



Tr.CMP No.226 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Tr.CMP No.226 of 2024 and
CMP No.4419 of 2024

Muthuvalla (deceased)
rep. by its legal heirs, petitioners 1 to 5.

1. V.Navaneetham
2. V.Thirunavukkarasu
3. V.Mangaiyarkkarasi
4. Kumaravel
5. Thiruneelakandan

... Petitioners

/vs/

1. Chandravarnam
2. Iyyappan @ Sowrirajan
3. Thangadurai
4. Jayanthi
5. Achi @ Dhanalakshmi
6. Ilavarasan
7. Chandra
8. Selvi
9. Indirani
10. The Sub Registrar, O/o the Sub Registrar Office,
Cuddalore Road, Vridhachalam.
11. The Surveyor, Virudhachalam Municipality,
Virudhachalam Municipality,
Virudhachalam Taluk.



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12. The Tahsildar, O/o Virudhachalam Taluk,
Cuddalore District.

13. The Revenue Divisional Officer,
O/o RDO, Virudhachalam Taluk,
Cuddalore District.

14. The District Collector, Cuddalore.

15. Suresh

16. Jayam

17. Pushpa Raja

18. Chinna Durai

19. Malarvizhi

20. Tamilarasi

... Respondents

PRAYER : Transfer Civil Miscellaneous Petition filed under Article 115 of the Code of Civil Procedure to transfer the proceedings in A.S.No.69/2020 from the file of the III Additional District Judge, Virudhachalam to the District Court, Cuddalore.

For Petitioners ... Mr.P.Ayyachamy

For Respondents ... Mr.C.Sathish, Government Advocate
for respondents 10 to 14

ORDER

This Transfer Civil Miscellaneous Petition has been filed to transfer the proceedings in A.S.No.69/2020 from the file of the III Additional District Judge, Virudhachalam to the District Court, Cuddalore.



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2. The petitioners herein are the appellants in A.S.No.69/2020, which was challenged against the judgment and decree passed the Principal Subordinate Court, Virudhachalam in O.S.No.87/2015. It is the contention of the petitioners that, in the above said appeal, they have filed I.A.No.7/2024 to mark some documents and it was refused by the Court and posted the matter for argument, with a view to short close the case. It is further contended by the petitioners that, without following the due procedure of conducting the case, the appellate court is attempting to unlawfully act, according to its whims and fancies and hence, this petition has been filed.

3. Heard the learned counsel for the petitioners and I have perused the materials on record.

4. On perusal of the documents shows that, the petitioners herein have filed A.S.No.69/2020, as against the dismissal of the suit in O.S.No.87/2015. Pending suit, they have filed a petition in I.A.No.7/2024 to receive some documents, viz., news paper publications, police complaint



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and CSR receipts, stating that the above documents were inadvertently failed to be marked in the suit. According to the petitioners, the appellate court has refused the above petition and directed to be posted for argument, with a view to short close the case and hence, the above appeal has to be transferred to some other court.

5. It is to be noted that, in the above petition in I.A.No.7/2024, the respondents have filed their counter. Though it is stated by the petitioners that the above petition was refused, they have not produced the order passed in the above petition. Further, if the petitioners are aggrieved with the orders passed in the above I.A.No.7/2024, they have to file appeal, not to file the present petition to transfer the appeal itself.

6. The power of transfer must be exercised with the extreme caution and circumspection and in the interest of justice. The approach of the court should be pragmatic, not theoretical and the totality of facts and circumstances should be considered. In this case, the contention of the petitioners is that, the appellate court has refused to receive the documents



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in I.A.No.7/2024 and also, in similar case in A.S.No.17/2023, the appellate court has closed the evidence of the petitioners and subsequently, dismissed the appeal and hence, they have not satisfied to contest the case before him.

7. The allegation of bias, prejudice or partiality, levelled against the presiding officer cannot be taken lightly, without any material. The allegation of apprehension against the fair trial, without furnishing particulars cannot be entertained. It does not meet the parameter laid down by the *Hon'ble Supreme Court in AIR 1979 SC 468 in Menaka Sanjay Gandhi and another, Vs. Rani Jethmalaji*.

8. In this case, without any valid reason and materials, the petitioners have made allegations against the Presiding officer and sought to transfer the appeal, which cannot be entertained. Therefore, I find no merit to transfer the case, as sought for by the petitioner and hence, the transfer civil miscellaneous petition is liable to be dismissed.



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9. Accordingly, this transfer civil miscellaneous petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
mst

To

The III Additional District Judge, Virudhachalam, Cuddalore.



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V.SIVAGNANAM ,J.

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