



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Tr.C.M.P. (MD) No.307 of 2021

and

C.M.P. (MD) No.6484 of 2021

WEB COPY

1.The Tamil Evangelical Lutheran Church (TELC)
Rep. by its Secretary A.Mehar Antony

2.A.Maher Antony

3.Rev.Dr.J.C.Jacob Sundar Singh

4.K.Albert Inbaraj ... Petitioners/Plaintiffs
[Amended as per order in I.A.No.09/2021
dated 27.04.2021]

-vs-

1.Rt.Rev.D.Daniel Jayaraj

2.Rev.J.Chelladurai

3.D.Wilfred Daniel

4.Rev.S.Samuel Abraham

5.D.Thangapazham

6.R.Benjamin Jeyaraj ... Respondents/Defendants

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 r/w.151 of the Code of Civil Procedure, to withdraw the suit in O.S.No.253 of 2020 from the file of the learned I Additional District and Sessions Judge (PCR), Tiruchirappalli and transfer the same to the learned III Additional District Judge, Tiruchirappalli.

For Petitioner : Mr.P.H.Arvinth Pandian
for Mr.G.Thalaimutharasu

For Respondents : Mr.R.Baskaran (for R1)
Mr.K.Viralinathan
(for R2 to R6)

O R D E R



withdraw the suit on the file of the I Additional District and Sessions Judge (PCR), Tiruchirappalli in O.S.No.253 of 2020 and transfer the same to the learned III Additional District Judge, Tiruchirappalli.

2. The brief facts of the case are as follows:

The petitioners are plaintiffs in O.S.No.253 of 2020 pending on the file of the I Additional District and Sessions Court(PCR) Tiruchirapalli. The suit has been filed seeking for declaration invoking Rule 128(12) of Church Rules 1991 by the first defendant to assume the office of Secretary, Church Council and Treasurer, Church Council by his letters dated 30.10.2020 and to declare the bishop/President TELC Emergency Circular No.4/2020 dated 1.11.2020 issued by the first defendant invoking of Rule 194 of the Church Rules 1991 as ab initio null and void and for permanent injunction restraining the defendants or any one claiming any right under them from interfering with the functioning of the plaintiffs as members and office bearers of Church Council for the Triennium 2019-2022 and carry out their duties as per the Rules either by issuing any circular or letter to the Pastors/Chairman/Candidates of Pastorates/office bearers of TELC/Boards/Station Managers/ Staff or Members of TELC without the approval of the Church Council.

ii) The respondents/defendants filed I.A.No.2 of 2020 seeking to reject the plaint under Order VII Rule 11 of the Civil Procedure Code. The Trial Court by an order dated 21.12.2020 rejected the plaint.

iii) As against the rejection of plaint, the petitioners preferred A.S.(MD) No.18 of 2021 before this Court and this Court, by an order dated 19.03.2021, set aside the order passed by the Trial Court and restored the suit.

iv) During the pendency of the case, the petitioners had filed I.A.No.1 of 2020 seeking for temporary injunction restraining the respondents/defendants or any one claiming any right under them from interfering with the functioning of the plaintiff as members and office bearers of the Church Council for the Triennium 2019-2022 and carrying out their duties as per their rights either by issuing any circular or letter to the pastors and other office bearers without approval of the Church council till the disposal of the suit.

v) After hearing both sides, the Trial Judge, by an order dated 23.06.2021 had dismissed the I.A.No.1 of 2020. As against the dismissal of the I.A., the petitioners have preferred CMA(MD) No.619 of 2021 before this Court and it is still pending before this Court.



vi) It is the case of the petitioners that the matter has been listed before the Trial Court on 26.07.2021 and the petitioners had informed the Trial Judge about the pendency of CMA(MD) No. 619 of 2021 before this Court and they had sought for adjournment. However, the Trial Judge had hesitated to give adjournment and stated that this Hon'ble Court, while allowing A.S.(MD) No.18 of 2021, had directed to complete the trial within a period of six months. It is the further case of the petitioners that they have insisted for adjournment, but, the Trial Judge had made an open declaration that if the petitioners do not proceed to examine the witnesses, the suit will be dismissed on 02.08.2021. Apprehending bias on the part of the Trial Judge the present petition has been filed seeking for transfer.

