



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on	27.06.2023
Pronounced on	30.06.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

Tr.C.M.P.(MD) Nos.301 to 303 of 2023

and

C.M.P.(MD) Nos.6833 to 6835 of 2023

Tr.C.M.P.(MD) No.301 of 2023

S.Vaikundarajan

... Petitioner

Vs.

1.V.Chandra Boopathy

2.V.Subramanian

3.V.Velmurugan

4.Karthiyayini

5.V.Subasaranya

6.S.Jegatheesan

7.J.Renuka

8.J.Muthurajan

9.J.Chenthilrajan

10.J.Subburajan

... Respondents



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure, 1908, to withdraw and transfer the E.P.No.61 of 2019 in A.C.P.No.1 of 2019, on the file of the Principal District Court, Tirunelveli to the Principal District Court, Madurai.

For Petitioner : Mr.V.Ragavachari
Senior Counsel for
Mr.J.Kingsly Solomon

For R6 & R7 : Mr.R.Thiyagarajan
for Mr.N.V.Prakash

For R9 : M/s.Krishnaveni
Senior Counsel for
Mr.P.Thiyagarajan

Tr.C.M.P.(MD) No.302 of 2023

S.Vaikundarajan

Vs.

... Petitioner

1.V.Chandra Boopathy

2.V.Subramanian

3.V.Velmurugan

4.Karthiyayini

5.V.Subasaranya

6.S.Jegatheesan

7.J.Renuka

8.J.Muthurajan



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

9.J.Chenthilrajan

10.J.Subburajan

11.M.Madhana

... Respondents

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure, 1908, to withdraw and transfer the E.P.No.62 of 2019 in A.C.P.No.1 of 2019, on the file of the Principal District Court, Tirunelveli to the Principal District Court, Madurai.

For Petitioner : Mr.V.Ragavachari
Senior Counsel for
Mr.J.Kingsly Solomon

For R6 & R7 : Mr.R.Thiyagarajan
for Mr.N.V.Prakash

For R9 : M/s.Krishnaveni
Senior Counsel for
Mr.P.Thiyagarajan

Tr.C.M.P.(MD) No.303 of 2023

S.Vaikundarajan

... Petitioner

Vs.

1.V.Chandra Boopathy

2.V.Subramanian

3.V.Velmurugan

4.Karthiyayini



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

5.V.Subasaranya

6.V.V.M. Education Trust,
Through its Managing Trustee
S.Jagatheesan
S/o.A.S.V. Subbiah Nadar (Late),
M.L.Theri Road,
Keeraikaranthattu,
Tisaiyanvillai - 627 657.

7.S.Jagatheesan

8.J.Muthurajan

9.J.Chenthilrajan

10.J.Subburajan

... Respondents

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure, 1908, to withdraw and transfer the E.P.No.63 of 2019 in A.C.P.No.1 of 2019, on the file of the Principal District Court, Tirunelveli to the Principal District Court, Madurai.

For Petitioner : Mr.V.Ragavachari
Senior Counsel for
Mr.J.Kingsly Solomon

For R6 & R7 : Mr.R.Thiyagarajan
for Mr.N.V.Prakash

For R9 : M/s.Krishnaveni
Senior Counsel for
Mr.P.Thiyagarajan



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

WEB COPY

COMMON ORDER

By this common order, all the three Transfer Civil Miscellaneous Petitions are being disposed of.

2. Heard Mr.V.Ragavachari the learned Senior Counsel for the petitioner, Mr.R.Thiyagarajan the learned counsel for the sixth and seventh respondents and M/s.Krishnaveni the learned Senior Counsel for the ninth respondent in Tr.C.M.P.(MD) No.301 of 2023.

3. These Transfer Civil Miscellaneous Petitions has been filed to transfer the E.P.Nos.61 to 63 of 2019 in A.C.P.No.1 of 2019 from the file of the Principal District Court, Tirunelveli to file of the Principal District Court, Madurai.

