

(1998) 08 MAD CK 0058

In the Madras High Court

Case No : Tr. C.M.P. No's. 7492, 7494, 7496, 7498, 7450 and 7502 of 1998, C.M.P. No's. 7493, 7495, 7497, 7499, 7501 of 1998 in Tr. C.M.P. No's. 7492, 7494, 7496, 7498, 7450 and 7502 of 1998 respectively C.M.P. No's. 8780 of 1998

Arulmigu Alavandar Charities, Mahabalipuram

APPELLANT

Vs

R. Kannappan and seven others

RESPONDENT

Date of Decision : 06-08-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : (1998) 2 CTC 308 : (1998) 3 MLJ 408

Hon'ble Judges : S.M. Abdul Wahab, J

Bench : Single Bench

Advocate : Mr. R. Gandhi, for Mr. R.G. Narendiran, for the Appellant; Mr. T.V. Ramanujam, for Mr. T.V. Krishnamachari, for the Respondent

Judgement

1. These six transfer petitions have been filed by the plaintiffs in O.S. No.107 of 1994, the 1st defendant in O.S. No.76 of 1992, the 1st defendant

in O.S. No.109 of 1994, the 2nd defendant in O.S. No.159 of 1994, the 4th defendant in O.S. No.161 of 1994, and the 4th defendant in O.S.

No.209 of 1994 on the file of the Principal Sub-Judge, Chengalpet for transfer of the aforesaid suits from the Principal Sub-Court, Chengalpet, to

City Civil Court, Madras.

2. The affidavit in support of the petitioner for transfer discloses the following facts: In respect of the lands belonging to one Arulmigu Alavandar

Charity, Mahabalipuram, eight suits are pending on the file of the Principal Sub-Judge, Chengalpet. Two suits O.S. No.107 of 1994 and 111 of

1994 were filed by the petitioners herein for declaration of the petitioner's title in respect of the lands belonging to the charity and O.S. Nos.76 of

1992, 109 of 1994, 159 of 1994, 161 of 1994 and 209 of 1994 were filed by the joint patta holders for injunction against the petitioners. The

lands covered by the suits are belonging to the petitioner.

3. The case of the petitioner is that originally one Alavandar known as ""Ayiram Kaani Alavandar"" acquired vast extent of land, wet and dry in

Nemili, Pattikulam, Salavankuppam, Krishnankaranai, Soolerikadu, Kadumbadi and Mahabalipuram villages during 1877. He dedicated this

property for the purpose of charities in O.S. No.26 of 1914. The District Court framed a scheme and the same was confirmed by the High Court

in A.S. No.226 of 1916. As a result of this scheme the management of the lands belonging to the charity came to be vested with the Hindu

Religious and Charitable Endowment Board. The annual administration is by the Manager appointed by the Board. Originally the Charity owned

about 1175 acres in and around the villages mentioned above. In course of time there was some acquisition proceedings by the Government for

the purpose of confirming the Madras-Mahabalipuram Road. There were also resurvey and settlement operations. On account of this some of the

respondents came to be given joint patta. Hence they claimed independent title to the lands belonging to the charity which has resulted in the filing

of the suits mentioned above.

4. The reasons for the transfer of these suits from the file of the Principal Sub-Judge, Chengalpet to City Civil Court, Madras are that the learned

Sub-Judge who is hearing the matters posted the matters for argument even before concluding the respondents' witnesses or before recalling those

witnesses for any material purpose and the learned Judge is in a hurry to dispose of the matter and informed the counsel for the petitioner to

commence the argument and complete it within an hour as the matter does not require an elaborate argument. It is also added that the learned

Judge has openly stated in the court that he has gone through the papers and found nothing in it. It is further stated that when the counsel requested

the court to grant considerable time for the arguments of Senior counsel practicing in the High Court, the learned Judge abruptly refused.

According to the petitioner these things happened on 9th and 10th June of 1998. After narrating the above facts it is averred that the proceedings

before the learned Subordinate Judge including the argument would be an empty

formality. The conduct of the Judge caused great apprehension in the minds of the petitioner that it would not get justice in the hands of the learned Judge.

