



Tr.C.M.P.No.543 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Tr.C.M.P.No.543 of 2024 and
C.M.P.No.12009 of 2024

T.Rajamanickam

... Petitioner

Vs.

1.Vimala

2.T.Balasubramanian

... Respondents

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure, to withdraw the suit in O.S.No.38 of 2019 pending on the file of the Principal District Judge, Thiruvarur and transfer the same to the file of the Additional District Court, Kumbakonam.

For Petitioner : Mr.K.Venkatramani, Senior Counsel for
Mr.S.Srinivasan

For R1 : Mr.S.Balasubramanian

For R2 : No Appearance

ORDER



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This transfer civil miscellaneous petition has been filed to transfer the suit in O.S.No.38 of 2019 from the file of the Principal District Court, Thiruvarur to the file of the Additional District Court, Kumbakonam.

2.The learned Senior Counsel appearing for the petitioner submitted that the petitioner/plaintiff filed suit for partition against his elder sister and elder brother, the respondents herein. The father and mother of the petitioner named Thangarajan and Dhanalakshmi inherited and purchased properties and also invested money in share market. The petitioner's father worked in Defence, thereafter in the Postal Department. The entire properties were purchased by the petitioner's father on his own money. The petitioner's mother passed away on 04.07.2010 and his father passed away on 01.03.2017 leaving behind the petitioner and the respondents as the surviving legal heirs. All were enjoying undivided joint family properties and thereafter to make partition among themselves, the petitioner sought 1/3rd share over the entire properties, for which, the suit filed. He further submitted that the respondents/defendants entered appearance through their Counsel, filed written statement during February 2021 and additional written statement on 19.12.2022. No reply statement filed by the petitioner.



Thereafter, pleadings completed and the suit is ready for trial. When the suit is pending, the respondents cut down valuable trees in the family property and also caused damage to the house. Further, the door, windows, valuable articles and jewels were taken away. When the same was questioned by the petitioner, he and his family members threatened by the respondents. Hence, the petitioner lodged a Police Station to Thiruvarur Taluk Police Station on 07.02.2021. The petitioner was assaulted and got admitted in Thiruvarur Government Hospital. After his discharge, enquiry conducted by the Police. During enquiry, the respondents appeared and gave undertaking that the issue would be resolved between them. Despite the same, threat to the petitioner continued.

3.He further submitted that earlier, the suit referred to Lok adalat on the guise of settlement but ultimately it was only to gain time denying the petitioner's rightful $1/3^{\text{rd}}$ share in the family property. From 27.06.2023 to 22.04.2024, for almost a year, the suit pending in Lok adalat. Now the suit is posted for cross examination of plaintiff/PW1 but it is periodically adjourned without any progress. He further submitted that the 2nd respondent's son named Karthik @ Inbasagan is employed as Advocate



Clerk in the 2nd respondent's Advocate office. Because of his acquittance and familiarity, he ensures the suit does not progress. Further, the said Karthik @ Inbasagan influenced the petitioner's Advocate and other Advocates and pressurized them from keeping away from the petitioner's suit. For this reason, the petitioner is unable to proceed with the case in Thiruvarur Court. His Counsel though a senior person, returned back the vakalat informing that he cannot further represent the petitioner and prosecute the suit. The petitioner now settled in Vellore and he is travelling all the way to from Vellore to Thiruvarur to conduct the case, but for the above said reasons, the suit is put in cold storage. In view of the same, the learned Senior Counsel sought for transfer of the suit from the file of the Principal District Court, Thiruvarur to the file of the Additional District Court, Kumbakonam. The distance between Thiruvarur and Kumbakonam is only 35 kms, it will not be difficult for the respondents to appear before Kumbakonam Court.

4.He further submitted that the 1st respondent is residing at Mayiladuthurai in any event she has to travel to Thiruvarur. Hence, prayed for transfer and also a direction to dispose of the suit within the stipulated time. In support of his submissions, the learned Senior Counsel produced



the photographs showing damage caused to the property and trees cut, Police complaint and undertaking given by the respondents and e-Court proceedings.