4. The petitioner has filed E.P.Nos.61 to 63 of 2019 pursuant to the Award dated 02.01.2019 passed in A.C.P.No.1 of 2019. The sixth to tenth respondents had attempted to dilute the aforesaid Award dated 02.01.2019 in A.C.P.No.1 of 2019 by filing O.P.Nos.372 to 374, 380 to 382 and 384 of 2019 and O.A.No.543 of 2019 under Section 11(6) of the Arbitration



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

and Conciliation Act, 1996 before the Madras High Court (Principal Seat of this Court), Chennai. The learned Single Judge of the Madras High Court (Principal Seat of this Court), Chennai, by an order dated 06.09.2019, has rejected the prayer for appointment of a retired Judge of the Hon'ble Supreme Court as the Sole Arbitrator to decide the dispute between the parties. Operative portion of the order dated 06.09.2019 reads as under:-

19. As discussed earlier, if the said Partition Deed is not result of any conciliation proceedings, then the document is a settlement of all the disputes and differences existing in the families as per the customs and practice prevailing in their community. If at all the same is to be challenged, the same can be done only before the Civil Court and not by invoking Section 11 or 9 of the A & C Act.

20. Reliance was placed on the judgment of the Hon'ble Apex Court in **Sukhrani v. Hari Shanker**, AIR 1979 SC 1436, wherein, relying upon the judgment in **Ratnam Chettiar v. S.M. Kuppuswami Chettiar**, AIR 1976 SC 1, it was held that even though there was no fraud, misrepresentation or undue influence, a partition could be reopened at the instance of a minor coparcener, despite the fact that his branch was represented by his father at the partition, if the partition was unfair or prejudicial to the interest of the minor. It was also held that the entire partition need not be reopened if the partition was unfair in regard to a distinct and separable part of the scheme of partition. In such an event the



WEB COPY



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

reopening of the partition could be suitably circumscribed.

21. From the above discussions, it is clear that there is no such dispute between the parties. If there is no dispute, the other questions will not arise. If there is a dispute, it is only with respect to the execution of the Kaithadi Partition. Admittedly, both the parties have consented to the Partition Deed. The document also satisfies all the requirements of a conciliation or even a partition. Therefore, what is now sought to be agitated is only the misrepresentation by the first respondent and the inequality of partition effected in the said document.

22. The only allegation is that the first respondent misrepresented and that the petitioners did not have time to verify the entire details of the Partition Deed. It is also not the case of the petitioners that they requested time to go through the Partition Deed and that they were refused the same. Non-availability of time and the length of the document would not constitute fraud or misrepresentation. Fraud has to be pleaded and proved. It must be proved that the first respondent made false representation to his knowledge. The level of proof required is much higher in these cases, as a mere ambiguous statement per se cannot make the allegation of the misrepresentation true. Unless knowledge is attributed to the person making misrepresentation, it is difficult to prove the same.

23. The next question that arises is whether the said Partition Deed is an award and if so, whether it requires registration, after affixing required stamp duty. If it is deemed to be a Partition Deed, which came to be executed by misrepresentation or undue influence, then the remedy for the petitioners is to go



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

before the Civil Court. The Kaithadi Partition is the outcome of all the issues being settled in the family. Though the counsels could not explain the meaning of “Kaithadi”, it only indicates that the partition is as per the custom prevalent in the trading families of the area/community. Having admitted the execution, but pleaded undue influence and misrepresentation, the document is only voidable, which has to be set aside in a manner known to law before the civil court after trial. If it is an outcome of conciliation and that it is an award, whether it requires registration or stamp duty payable can be agitated in a petition filed under Section 34 of the A & C Act. Therefore, by no stretch of imagination, the petitioners can ask for reference to Arbitral Tribunal, when they are seeking to set aside the document, admittedly, signed by both the parties. Unless and until the document is set aside in the manner known to law, they cannot attack the validity or otherwise of the same in the present proceedings.

24. For all these reasons, all these petitions are dismissed. Consequently, O.A.No.543 of 2019 is also dismissed. The parties shall bear their own costs.

5. Aggrieved by the aforesaid order, the sixth respondent S.Jagatheesan had also filed S.L.P. before the Hon'ble Supreme Court. The said S.L.P. was dismissed at the diary stage in S.L.P. (Civil) Diary No.36699 of 2019 *vide* order dated 21.10.2019. While dismissing the S.L.P., the Hon'ble Supreme Court has however granted liberty to the sixth respondent herein to work out remedy in accordance with law.