5. As against these averments, a common counter affidavit has been filed by one S. Viswanathan, son of Subramaniam. He is said to be the 3rd

respondent in Tr.C.M.P. Nos.7493 of 1998. According to him there is a deliberate suppression of material facts in the affidavit in support of the

petitioner for transfer. The suppression referred to is that the High Court has issued repeated directions for the disposal of the batch of suits on

day-to-day basis as per order dated 20.10.1994 in C.R.P. Nos.2642 and 2643 of 1994. The order of this court is also quoted in the counter. In

the counter various directions of this court for the disposal of the suit are cited. It is stated that the High Court directed to dispose of the suits

before the summer recess of 1998. It is further stated that from January 1998 onwards the Sub-Court insisted on the parties to co-operate and

complete the disposal of the suits as per the directions of this Court. On account of the specific direction only the Sub-Court has taken up the case

for disposal on day-to-day basis. In the counter it is also stated that there was no representation by the petitioner's counsel that the senior counsel

was going to come from Madras. Only on 10.6.1998 there was such a representation. In the counter it is stated that the allegations about the

observation of the learned Judge to commence the arguments and complete it within an hour as the matter did not require an elaborate argument

etc. are not correct. As regards the stage the petitioner's evidence as well as the evidence of the defendants" were recorded, P.W.1, D.W.1 to

D.W.9 were examined as early as on 17.4.1997. The evidence in the case were closed. Only the 3rd defendant delayed the matter for something

and he did not turn up after 1997 onwards.

6. A reply affidavit also has been filed by the petitioner. The reply affidavit shows that some suits pending on the file of the District Munsif court

were transferred to the Sub-Court, Chengalpet for joint trial. In the reply the closure of the evidence on the defendants" side is admitted. It is also

admitted that the cases were posted for arguments. It is also stated that from 21.4.1997 to 17.3.1998 there was no progress on account of the

third defendant in O.S. No.76 of 1992 filing some petitions. It is also alleged that

an amendment was allowed, even before the amendment is

carried out the learned Judge insisted on the arguments quoting the High Court's order.

7. In the light of the allegations in the affidavit, counter affidavit and the reply affidavit what we have to find is whether the cases referred to above

are required to be transferred from the file of the Principal Sub-Judge, Chengalpet to City Civil Court, Madras. The main allegation of the

petitioner are that the learned Sub-Judge has expressed his opinion about the result of the case and hastening the arguments without giving sufficient

time.

8. From the allegations in the affidavit and the counter affidavit we are able to see that the suits are pending on the file of the Sub-Judge,

Chengalpet, from 1991 onwards O.S. No.67 of 1991 filed in the District. Munsif Court, was transferred and renumbered by the Sub-Court as

O.S. No.107 of 1994. The latest suit is of the year 1994 i.e., O.S. No.109 of 1994. Four years have lapsed from the filing of the last of the suits.

The evidence on both the sides is over.

Only the arguments have to be advanced. The apprehension, that the learned Sub-Judge has expressed his opinion about the result of the suit

cannot be taken as a ground for transfer because it is denied by the other side in the counter. Further as and when some opinions are expressed by

the Judge about the merits it should not be taken that the expression is on the result of the suit itself. The Judge is expected to deliver the judgment

based on evidence and giving reasons for arriving at a particular finding or findings. If the findings are contrary to the evidence, the aggrieved party

is entitled to agitate the same in the appellate Court.

9. In C.V. Xavier Vs. J. and J. De Chane, a Bench of the Kerala High Court expressed its view that the allegation that Judges were biased if they

express some opinion on the merits of the case after hearing the case for a day is certainly mala fide. The learned Judges have quoted the following

observation of the learned Judges of the Apex Court in M.Y. Shareef and Another Vs. The Hon"ble Judges of The High Court of Nagpur and

Others, .

