under the petitioners and there is no proof to show that he paid rent after August 2013 and that it is his case that the petitioners refuse to receive his rent, to show *bona fide* on the part of the respondents, they are directed to deposit the admitted arrears of rent into O.S.No.84 of 2016 starting from August 2013 onwards and upto date, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the petitioners are permitted to receive such arrears of rent. In case, the respondents fail to deposit the arrears of rent, the petitioners are at liberty to proceed against the respondents in the manner known to law. The future rent shall be sent by way of demand draft directly to the petitioners account and the petitioners shall provide the account details for the purpose of depositing the rent.

This Civil Revision Petition stands allowed as indicated above. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm



To

1.The Principal District Judge,
Madurai.

2.The II Additional Sub Judge,
Madurai.

+1CC to M/S T.R. Jeyapalam, Advocate, Copy Appln. SR. NO. 22604/2021
dated 19.7.2021

+1CC to M/S Vijay Sethupathy, Advocate, Copy Appln. SR. NO. 22799
dated 15.7.2021

C.R.P. (PD) (MD) No. 800 of 2019
15.07.2021

MGJ(26.07.2021) 6P 5C