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

6. A Review Petition (Civil) Diary No.2203 of 2020 was also dismissed by the Hon'ble Supreme Court *vide* 09.06.2020.

7. The Execution Proceedings initiated by the petitioner in E.P.Nos. 61 to 63 of 2019 in A.C.P.No.1 of 2019 were also the subject matter of a challenge in C.R.P.(MD) Nos.1797 to 1799 of 2019 filed by the first to seventh respondents herein. These Civil Revision Petitions were dismissed this Court *vide* its order dated 08.04.2021. A reference is made to the Paragraph Nos.10 to 15 of the above order dated 08.04.2021 which reads as under:-

10.Admittedly, through the judgment of the High Court and the Supreme Court, the KBPP is considered to be a valid document unless it is challenged in the manner known to law. Therefore, I need not go into any of the arguments advanced by the petitioners' counsel and the respondents' counsel. Everything has reached its finality. The revision petitions have been filed against the notice issued by the Executing Court. At the risk of repetition, even assuming as stated by the learned Senior Counsel for the revision petitioners, the order of Justice Pushpa Sathyanarayana is *per incuriam*, it is still binding on the parties except it cannot be cited as a precedent in some other proceeding. The petitioners have not come out with sufficient reason for not agitating the issue before the trial Court under Order 21 Rule 23(2) of CPC read with Rules 143 and 146 of Civil Rules of Practice read with Section 47 of CPC to maintain the CRPs. There is no violation



WEB COPY



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

committed by the EP Court under Order 21 Rule 17 read with Rule 11(2) of CPC and Rule 142 of Civil Rules of Practice and therefore, for the above reasons also, the CRPs are not maintainable. In view of Order 21 of CPC read with Section 47 CPC being a complete code by itself, capable of addressing and deciding all the issues raised by the civil revision petitioners including that of the maintainability of the execution petition, the present exercise under Article 227 of the Constitution of India is barred. There is no any order passed by the Executing Court to challenge the same before this Court. As held by the Supreme Court in **Virudhunagar Hindu Nadargal Dharm Paribalana Sabai and others vs. Tuticorin Educational Society and others reported in (2019) 5 SCC 938**, when an alternative remedy is available under the Code of Civil Procedure, 1908, a revision under Article 227 of the Constitution is not maintainable. The revision petitioners cannot convert this Court into the trial Court and seek to let in evidence. The petitioners cannot let in any new evidence and cannot raise any new grounds before this Court.

11.The learned counsel for the respondents would seek for appointment of Receiver alleging that the petitioners are encumbering the properties removing the machineries etc., for which, the learned Senior Counsel Mr.V.Sathish Parasaran vehemently opposed for the appointment of Receiver. Admittedly, the KBPP is considered to be a valid document unless it is challenged in the manner known to law. He would state that the judgment of Justice Pushpa Sathyanarayana is not a conclusive decision. He would further state that though the respondents have stated that the revision petitioners are removing the machineries and goods from the companies, but had not given the precise details of the amount and machineries removed etc. He would state that a Receiver is sought even for the companies which are artificial legal entities and therefore, the remedy open to the respondents is only by way of oppression and



WEB COPY



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

mismanagement and not by way of execution. The learned Senior Counsel Mr.Sathish Parasaran would further state that the respondents ought to have moved the NCLT if the materials and stocks are moved from V.V Marine. Mr.Isaac Mohanlal, the learned Senior Counsel arguing for the petitioners would state that the appointment of Receiver will hinder the process of mediation. Mr.A.V.Arun adopted the arguments of Mr.V.Prakash. He would state the procedure followed under section 31 will have to be read with Section 74 as the award does not comply with the provisions of Section 31, and therefore, the conciliation award is not a decree and hence cannot be executed, as no stamps have been affixed under schedule I Class 12 of the Indian Stamp Act by which it has already been stated if it is so the petitioners can challenge the same only under section 13 of the Arbitration and Conciliation Act. Thus, all the counsels who appeared for the petitioners would reiterate the same arguments and the same grounds which was raised before the High Court and the Supreme Court and by Mr.V.Prakash.