3. Mr.P.H.Arvinth Pandian, learned Senior Counsel appearing for the petitioners would submit that the petitioners are the plaintiffs in O.S.No. 253 of 2020 pending on the file of the I Additional District and Sessions Court (PCR) Tiruchirapalli. The petitioners had filed I.A.No.1 of 2020 and the learned trial Judge, by order dated 23.06.2021, had dismissed the same against which, the petitioners have preferred CMA(MD) No.619 of 2020 and it is pending before this Court. The petitioners had sought for adjournment, whereas the Trial Judge had made an open declaration in the Court that if the petitioners do not proceed to cross examine witnesses the suit will be dismissed on the next hearing date. The open declaration made by the learned Judge during the proceedings had created strong doubt in the minds of the petitioners that they may not get fair and reasonable opportunity before the Court. It had exposed that the Trial Judge was already pre determined and biased. The petitioners have lost confidence in conducting trial before him. He would further submit that though there is a direction by this Court to complete the trial within a period of six months in an earlier round of litigation, it does not mean that the petitioners should not be granted opportunity to exercise their rights. He would further submit that there were earlier litigation between the very same parties in respect of similar disputes and this Court, in the earlier litigation, had directed all the connected matters to be listed before the learned III Additional District Judge, Tiruchirapalli for effective disposal of all the cases. He would thereby pray that the suit in O.S.No.253 of 2020 pending on the file of the I Additional District and Session Court(PCR) Tiruchirappali may be transferred to the file of the learned III Additional District Judge, Tiruchirapalli.

4. Per Contra, Mr.R.Baskaran, the learned counsel for the respondents would submit that the petitioners are the plaintiffs in the suit. One of the main reliefs sought for in the suit is



for a permanent injunction restraining the respondents or any one claiming any right under them from interfering with the functioning of the plaintiff as members and office bearers of the Church council for the Triennium 2019-2022. He would further submit that the petitioners had filed I.A.No.1 of 2020 seeking the very same interim relief and the trial Court finding that the prayer in the main suit and the interim prayer are one and the same, had dismissed the same and against the order the petitioners have also approached this Court by filing CMA(MD) No.619 of 2020 and this Court has not granted any interim orders. He would further submit that in an earlier round of litigation in A.S.No.18 of 2021, this court had specifically directed the Trial Court to complete the trial within a period of six months from the date of order and till such time, having regard to the nature and the manner in which the Rules have been amended, had granted interim stay restraining the respondents from issuing any Circular or fresh Notification for election and had directed that the parties are also bound by the orders. In view of the order of this Court elections could not be conducted. The petitioners are now advantageously placed by the order and are now wilfully delaying to proceed with the trial and thereby attempting to stall the entire proceedings by one or the other reason and such being the situation, the Trial Judge, based on the orders of this court, fixing time frame had insisted to proceed with the trial. He would submit that merely because of the Trial Judge had directed the plaintiffs to proceed with the trial, the petitioners cannot have the apprehension that he is biased.

5. The learned counsel would further submit that in respect of the submission that this Court had directed all the connected matters to be listed before the III Additional District Court, Tiruchirapalli may not be applicable to this case because earlier orders pertain to election conducted during the earlier Triennium and that order has no relevance to the present case. He would further submit that the Trial Judge, after giving due opportunity, had disposed the I.A.No. 1 of 2020 on 23.06.2021 and posted the matter to 28.06.2021 and thereafter the matter was posted for trial on 28.06.2021.

6. Heard the learned counsel appearing for both sides and perused the materials available on record.

7. The petitioners are plaintiffs in O.S. No. 253 of 2021 and in earlier round of litigation this Court, by an order in A.S. (MD) No.18 of 2021 dated 19.03.2021, had directed the trial Court to expedite the suit and complete the trial within a period of six months. The prayer in I.A.No.1 of 2021 and the third prayer in the main suit are one and the same. I.A had been dismissed on 23.06.2021. Therefore the trial Court, in compliance of the orders



of this Court in A.S.No.18 of 2021, had instructed the petitioners/ plaintiffs to get along with the trial.

8. The allegation made by the petitioners is that the Trial Judge had insisted the petitioner to commence the examination of witnesses and the further allegation is that the Judge had proceeded to record that the suit will be dismissed on 02.08.2021 if the petitioner does not commence the examination of witnesses and that the open declaration made by the learned Judge had created strong doubt in the minds of the petitioners that they would not get a fair and reasonable opportunity before the learned Judge and it was clear that the learned Judge had pre-determined his mind on the issue thereby making the petitioners lose confidence in the court conducting trial.

9. In the opinion of this court, the apprehension of the petitioner without there being any supporting material cannot be held to be ground for transfer. When the ground for transfer is not substantiated with reasonable should note be allowed. It would be useful to refer to the following decisions.

10. In **Vijay Pal and others v. State of Haryana and another** reported in **((1999) 9 SCC 67)**, the Apex Court has held that in the absence of justified reason, it is not proper and legal to transfer cases.

11. Mere allegations like substantial prejudice, non-availability of congenial atmosphere for a free trial cannot be held the sole ground of transfer. Mere apprehension is not enough unless it is supported with some material. A party, either complainant or the accused should not ordinarily be allowed to have the Forum of his/her own choice. A transfer applicant cannot be allowed to make unfounded charges. A transfer should not be granted on a fancied notion of a litigant. Where the ground for transfer is not substantiated and as such does not exist, the application for transfer should not be allowed. It should not be allowed to help a litigant to choose a Bench of his own choice.

