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Tr.C.M.P.No.238 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Transfer C.M.P.No.238 of 2023

a n d

C.M.P.No.5211 of 2023

Minor Senthurkumaran

...

Petitioner

Vs

1. Veeromohan
2. Sagunthala
3. The Sub-Registrar
Sendurai Town and Taluk
Ariyalur District.
4. The Tahsildar
Sendurai Town and Taluk
Ariyalur District.
5. The District Collector
Collectorate
Ariyalur District
Ariyalur.

...

Respondents

Prayer: Petition filed under Section 24 of the Code of Civil Procedure to withdraw the case in O.S.No.59 of 2022 on the file of the Principal District and Sessions Judge, Ariyalur District and transfer to the Principal District Judge, Tiruvannamalai District.



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For Petitioner

...

Mr.C.Munusamy

For respondents

...

Mr.S.Kamadevan
for R.R.1 and 2.

ORDER

This Civil Revision Petition is filed seeking to withdraw O.S.No.58 of 2022, pending on the file of the learned Principal District and Sessions Judge, Ariyalur District and to transfer the same to the Principal District Judge, Tirunelveli, under Section 24 of the Code of Civil Procedure.

2. The facts in respect of grounds on which this petition is filed would go to show that the petitioner's father by name Rajamanickam had two sons and one daughter through his first wife Sundarammal. After the death of the first wife, on 14/12/1995, Rajamanickam has married again, on 12/6/1996. The petitioner is the son of Rajamanickam through first wife. The first respondent was born through second wife. Rajamanickam when he was working as a Professor at Government Arts College, Ariyalur, and during that time, he has purchased several immovable properties. However, the respondent Nos.1 and 2 have surreptitiously and stealthily got transferred those properties in their names.



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3. The second wife and her son have thrown the petitioner's father Rajamanickam out of the house, without taking care, thereby, disputes started between them. The first respondent has become addicted to bad habits and he used to abuse the petitioner's father in filthy language, thereby, the said Rajamanickam came to the petitioner's house. Due to his ill, the petitioner's father died on 28/6/2022. His father has executed a Will in favour of the petitioner's son in respect of the schedule of property. The second respondent, who is the second wife of Rajamanickam, and her son have disputed the same and thereby the petitioner had to file O.S.No.59 of 2022 on the file of the learned Principal District and Sessions Judge, Ariyalur District.

4. It is also the case of the petitioner that guardian of the petitioner is working as a Deputy Superintendent of Police, Finger Print Special Wing, District Police Office, Tiruvannamalai and his son is a special child, suffering from permanent disability to the extent of 70%. He is suffering from autism spectrum disorder, which required round the clock care and he has been taking personal care and his son cannot manage himself without the assistance of the petitioner. It is therefore, stated that he cannot attend the Court proceedings at Ariyalur and thereby



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sought for transfer of the case from Ariyalur to Tiruvannamalai.

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5. The first and second respondents have filed a detailed counter, denying the allegations in respect of the allegations made against them and submitted that O.S.No.59 of 2022 is posted for trial and they have to file their proof affidavit and subjected themselves to cross-examination. Therefore, there are no circumstances warranting the transfer of the case. It is submitted that the second respondent is 65 years old facing severe health issues and cannot travel 170 kms from Ariyalur to let her evidence.

6. It is also stated that the petitioner is working as a Deputy Superintendent of Police in Forensic Department and he is a very influential person in the said District and in case, if the suit is transferred, the respondents 1 and 2 may not get fair justice. Therefore, sought for dismissal.

7. Heard Mr.C.Munusamy, learned counsel for the petitioner and Mr.S.Kamadevan, learned counsel for the respondents 1 and 2.



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8. There is no dispute in respect of the relationship between the petitioner and respondents 1 and 2. Both the parties are claiming their rights over the Schedule of property through one Rajamanickam. The petitioner has filed O.S.No.59 of 2022 for declaration in respect of schedule of property at Ariyalur District, as the schedule of properties are in the territorial jurisdiction.

9. The petitioner is seeking to transfer O.S.No.59 of 2022 from Ariyalur District to that of Tiruvannamalai District, as his son is suffering from autism spectrum disorder to the extent of 70% disability, thereby, continuous care and attention is required and here, he will not be able to attend the proceeding in O.S.No.59 of 2022 pending at Ariyalur District.

10. The other ground raised by the learned counsel for the petitioner is that he has been working as the Deputy Superintendent of Police in Finger Print Special Wing, District Police Office, Tiruvannamalai and thereby, on account of his professional obligations, he cannot take the leave and it would be convenient for him to attend the case if it is transferred to Tiruvannamalai.



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11. Respondents 1 and 2 have strongly opposed stating that in case, if the case is transferred to the Principal District Judge, Tiruvannamalai, the petitioner being the Deputy Superintendent of Police is an influential person and thereby, they may not get fair justice. The respondents 1 and 2 have made loose comments that if the case is transferred, they will not get fair justice. Making such allegations against the system is totally uncalled for. However, this Court is of the view that the respondents 1 and 2 have taken such a plea in order to see that cases are not transferred to Tiruvannamalai Court. This Court is of the view that the relief sought for by the petitioner counsel be refused on the ground that petitioner is working as a Deputy Superintendent of Police in the District where transfer is sought for.

12. It is submitted by the learned counsel for the respondents 1 and 2 that pleadings in this case are already over, issues have also been framed and the petitioner is expected to file his proof affidavit then making himself for cross-examination, thereby, at this stage, request for transfer cannot be permitted. It is true that O.S.No.59 of 2022 stated to have been posted for trial. The petitioner is expected to pursue his case and defend his case until evidence of both side is over and the matter is finally heard



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and disposed by the Court. Therefore, since O.S.No.59 of 2022 is posted for trial, that cannot be a ground to dismiss this application. The other aspect raised by the respondents 1 and 2 is that the second respondent is aged about 67 years and it is difficult for her to attend. It has to be seen that first respondent is none other than the son of Rajamanickam. If the second respondent is not in a position to attend the Court, she can engage a counsel. Further, on behalf of the second respondent, first respondent can also appear before the Court and give evidence. In case of necessity, second respondent may come once or twice to attend the Court for giving evidence. Rest of the times, the first respondent can take care of the proceedings of the case. In case, if the second respondent is unable to attend the Court, she can let the evidence through VC also.

13. Considering the fact that the petitioner's son is a special child and that the respondents 1 and 2 are not having any serious reservations, except stating that the petitioner is an influential person, and after weighing the advantages and disadvantages of both the parties, this Court is inclined to allow the Transfer Civil Miscellaneous Petition.

Dr.D.NAGARJUN,J



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14. In the result, this Transfer Civil Miscellaneous Petition is allowed and O.S.No.59 of 2022 on the file of the learned Principal District and Sessions Judge, Ariyalur District is withdrawn and transferred to the learned Principal District Judge, Tiruvannamalai District. The learned Principal District Judge, Tiruvannamalai, is directed to complete the trial within 6 months from the date of receipt of a copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

30/6/2023

Index :yes/no

Neutral Citation: Yes/No

mvs.

To

1. The Principal District and Sessions Judge, Ariyalur District
2. The Principal District Judge, Tiruvannamalai District.

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