12.For all the reasons stated above, particularly, paragraph 10, the present CRPs and all the petitions filed by the petitioners are not maintainable. This Court while admitting the revisions taking into consideration that the petitioners and the respondents are brothers thought it fit that if the matter is referred to mediation, there could be some amicable settlement and accordingly, the matter was referred to mediation and Mr.Justice Shivraj Patil(Retired Judge of the Hon'ble Supreme Court) and Mr.Justice K.K.Kannan(Retired Judge of this Court) were appointed as mediators and it is stated that the mediation is under process.

13.While dismissing all the civil revision petitions and the petitions filed by the petitioners, this Court also keeping in mind that there is a fundamental tie that binds the brothers urged for mediation. Especially, in these unpredictable times, it is imperative that we put aside



WEB COPY



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

differences and allegations, and think with a sound mind whether these ties that binds are mere formalities or have solid convictions. Yes, things do sour in any relationship and brotherhood is probably the most resilient of all. As any word said poorly, or action that hurt is immediately healed by the love of a brotherly solace, shoulder to support and hand to hold firm on to and therefore it is always good to look back and retrospect on how one can pick up the threads of their relationship and start weaving it together with the intent as brothers and not strangers unto each other. The cracks that have divided the brother could be weaved as a tangible design in the tapestry of a new relationship. If the brothers do not reconcile to mitigate but arbitrate, the bridges become gaps and next generation after the other are certain to know of each other in either bitterness or strange acquaintances if any. We as a country are known to have traditional roots, there was a reason for joint families – to keep all siblings together under one purpose to care and nurture each and therefore, this Court feels that the mediation has to be continued for an amicable settlement between the parties.

14. In my opinion, to facilitate the mediation process, the appointment of Receiver is very much necessary. If allegations mount that both parties are trying to encumber the properties which had already been divided by KBPP, it would only add strain in the relationship of the 1st petitioner and the 1st respondent and therefore, the mediation would only be an empty formality. This Court is very conscious that the respondents alone have asked for appointment of Receiver for C schedule properties alone, but considering the allegations and counter allegations in the course of arguments, without commenting on the arguments of the petitioners' counsel and the respondents' counsel, this Court deems fit that the Receiver be appointed to look into the affairs in the A schedule properties which are allotted to the petitioners in possession of the respondents and C schedule properties which are allotted to the



WEB COPY



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

respondents and in possession of the petitioners.

15.(i)Therefore, in view of the discussions above, all the Civil Revision Petitions and all the Civil Miscellaneous Petitions filed by the petitioners are dismissed.

(ii)The mediation process will continue.

(iii)Mrs.Justice DR.S.VIMALA (Retired Judge of this Court) is appointed as Receiver to look into the overall administration of the properties found in the A schedule which is in possession of the respondents and C schedule which is in possession of the petitioners.

(iv)For the proper administration of the companies and the firms, the Receiver can take the aid of the Government machineries wherever necessary.

(v)Any expenses occurring in the process of the administration of the companies and firms will be borne by the parties.

(vi)Mr.Siddharthan and Mr.P.Samuel Gunasingh, Advocates, are appointed as Assistants to assist the Receiver in the administration of the companies and firms.

(vii)The proceedings in E.P.Nos.61, 62 and 63 of 2019 shall be kept in abeyance till the mediation process is over.

(viii)The mediation process shall be completed within a period of three months. If the mediation fails, the petitioners are at liberty to raise all the issues raised in the present revision petitions before the Executing Court as the Executing Court is capable of addressing and deciding all the issues raised by the civil revision petitioners including that of the maintainability of the execution petition.



WEB COPY



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

(ix)The petitioners as well as the respondents shall jointly pay the monthly remuneration of Rs.7 Lakhs to the Receiver and a sum of Rs.1,00,000/- each to the Advocates who will assist the Receiver.

8. Further appeals to the Hon'ble Supreme Court in S.L.P.No.6985 to 6987 of 2021 were also dismissed on 04.05.2021. While dismissing the S.L.P., the Hon'ble Supreme Court made it clear that none of the observations made in the order was to influence the Execution Court in deciding the matter on its own merits.