12. In **Smt. Sangeetha S. Chughv.Ram Narayan V.,and Official Assignee, Madras.v. Inspector-General of Registration, Bangalore (1994 SCC Online Kar. 274)**, it has been held as under:-

The mere observations of Presiding Officer of the Court while hearing a case does not mean that he has made up his mind in a particular manner so as to justify an allegation of bias against such Presiding Officer and this would not justify transfer of case from one Court to another. A Judge is not expected to remain silent during course of hearing and not to express any opinion. A sphinx



Officer. There has to be an effective discussion and effective attempt to conciliate or to clarify the misunderstanding or to get the issues clear, so that the issues can be settled or a just and proper decision can be arrived at. If in that process the Presiding Officer would make a statement it should not be misunderstood as an expression of decision."

13. In one matter, certain observations were made by a Judge in an earlier case. When a subsequent matter came up before him this was sought to be a ground for transfer but declined by the Court in ***G. Lakshmi Ammal v. Elumalai Chettiar (1980 SCC Online Mad. 89)***.

14. The allegations of bias of Presiding Officer, if made the basis for transfer of case, before exercising power under section 24 C.P.C., the Court must be satisfied that the apprehension of bias or prejudice is *bona fide* and reasonable. The expression of apprehension, must be proved/substantiated by circumstances and material placed by such applicant before the Court. It cannot be taken as granted that mere allegation would be sufficient to justify transfer.

15. In ***Smt. Sudha Sharma vs Ram Naresh Jaiswal (AIR 1990 MP 320)***, the Court observed that it is the duty of the learned Counsel to draft the application with utmost care and caution. Hon'ble B.M. Lal, J. (as His Lordship then was), said:

"9.....a foremost duty casts upon the Counsel concerned while drafting and making allegations in the transfer petition against the Judge concerned with utmost care and caution, particularly in making wild allegations against the Presiding Judge. But, it appears that now-a-days it has become common feature to make allegations against the Court Presiding Judge. The Counsel should realise that they are also officers of the Court. Introducing fanciful and imaginary allegations as grounds for transfer and harbouring apprehension such grounds that fair and impartial justice would not be done should always be deprecated.

10. Nonetheless, it is also important for all those who are engaged in the task of administering justice to remember that it is incumbent on them to create and maintain such confidence and atmosphere by giving every litigant an assurance by their judicial conduct that fair and impartial justice will be imparted. It is necessary to create such a confidence in the mind of the litigants so that their faith may not be shaken in Courts of law."



16. Mere suspicion by the party that he would not get justice would not justify the transfer. There must be a reasonable apprehension to that effect. A judicial order made by a Judge legitimately cannot be made as as foundation for transfer of a case. Mere presumption of possible apprehension should not and ought not be the basis of transfer of any case from one court to another. It is only in very special circumstances, when such grounds are taken, the Court must find reasons that exist to transfer a case, not otherwise. **(Rajkot Cancer Society. v. Municipal Corporation, Rajkot, Pasupala Fakruddin v. Jamia Masque, and, Nandini Chatterjee v. Arup Hari Chatterjee. (AIR 2003 AP 448) .**

17. Where a transfer is sought making allegations regarding integrity or influence etc. in respect of the Presiding Officer of the Court, this Court has to be very careful before passing any order of transfer. In the matters where reckless false allegations are attempted to be made to seek some favourable order, either in a transfer application, or otherwise, the approach of Court must be strict and cautious to find out whether the allegations are *bona fide*, and if treated to be true on their face, in the entirety of circumstances, can be believed to be correct, by any person of ordinary prudence in those circumstances. If the allegations are apparently false, strict approach is the call of the day so as to maintain not only discipline in the Courts of law but also to protect Judicial Officers and maintain their self-esteem, confidence and above all the majesty of institution of justice.

18. In the light of the above decisions, this court is of the view that the apprehension of the petitioners in the case on hand is vague and wholly unsubstantiated and such mere apprehension is not sufficient to justify the transfer.

19. In the result, this Transfer Civil Miscellaneous Petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

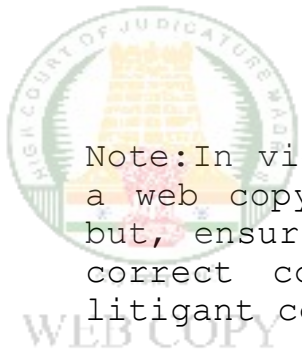
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/ /2021

Sub Assistant Registrar (CS)

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To:

1. The I Additional District and Sessions Judge (PCR),
Tiruchirappalli.

2. The III Additional District Judge, Tiruchirappalli.

+1 CC to M/s.R.BASKARAN, Advocate (SR-26988[F] dated
23/08/2021)

Tr.C.M.P.(MD) No.307 of 2021
and
C.M.P.(MD) No.6484 of 2021
23.08.2021

PK(CO)
SB(21.10.2021) 8P 4C