5.The learned counsel for the 1st respondent filed counter affidavit stating that she has no objection to transfer the suit and ready to contest the suit before Kumbakonam Court. The 1st respondent's request is that the suit to be completed within a stipulated period so that the family property can be used by the family.

6.The learned counsel for the 2nd respondent produced adjudication of the suit and filed counter affidavit denying the allegations and submitted that the petitioner had joint account along with his father in State Bank of India, Thiruvarur Branch. The share dividends credited to the account nearly around Rs.4 crores transacted but not shared with the respondents. It is the petitioner who swindled the entire amount. The petitioner wantonly omitted few properties situated in survey Nos.109/2 and 109/2D at Aanai Vadapathi Village, Thandalai, Thiruvarur Taluk. Since the property situated at Thiruvarur, the suit filed in Thiruvarur Court. Now the petitioner is living in



Vellore. Finding difficult to travel Thiruvarur, the petitioner filed the present transfer petition with false allegations as though the 2nd respondent's son who is an Advocate Clerk, is the reason for stalling the progress of the trial. The counsel representing the petitioner before the Lower Court is a senior person who had more than forty five years of Bar experience. The present Advocate, who filed change of vakalat is also an elderly person with similar experience in Bar. Added to it, unwanted scandalous allegations made against the 2nd respondent's counsel and 2nd respondent's son. The reason for seeking transfer of the case from Thiruvarur to Kumbakonam is that the petitioner's wife is a native of Kumbakonam, his brother-in-law, sister-in-law and other relatives are residing at Kumbakonam and they have money and muscle power to exert pressure on the 2nd respondent. Hence, the petitioner seeks transfer of the suit. The Principal District Court at Thiruvarur has got territorial jurisdiction to deal with execution of decree. Hence, he opposed transfer of the suit, but willing for speedy disposal.

7.Considering the submissions and on perusal of the materials and also from the e-Court proceedings, it is seen that after appearance of the parties, initially the suit referred to Lok adalat during the year 2020,



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thereafter it has been posted for exparte evidence in the year 2021 and later for framing of issues and thereafter for trial from 08.06.2021 to 16.11.2021.

Again the suit referred to Lok adalat between 29.11.2021 and 08.01.2022.

Thus, the suit shuttled between the Court for recording evidence and any settlement before Lok adalat. In this case, pleadings completed, the petitioner's proof affidavit filed and the case is pending for cross examination by the defendants. The 1st respondent has no objection for transfer of the suit.

8.It is also seen that the 2nd respondent's son is an Advocate Clerk attached to a Senior Member of Thiruvarur Bar who is the counsel for 2nd respondent in the suit. It is to be noted that the petitioner's counsel had given change of vakalat. In view of the same, the petitioner's apprehension cannot be ignored. The only apprehension of the 2nd respondent is that the Court at Thiruvarur has got territorial jurisdiction to deal with execution of the decree. The execution of decree can be transmitted to the concerned Court even after pronouncement of preliminary decree and final decree.

9.In view of the above, this Court withdraws O.S.No.38 of 2019 from



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the file of the Principal District Court, Thiruvarur and transfers the same to the file of the concerned Court at Mayiladuthurai which is not far away for the respondents to attend the Court. The learned Principal District Judge, Thiruvarur is directed to send the entire case bundles in O.S.No.38 of 2019 to the file of the concerned Competent Court at Mayiladuthurai forthwith. On receipt of the bundles, the concerned Judge at Mayiladuthurai is directed to complete the trial and pronounce judgment within a period of three months from the date of receipt of the case bundle.

10.In the result, this transfer civil miscellaneous petition stands disposed of. Consequently, connected civil miscellaneous petition is closed.
No costs.

30.07.2024

Speaking Order/Non Speaking Order
Index : Yes/No
Internet : Yes
Neutral Citation: Yes/No



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The Principal District Judge,
Thiruvavarur.



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M.NIRMAL KUMAR, J.

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