



Tr.CMP No.208 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 23.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Tr.CMP No.208 of 2024 and
CMP No.4066 of 2024

N.Jeyalakshmi

... Petitioner

Vs.

1 . Faizel Mohammed

2 . Mohammed Alikhan

3 . Rahman Khan

4 . The Wakf Superintendent,
Wakf Superintendent's office,
No.512, Ganthi Road, Panruti.

5 . The Chief Executive Officer,
Tamil Nadu Wakf Board, No.1,
Jaffer Syrang Street, Vallal Seethakadi Nagar,
George Town, Chennai, Tamilnadu.

... Respondents

Prayer: Transfer civil miscellaneous petition filed under Section 24 of CPC to withdraw and transferring O.S.No.234/2023 from the file of the District Munsif Court, Thirukkoilur to the District Munsif Court, Villupuram.

For Petitioner : Mr.M.Vijaya Kumar



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ORDER

This Transfer civil miscellaneous petition has been filed to withdraw and transferring O.S.No.234/2023 from the file of the District Munsif Court, Thirukkoilur to the District Munsif Court, Villupuram.

2. The petitioner herein is the plaintiff and the respondents herein are the defendants in the above said suit in O.S.No.243/2023, which was filed for permanent injunction restraining the respondents from interfering with the petitioner's peaceful possession and enjoyment of the suit schedule property. According to the petitioner, she is a senior citizen and being a widow, conducting the case and the respondents have attempted to encroach the suit property and hence, she has filed the above said suit. Pending suit, the second defendant has filed an application in I.A.No.699/2023 to reject the plaint, in which, without providing any opportunity to the petitioner, the learned Judge has reserved for orders on 03.02.2024.

3. The further contention of the petitioner is that, her counsel has filed a memo dated 03.02.2024 in the open court by stating that the defendants 4 and 5 are formal parties in O.S.No.234/2023 and the plaintiff has not sought any relief against them and hence, the plaintiff filed the memo to give up the



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defendants 4 and 5, without prejudice the right of the plaintiff to proceed with the suit against the other defendant. The memo dated 03.02.204 has not been received by the court, stating that a petition may be filed to that effect. But, without affording opportunity to file a petition, the court has reserved for orders in I.A.No.699/2023, thereby the Trial Court acted with partiality and hence, the petitioner/plaintiff has lost her confident and reasonable apprehension that she may not get justice, if the case is conducted before the District Munsif Court, Tirukkoilur. Hence, this petition has been filed.

4. Heard the learned counsel for the petitioner and I have perused the materials on record.

5. Admittedly, the petitioner has filed the above said suit for permanent injunction, as stated supra. The main ground raised by the petitioner to transfer the suit is that, the Trial Judge acted with partiality and hence, she may not get justice, if the case is proceeded before the District Munsif, Tirukkoilur.

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



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should be pragmatic, not theoretical and the totality of facts and circumstances should be considered. In this case, the only contention of the petitioner is that, the Judge acted with partiality. 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*. Therefore, I find no merit to transfer the case, as sought for by the petitioner and hence, the civil revision petition is liable to be dismissed.

7. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.02.2024

Index:Yes/No
Internet:Yes/No
mst

To

The District Munsif, Thirukkoilur.



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V.SIVAGNANAM, J.

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23.02.2024