9. E.P.Nos.61 to 63 of 2019 were initiated by the petitioner. In E.P.Nos.61 to 63 of 2019 initiated by the petitioner, the sixth and seventh respondent herein filed E.A.Nos.2, 2 & 2 of 2021 under Section 47 of the Code of Civil Procedure, 1908 in the individual capacity and/or in the capacity of trustee of V.V.M. Education Trust, the sixth respondent in Tr.C.M.P.(MD) No.303 of 2023.

10. Meanwhile, on the strength of liberty granted by the Hon'ble Supreme Court while confirming the order of the learned Single Judge of the Madras High Court (Principal Seat of this Court), Chennai, dated



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

06.09.2019, in O.P.Nos.372 to 374, 380 to 382 and 384 of 2019 and O.A.No.543 of 2019, the sixth to tenth respondents along with the eleventh respondent in Tr.C.M.P.(MD) No.302 of 2023 have filed O.S.No.72 of 2022 before the III Additional District Judge, Tirunelveli to declare the proceedings of S.Ganesh regarding the "Kaithadi Baga Privinai Pathiram" dated 31.12.2018 as not binding on the respondents. The said suit is pending before the District Court, Tirunelveli.

11. Meanwhile, one Sakthi Ganapathy, the Manager of Vetrivel Minerals (V.V.Minerals) filed CrI.M.P.Nos.12959 to 12961 of 2022 before the Principal Sessions Court, Tirunelveli under Section 457 and 451 of Cr.P.C. at the behest of the petitioner, to direct the State represented by the Inspector of Police, Nanguneri Police Station to release the Container Lorries. The sixth respondent in Tr.C.M.P.(MD) Nos.301 & 302 of 2023/the seventh respondent in Tr.C.M.P.(MD) No.303 of 2023, filed Cr.M.P.Nos.2873 to 2875 of 2023 as intervenor to dismiss CrI.M.P.Nos.12959 to 12961 of 2022 filed by the Sakthi Ganapathy, the Manager of Vetrivel Minerals (V.V.Minerals) for release of the Container Lorries. Details of the proceedings are given in a Table as under:-



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

Sl. No	Cr.M.P.No. filed by the Sakthi Ganapathy, the Manager of V.V. Minerals	Intervening Cr.M.P.No. filed by the R6/R7	Registration No. of the Container Lorry
1	Cr.M.P.No.12959/2022	Cr.M.P.No.2873/2023	TN 69 AD 5992
2	Cr.M.P.No.12960/2022	Cr.M.P.No.2875/2023	TN 69 AD 1001
3	Cr.M.P.No.12961/2022	Cr.M.P.No.2874/2023	TN 69 Q 5672

12. By three separate orders all dated 03.06.2023, the learned Principal Sessions Judge, Tirunelveli has dismissed Crl.M.P.Nos.12959 to 12961 of 2022 filed by the Sakthi Ganapathy, the Manager of Vetrivel Minerals (V.V.Minerals) for release of Container Lorries while allowing Cr.M.P.Nos.2873 to 2875 of 2023 filed by the sixth respondent in Tr.C.M.P.(MD) Nos.301 & 302 of 2023/the seventh respondent in Tr.C.M.P.(MD) No.303 of 2023. All three orders all dated 03.06.2023 are almost identical.

13. The learned Principal Sessions Judge, Tirunelveli has held that the said Sakthi Ganapathy, the Manager of Vetrivel Minerals (V.V.Minerals) has not established that the above three Container Lorries seized by the Police were allotted to the petitioner. Since all three orders all dated 03.06.2023 read almost identically, operative portion of the order passed in Cr.M.P.No.12960 of 2022 alone is extracted hereunder:-



