



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

TR.C.M.P.NO.132 OF 2022

&

C.M.P.NO.2663 OF 2022

1. G.Krishnaveni

2. G.Ramesh

3. G.Revathi

4. P.Manjula

... Petitioners

.Vs.

1. M.Sundaramoorthy

2. Vasantha

... Respondents

PRAYER:-

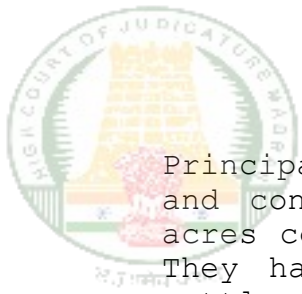
Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure to withdraw the first appeal filed by the respondent in A.S.No.11 of 2021 on the file of the learned Sub-ordinate Judge, Tiruvallur and transfer to Sub-ordinate Judge, Poonamallee.

For Petitioner : Mr.J.R.K.Bhavanantham

ORDER

The respondents 1 to 4 in A.S.No.11 of 2021 on the file of the Subordinate Court, Tiruvallur are the petitioners before this Court seeking to transfer A.S.No.11 of 2021, from the file of the Subordinate Court, Tiruvallur to the file of the Subordinate Court, Poonamallee.

2. Given below is the brief resume of the facts stated in the petition. The revision petitioners herein would submit that they had filed the suit O.S.No.25 of 2003 on the file of the



Principal District Munsif, Tiruvallur for declaration of title and consequential injunction in respect of an extent of 1.11 acres comprised in S.No.98/2 of Perumbakkam Village, Tiruvallur. They had claimed a right to the property on the basis of a settlement deed said to have been executed by the mother in law of the 1st petitioner and grand mother of the petitioners 2 to 4, one Pattammal.

3. It is the case of the petitioners that the said Pattammal executed a settlement deed dated 19.06.1959 bequeathing the A-Schedule property in favour of her elder son Subramani @ Kannapan and the B-Schedule property in favour of Govindasamy, the husband of the 1st petitioner and the father of the petitioners 2 to 4. The patta was mutated in their respective names.

4. The respondents had defended the suit inter alia contending that Govindasamy had executed an agreement of sale in respect of the suit schedule property in favour of the 1st respondent, Sundaramoorthy, for which a sum of Rs.10,000/- had been received as an advance by the said Govindasamy and the balance amount of Rs.31,625/- was to be paid by the 1st respondent. Thereafter, Govindasamy had appointed the 1st respondent's mother Chinnammal as his power of attorney to sell the schedule property.

5. On 11.06.1981, the said Govindasamy and his brother Subramani @ Kannapan had mortgaged the property and the plaint schedule property had been handed over to the 1st respondent. The mortgage was discharged on 12.06.1980, for which an endorsement was made on the reverse of the mortgage deed. The 1st respondent would contend that from the date of the agreement, he has been in possession and enjoyment of the property.

6. The petitioner's husband died on 08.07.1999, and after his death, the 2nd respondent as his power agent executed sale deed in favour of the 1st respondent. The petitioners had questioned the sale as null and void and fraudulent one. They have therefore filed the suit O.S.No.25 of 2003. The petitioners had obtained an injunction in I.A.No.1567 of 2004. This order of injunction was made absolute and the Civil Miscellaneous Appeal was filed by the respondents in C.M.A.No.22 of 2005 on the file of the Subordinate Court, Tiruvallur. Though the revision petitioners have filed caveat no notice was served on the revision petitioners and an order of stay was obtained by the respondents. Thereafter, the revision petitioners had moved the transfer petition in Tr.C.M.P.No.99 of 2006 to transfer C.M.A.No.22 of 2005 to any other Court.



7. This Court by order dated 19.06.2006 was pleased to transfer C.M.A.No.22 of 2005 to the Subordinate Court, Poonamallee and it was re-numbered as C.M.A.No.24 of 2006 and thereafter disposed of on merits. Meanwhile, the suit was decreed in favour of the plaintiff. Against the said Judgement and Decree, the 1st respondent herein had filed an appeal in A.S.No.11 of 2021 on the file of the Subordinate Court, Tiruvallur. The revision petitioners had lodged their caveat in the said appeal and therefore I.A.No.2 of 2021 filed by the 1st respondent for stay and I.A.No.3 of 2021 for interim injunction was adjourned to 17.12.2021 for filing of the counter.

8. It is the case of the petitioners that, on 17.12.2021, when the matter was listed, the learned Judge expressed her mind to grant interim injunction on the ground of disturbance caused by the revision petitioners. That apart, the petitioners would contend that the 1st respondent's daughter is employed as an OA (Cum) Cook at the residence of the District Judge, Tiruvallur and therefore there is every possibility of the learned Subordinate Judge, Tiruvallur being influenced by the District Judge, Tiruvallur. The matter is at the stage of arguments.

9. Therefore, in view of the above two circumstances:

(a) Since the presiding officer had expressed her mind; and,

(b) The 1st respondent's daughter was employed as an OA (cum) Cook at the residence of the District Judge, Tiruvallur.

There is a chance of the District Judge, Tiruvallur influencing the Subordinate Judge, Tiruvallur. The reasons given in the affidavit filed for transfer are mere apprehension and an accusation against the Presiding Officer, particularly, when the petitioners would state that the Subordinate Judge, Tiruvallur could be influenced by the District Judge, Tiruvallur into passing an order, since the 1st respondent's daughter is working as an OA (cum) Cook in the residence of the District Judge, Tiruvallur.

10. This Court cannot order transfer on a mere apprehension that too when the matter is posed for arguments. An argument was advanced by Mr.J.R.K.Bhavanantham, learned counsel for the petitioners that the learned Judge is rushing to pass order in the appeal. However, a perusal of the adjudication order in A.S.No.11 of 2021, would show that the respondents had entered appearance and the appellant had concluded arguments on 14.12.2021 and adjourned to 17.12.2021 for respondents' (revision petitioners herein) arguments. Since then, the matter has been adjourned on six occasions for the respondents' argument. Without arguing the matter, the respondents/revision



petitioners have come forward with the instant petition by making allegations on the basis of a mere apprehension.

11. Therefore, this Court is not inclined to grant a transfer and accordingly, the Transfer Civil Miscellaneous Petition is dismissed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub-ordinate Judge,
Tiruvallur.
2. The Sub-ordinate Judge,
Poonamallee.

+1cc to Mr.J.R.K.Bhavanantham, Advocate, S.R.No.11898

TR.C.M.P.NO.132 OF 2022

NK(CO)
PBS/16/03/2022