



WEB COPY



Tr.C.M.P.No.996 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Tr.C.M.P.No.996 of 2024
and C.M.P.No.21902 of 2024

Malathi

... Petitioner

Vs.

K.Chandra (Died)
1.K.Premkumar
K.Mythili (Died)
2.L.Venkatesan
3.The Sub-Registrar
Ambattur, Chennai – 600 053.
4.The Sub-Registrar
Acharapakkam.

... Respondents

PRAYER: The Transfer Civil Miscellaneous Petition is filed under Section 24 of Code of Civil Procedure, to transfer the proceedings of review petition No.5 of 2023 in A.S.No.19 of 2022 on the file of the III Addl. District Judge, Thiruvallur at Poonamallee to the City Civil Court, Chennai.

For the Petitioner : Mr.R.Balasubramanian

For the Respondents : Dr.S.Suriya
Addl. Govt. Pleader for R3
Mr.N.Muthuvel, GA for R4



Tr.C.M.P.No.996 of 2024

ORDER

WEB COPY

This Transfer Civil Miscellaneous Petition seeks for transferring the proceedings in Review Petition No.5 of 2023 in A.S.No.19 of 2022 from the file of the III Additional District Judge, Thiruvallur at Poonamallee to any other District Court.

2. I had called for remarks from the learned III Additional District Judge, Thiruvallur at Poonamallee. He also sent his remarks on 14.10.2024.

3. The allegation of the petitioner is that the learned Trial Judge committed a grave error by insisting the 4th respondent to argue the review filed by the petitioner, despite the fact, the petitioner had filed an application to give up the said respondent.

4. The original proceedings started in O.S.No.227 of 2009, on the file of the Sub Court at Poonamallee. It sought for partition and separate possession. In the said suit, the defendants 1, 3 and 6 have remained *exparte* and only the 2nd, 4th and 5th defendants contested the suit. The suit was dismissed on 17.10.2016. Aggrieved by the same, the transfer petitioner moved a review in I.A.No.160 of 2017. The said review was dismissed on



Tr.C.M.P.No.996 of 2024

22.02.2021. Thereafter, an appeal was preferred as against the decree dated 17.10.2016 in A.S.No.19 of 2022. After hearing both sides, the appeal came to be dismissed on 31.07.2023. Thereafter, the transfer petitioner filed M.P.No.5 of 2024 seeking for review of the order dated 31.07.2023. The report of the learned District Judge points out that other respondents have remained *exparte* and the 4th respondent alone contested the said proceedings. Arguments were heard and orders were reserved on 12.08.2024. The learned District Judge had fixed date as 06.09.2024 for pronouncing order in the review petition. Thereafter on 21.08.2024, the transfer petitioner filed a memo, giving up the contesting 4th respondent from the array of parties. He also filed an application for recusal of the learned Judge from hearing the petition. As the learned Judge did not entertain the said plea, the transfer petitioner has moved the present transfer petition.

5. I heard, Mr.R.Balasubramanian, for the transfer petitioner and have gone through the records.

6. There are no allegations as against the Presiding Officer in the manner of disposal of the appeal. It is only after the appeal was dismissed and the review was taken up, the transfer petitioner has come forward with



Tr.C.M.P.No.996 of 2024

this present transfer petition.

WEB COPY

7. Mr.R.Balasubramanian, urges that the order passed by the learned District Judge in dismissing the appeal itself is erroneous. If that be the situation, the appropriate remedy for the plaintiff/appellant is to move this Court by way of Second Appeal. Having filed a review petition, it is the duty of the transfer petitioner to argue in the review petition.

8. Therefore, I am not inclined to transfer the said proceedings out of the file of the III Addl. District Judge, Thiruvallur at Poonamallee. Considering the grievance of Mr.R.Balasubramanian, that orders had been reserved without hearing him, the learned III Addl. District Judge, Thiruvallur at Poonamallee, is requested to afford an opportunity to the counsel for the petitioner to argue the review petition as well as the petition filed under Order XXIII Rule 1 of CPC giving up the 4th respondent. Both the applications shall be heard together and disposed of by the learned III Addl. District Judge, Thiruvallur at Poonamallee, within a period of eight weeks from the date of receipt of a copy of this order.

9. With the above direction, this Transfer Civil Miscellaneous Petition



Tr.C.M.P.No.996 of 2024

is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

21.10.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
Speaking order / Non-speaking order

Jer

To

- 1.The III Addl. District Judge,
Thiruvallur at Poonamallee.
- 2.The Sub-Registrar
Ambattur, Chennai – 600 053.
- 3.The Sub-Registrar
Acharapakkam.

V.LAKSHMINARAYANAN, J.

Jer



WEB COPY



Tr.C.M.P.No.996 of 2024

Tr.C.M.P.No.996 of 2024

21.10.2024