WEB COPY



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

29. It is an admitted fact that, the above said suit in O.S.72/2022 challenging the validity of the Kaithadi Partition deed, dt.31.12.2018 is pending before the III Additional District Court for adjudication. It is very clear that, the petitioner has claimed the ownership of 3 vehicles only through the Kaithadi Partition Deed dt.31.12.2018. This Court viewed that, when the Kaithadi Partition deed dt.31.12.2018 is under challenge in O.S.No.72/2022 before the III Additional District Court, Tirunelveli, the petitioner cannot claim any absolute ownership over 3 vehicles seized in this case through the Kaithadi Partition Deed dt.31.12.2018. In this petition for the return of the vehicles, the ownership of above said 3 vehicles should be proved by the petitioner and hence, the petitioner should establish the fact that, the above said seized vehicles are belonged to S. Vaikuntarajan who is the Managing Partner of the V.V. Minerals apart from Kaithadi Partition Deed dt. 31.12.2018.

30. The petitioner did not produce any material documents to prove the ownership of the above said 3 vehicles seized in this case. Further, it is very clear that, the petitioner did not produce any documents to prove the fact that, the firm namely V.V. Minerals was dissolved and defunct through the act of Partners or through the documents. Hence, it is to be presumed that, the firm namely V.V. Minerals is in existence in which S.Vaikuntarajan and the Intervener S.Jegadeesan and others are still functioning as Partners and the said firm was not yet dissolved or become defunct. Hence, this Court came to the conclusion that, the said S.Vaikuntarajan cannot claim any absolute ownership over the above said 3 vehicles seized in this case.



WEB COPY



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

31. The petitioner would submit that, the Intervener S.Jegadeesan has categorically admitted about the genuineness and validity of Kaithadi Partition Deed before the Hon'ble Madurai Bench of Madras High Court and the Hon'ble High Court has also given a finding in the order dt. 6.09.2019 as follows:-

"First of all, the parties have admitted the execution of the Partition Deed. If the same, according to them, is obtained by coercion, they should have filed a suit for declaration that the partition deed is bad for whatever reasons known to them. Besides the Partition Deed is written in Tamizh, which all the parties to the document could write, speak and read. Therefore, the question of misrepresentation, as alleged, does not arise. That apart, when it is not denied that the Partition Deed was executed with their knowledge and the signatures were obtained only on the document, the plea of fraud or misrepresentation cannot be entertained. Admittedly, the parties were aware of the fact that what they were signing was a Partition Deed and admitted that they had put their signatures....."

32. On perusal of the order of Hon'ble High Court dt. 06.09.2019, it is very clear that, the Hon'ble High Court has given a finding that, if the partition deed is obtained by coercion, they should have filed a suit for declaration that, the partition deed is bad for whatever reasons known to them. The Hon'ble High Court has also given a finding



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

District Judge, Tirunelveli to Principal District Judge, Tirunelveli to be tried along with E.A.Nos.2, 2 & 2 of 2021 in E.P.Nos.61 to 63 of 2019 in A.C.P.No.1 of 2019.

15. The learned Senior Counsel for the petitioner submits that the petitioner apprehends that the learned Principal Sessions Judge, Tirunelveli while passing three separate orders all dated 03.06.2023 in CrI.M.P.Nos.12959 to 12961 of 2022 and Cr.M.P.Nos.2873 to 2875 of 2023, has formed a bias opinion contrary to the decision of the learned Single Judge of the Madras High Court (Principal Seat of this Court), Chennai, in O.P.Nos.372 to 374, 380 to 382 and 384 of 2019 and O.A.No. 543 of 2019 and the decision of this Court in C.R.P.(MD) Nos.1797 to 1799 of 2019 which were dismissed by the Court in their respective orders.

16. The learned Senior Counsel for the petitioner submits that this is a fit case to Court exercise the power under Section 24 of the Code of Civil Procedure, 1908 by ordering the transfer of E.P.Nos.61 to 63 in A.C.P.No.1 of 2019 from the Principal District Judge, Tirunelveli to Principal District Judge, Madurai.



