



Tr.C.M.P(MD)No.107 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.03.2025

Pronounced on : 24.04.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Tr.C.M.P(MD)No.107 of 2025

and

C.M.P(MD)No.2637 of 2025

Karpagavalli (Deceased)

1.Sridevi
2.Bharathi

... Petitioners

Vs.

1.C.Rameshkumar
2.M.A.Vasuki

... Respondents

PRAYER : Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the suit in O.S.No.27 of 2015 on the file of the Sub Court, Dindigul and transfer it to any other Sub Court in Madurai or any other District

For Petitioners : Mr.K.Prabhakar

For Respondents : Mr.S.Palani Kumar



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ORDER

WEB COPY This petition is filed by the petitioner U/s.24 of CPC., seeking for an order to withdraw the case in O.S.No.27 of 2015 from the file of the Sub Court, Dindigul and to transfer the same to any other Sub Court in Madurai or any other District.

2. The learned counsel for the petitioners has submitted that the first respondent has filed the suit in O.S.No.27 of 2015 against the mother of the petitioners, one Karpagavalli for specific performance. The first respondent managed to cause service of notice on their mother in wrong address and obtained ex-parte decree. Their mother filed the application in I.A.No.495 of 2017 to set aside the ex-parte decree and thereafter, she died on 16.06.2017, so the petitioners were brought on record. The first respondent is an advocate, and he dragged the restoration petition for two years, and he was set ex-parte in that petition. Then, he filed the petition in I.A.No.1 of 2019 to set aside the ex-parte order passed against him in I.A.No.495 of 2017. The counsel from the local bar of Dindigul misguided the petitioners to file a suit in O.S.No.737 of 2017 to declare the proceedings in O.S.No.27 of 2015 as null and void, and later the suit was dismissed for non-prosecution on 30.08.2024. The counsels from the Dindigul Bar do not want to appear on behalf of the petitioners. So, the



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petitioners engaged a counsel from Madurai to conduct the suit proceedings. In the meanwhile, during the pendency of the suit proceedings, the first respondent alienated the suit property to the second respondent. Quoting the activities of the first respondent, the petitioners lodged a complaint in Tr.Case No.484 of 2019 before the Bar Council of India, which found the first respondent being an advocate who indulged in activities to defeat the suit proceeding during pendency and he was suspended from practice for a period of two years as per the order, dated 12.11.2022, passed by the Bar Council of India. Therefore, the petitioners apprehend to conduct the case at Dindigul and pray for transfer of the suit to some other Court in Madurai or any other District. Therefore, the present petition is filed.

3. The learned counsel for the respondents has filed a counter and denied the averments of the petitioners. The learned counsel further submitted that the petitioners' mother, Karpagavalli executed the sale agreement with the first respondent, but she stated in her affidavit that she gave the suit property on othi to the first respondent for Rs.1,90,000/- and then manipulated the sale agreement with the use of her signature. There is no such manipulation. Since the petitioners' mother demanded more money for execution of sale deed and also tried to sell the suit property to the third party, the first respondent filed the suit.



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It is further submitted that only after getting an ex-parte decree, he transferred the property to the second respondent. The petitioners were impleaded as parties as their mother died and the petitioners created all things to drag the suit proceedings by filing a subsequent suit and let it for dismissal for non-prosecution. So far, the petitioners have changed four counsel. The respondents are ready to commence the trial of the suit.

4. In reply, the learned counsel for the petitioners submitted that the original defendant, namely Karpagavalli, mother of the petitioners herself, filed the petition in I.A.No.495 of 2017 to set aside the ex-parte decree. The first respondent being an advocate, dragged the proceeding by delaying tactics.

5. Both the counsel argued at length with regard to main case proceedings and also obtaining of ex-parte decree by service of notice on the wrong address. However, to set aside the ex-parte decree, petition was filed and the same is pending. This petition is filed for limited scope for transfer of suit from Dindigul on apprehension that the first respondent being an advocate of the local bar and also other advocates from that bar, do not want to appear on behalf of the petitioners. On hearing both and on perusal of records, the petitioners have now engaged a counsel from Madurai and the same is not denied by the respondents.

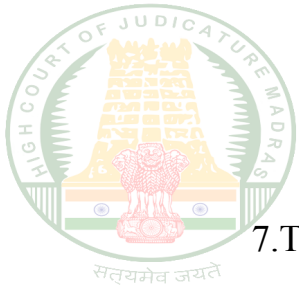


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From perusal of records, it is clear that the first respondent sold the suit property

to the second respondent during the pendency of the suit. So, the petitioners were constrained to lodge a complaint before the Bar Council of India in BCI Tr.Case No.484 of 2019 and the Bar Council of India passed the order, dated 12.11.2022 in Tr.Case No.484 of 2019 in D.C.C.No.269 of 2018. On perusal of that order, it is very clearly held that the subsequent transfer to a third party by the first respondent during pendency of the suit is clear attempt to defeat the proceeding before the Court and that the first respondent being a practicing advocate indulged in such activities to defeat the proceedings before the court by bringing in third party interest. By that order, the first respondent was suspended from practice for a period of two years. However, the first respondent has not denied the aforesaid order and after expiry of two years, he is now practicing.

6. The first respondent has not denied the pendency of the petition for setting aside the ex-parte decree for more than two years. Whiles, the apprehension of the petitioners that they would not get a fair trial of the suit proceeding if it continues in Court at Dindigul, cannot be brushed aside as there is no substance.



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7. Therefore, considering the above facts and circumstances, this Court is inclined to transfer the suit from the Sub Court, Dindigul to the Principal Sub Court in Madurai District.

8. In the result, this Transfer Civil Miscellaneous Petition is allowed. The suit in O.S.No.27 of 2015 on the file of the Sub Court, Dindigul, is hereby withdrawn and transferred to the file of the Principal Sub Court, Madurai for disposal in accordance with law. The learned Sub Judge, Dindigul, is directed to transmit the entire records pertaining to the case in O.s.No.27 of 2015 to the transferee Court, within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.04.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD



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To

- 1.The Sub Court,
Dindigul.
- 2.The Principal Sub Court,
Madurai.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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