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

17. On behalf of the petitioner, the learned Senior Counsel referred to a decision of a learned Single Judge of the Madras High Court (Principal Seat of this Court), Chennai in **M.Senthikumar and another Vs. Kalaimani and another**, 2012 (2) MWN (Civil) 162. It is submitted that under identical circumstances, the Court has held as follows:-

6. In the case on hand, the transfer O.P. has been filed by a party to the Suit since the party has lost her confidence in the Judicial Officer concerned. As far as Judicial System is concerned, justice should not only be done, but, it should also appear to be done. **When a party to the Suit has lost her confidence in the Presiding Officer concerned and on perusal of the records, the learned Principal District Judge, who is in-charge of the District, is also of the opinion that the transfer sought is justified, this Court is not able to accept the argument of the learned Counsel for the Petitioners that based on the judgment rendered in another case, transfer cannot be ordered.** Besides, considering the prevailing circumstances as well as the records, this Court is of the view that transfer, as ordered by the Principal District Judge, Namakkal has to be upheld. Accordingly, the Civil Revision Petition is dismissed upholding the order of the learned Principal District Judge, Namakkal in transfer O.P. No. 49 of 2011. No costs. Connected M.P. is also dismissed.

18. Per contra, Mr.R.Thiyagarajan, the learned counsel for the sixth and seventh respondents submits that the power of the Court to transfer



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

the case under Section 24 of the Code of Civil Procedure is unbridled.

However, such power has to be exercised sparingly and cautiously.

Wherever the transfer is warranted, the Court can order transfer. However, merely because the Principal District Judge before whom E.P.Nos.61 to 63 of 2019 are pending, has passed orders in CrI.M.P.Nos.12959 to 12961 of 2022 and Cr.M.P.Nos.2873 to 2875 of 2023 and rejected the prayer for release of Container Lorries, *ipso facto* would not warrant the transfer the case from the Principal District Judge, Tirunelveli to Principal District Judge, Madurai or to infer bias.

19. The learned counsel for the sixth and seventh respondents drawn attention to the following decisions:-

- i. **Krishnan Kanahya and another Vs. Vijay Kumar and others**, AIR 1976 DELHI 184.
- ii. **G.Lakshmi Ammal Vs. Elumalai Chettiar and others**, AIR 1981 MADRAS 24.
- iii. **K.Subba Rao Vs. M/s.Laxminarayana Complex**, AIR 1996 KARNATAKA 127.
- iv. **Mahabir Prasad Singh Vs. M/s.Jacks Aviation Pvt. Ltd.**, AIR 1999 SUPREME COURT 287.
- v. **Pushpa Devi Saraf and another Vs. Jai Narain Parasrampuria and others**, (1992) 2 SCC 676.
- vi. **Nandini Chatterjee Vs. Arup Hari Chatterjee**, AIR 2001 CALCUTTA 26.
- vii. **Balraj Singh and another Vs. Ajit Singh**, AIR 2005 RAJASTHAN 120.



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

20. The learned counsel for the sixth and seventh respondents further submits that till date no steps have been taken to set aside the order passed by the learned Principal Sessions Judge, Tirunelveli in CrI.M.P.Nos.12959 to 12961 of 2022 and Cr.M.P.Nos.2873 to 2875 of 2023 *vide* all orders dated 03.06.2023.

21. Mrs.Krishnaveni, the learned Senior Counsel for the ninth respondent in Tr.C.M.P. (MD)No.301 of 2023 submits that there is no case made out for transfer of the cases to Madurai as there is no nexus between the E.P. proceedings that is pending before the District Court, Tirunelveli and the parties hereto in Madurai and therefore prays for dismissal of these Transfer Civil Miscellaneous Petitions.

22. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned counsel for the sixth and seventh respondents and the learned Senior Counsel for the ninth respondent in Tr.C.M.P. (MD)No.301 of 2023.

23. I have also perused the orders dated 03.06.2023 passed by the learned Principal Sessions Judge, Tirunelveli in CrI.M.P.Nos.12959 to



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

12961 of 2022 and Cr.M.P.Nos.2873 to 2875 of 2023 filed by the Sakthi Ganapathi for release of the Container Lorries that were seized by the police for the alleged offences under Sections 4(1)(1A) and 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 read with Section 379 of the Indian Penal Code.

24. The observations contained in all the orders dated 03.06.2023 in Crl.M.P.Nos.12959 to 12961 of 2022 and Cr.M.P.Nos.2873 to 2875 of 2023 are merely a *prima facie* view taken by the learned Principal Sessions Judge, Tirunelveli in the light of pendency of O.S.No.72 of 2022 pending before the III Additional District Judge, Tirunelveli. The observations contained in the three orders dated 03.06.2023 in Crl.M.P.Nos.12959 to 12961 of 2022 and Cr.M.P.Nos.2873 to 2875 of 2023 cannot be construed as the ultimate view of the learned Principal Sessions Judge, Tirunelveli.

25. The rights of the parties have to be decided in O.S.No.72 of 2022 pending before the III Additional District Judge, Tirunelveli as also in Section 47 Petitions pending before the Principal District Judge, Tirunelveli in the respective Execution Petitions. Therefore, merely



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

because the CrI.M.P.Nos.12959 to 12961 of 2022 were dismissed and Cr.M.P.Nos.2873 to 2875 of 2023 were allowed, it cannot be construed that the learned Principal District Judge has already prejudged the case and will dismiss E.P.Nos.61 to 63 of 2023 filed by the petitioner.

26. To assume that the Presiding Officer of the Principal District Court, Tirunelveli will come to such an conclusion against the petitioner is nothing but a mere suspicion and a misapprehension on the part of the petitioner that E.P.Nos.61 to 63 of 2019 filed by the petitioner will be dismissed and the obstruction petition filed by the respondents will be allowed.

27. If transfer of pending cases are made and allowed based on the apprehension expressed by the petitioner, it will set an unhealthy precedent. Power of this Court cannot be allowed to be abused and used as an accessory to shackle the court proceedings. Both appellate and revisional remedies are always available to the petitioner in case the proceedings are answered against the petitioner. What the petitioner is attempting is practically forum shopping by questioning the integrity of the learned Principal District Judge, Tirunelveli.



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

WEB COPY 28. In fact, these Transfer Civil Miscellaneous Petitions appear to have been filed in the backdrop of Tr.O.P.No.122 of 2023 filed by the sixth to tenth respondents before the Principal District Judge, Tirunelveli for transfer of O.S.No.72 of 2022 from the file of the III Additional District Judge, Tirunelveli to Principal District Judge, Tirunelveli.

29. Therefore, transfer of the respective E.Ps. from the Principal District Court, Tirunelveli to any Court in Madurai based on the apprehension that the presiding officer will be biased based on the observations made in the three orders dated 03.06.2023 while dismissing CrI.M.P.Nos.12959 to 12961 of 2022 cannot be allowed.

30. In the light of above, I am inclined to dismiss these Transfer Civil Miscellaneous Petitions. Considering the fact that there are rival proceedings in the suit in O.S.No.72 of 2022 and in E.P.Nos.61 to 63 of 2019 arising out of "Kaithadi Baga Privinai Pathiram" dated 31.12.2018" and in Section 47 Petitions, i.e. E.A.Nos.2, 2 & 2 of 2021 in E.P.Nos.61 to 63 of 2019, there shall be an order of transfer of O.S.No.72 of 2022 from the learned III Additional District Judge, Tirunelveli to the learned



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

Principal District Judge, Tirunelveli to be tried along with E.P.Nos.61 to 63 of 2019 filed by the petitioner, so that, all the disputes can be decided once for all.

31. The learned Principal District Judge, Tirunelveli shall endeavour to dispose of all the above mentioned proceedings, as expeditiously as possible, preferably, within a period of 12 months from the date of receipt of a copy of this order.

32. Accordingly, these Transfer Civil Miscellaneous Petitions are dismissed. No cost. Consequently, connected Miscellaneous Petitions are closed.

30.06.2023

NCC : Yes / No
Internet : Yes/No
Index: Yes/ No
jen

To
1.The Principal District Court,
Tirunelveli.

2.The III Additional District Judge,
Tirunelveli



WEB COPY



Tr.C.M.P.(MD) Nos.301 to 303 of 2023

C.SARAVANAN, J.

Jen

Pre-Delivery Common Order made
in
Tr.C.M.P.(MD) Nos.301 to 303 of 2023
and C.M.P.(MD) Nos.6833 to 6835 of 2023

30.06.2023