We have no doubt that whatever the learned Judges of the High Court did in this case, they did in the firm belief that the dignity of the Court had

to be maintained and the members of the Bar, however big or learned, cannot be allowed to scandalize the Judges or to divert the course of justice

by attempting to take a case out from one Bench to another Bench of the Court when they find that the bench is expressing opinions seemingly

adverse to their clients.

10. The learned single Judge of the Karnataka High Court in *Sangeetha S. Chugh v. Ram Narayan V.*, AIR 1995 Kar. 112 has also held as

follows:

When discussions are held and arguments are heard, a Presiding Officer is entitled to disclose his mind so that the respective counsels can follow

the trend of the Court and offer an appropriate explanation or reply. Such discussion only helps to clear the disputed questions in the case, It is too

much to say that if any statements are made, it means that the Presiding Officer has -made up his mind with respect to the decision in the case. If

this be the position, no case can be heard by any Court. It cannot be expected that the Judges should be silent without expressing any opinion.

The other apprehension that the learned Judge is proceeding with the case on day-to-day basis and refusing long adjournments, also in my view is

without substance. From the counter it is seen that this court has extended the time for disposal. The learned Judge will be taken into task if he is

not able to dispose of the suits within the time granted. When evidence is over there is no justification for asking for time every now and then for

arguments. In a batch of cases when there is a specific direction from the High Court it is not only the duty of the Judge to dispose of the case as

per the directions of this Hon'ble Court, but also the duty of the lawyers appearing in the cases to assist the Court to comply with the directions of

the High Court. Instead of doing so resorting to blame the Judge who is anxiously proceeding to dispose of the case in accordance with the

direction of the High Court, requires condemnation rather than appreciation. It is true that in (1) *Rupendra Deb Raikut Vs. Ashrumati Debi and*

Others, (2) *Lalita Rajya Lakshmi and Another Vs. State of Bihar and Another*, and (3) *Thounaojam Nighol Indrani Devi and others v. Municipal*

Board of Imphar and others, AIR 1958 Man 56, it is stated that when a party reasonably apprehends that he is not likely to have a fair trial before

the Court, the transfer should be ordered. The question for decision is whether

under the circumstances referred to above, the plaintiff can be reasonably expect to have such an apprehension. The words "reasonably" and the "circumstances" referred to indicate that it is not the mere wish or whim of the party requesting transfer that should be taken note of. In substance it is not the subjective view of the party but it must be on the basis of the objective view. His apprehension must be reasonable and the circumstances referred to in a particular case must lead to a presumption that the apprehension was justified. But in the case on hand I do not find any such reason or circumstances.

11. In Mula Naramma Vs. Mula Rengamma, , it has been held as follows:

It would be a dangerous principle to establish that the moment a Judge falls out with a pleader or vice versa the case should be transferred from that Judge to some other. If, on the other hand, in this case there was any reasonable ground for my supposing that the prejudice against the pleader has in any manner or measure affected the judicial attitude towards the petitioner or her case, I should certainly have given effect to it by ordering a transfer even at the risk of such an order being supposed to establish a wrong precedent. But no such reasonable ground or apprehension has been made out to my satisfaction, and, what is more, I should not let myself under the guise of doing justice to the petitioner perpetrate an injustice against the respondent.

12. When almost finality had reached, it will not be in the interests of justice to remove the case from the file of the Judge who has patiently recorded the evidence of about ten witnesses and continued to hear the arguments in interlocutory applications and passed the orders. From the reply itself, I find that the learned Judge has disposed of a number of applications on 7.4.1998 itself. The allegations themselves show that the court is well acquainted with the facts and circumstances of the case. If another Judge is to hear the arguments alone and deliver the judgment, the heavy burden is cast upon him to read the evidence from the beginning. A person who heard and recorded the evidence is a better person to write the judgment than a person who simply hear the arguments and read the evidence. Considering the circumstances of the case, I am of the view that the transfer at this stage is not in the interests of justice. It is unwarranted and is not also in the interests of the parties concerned. Therefore, all the

petitions are dismissed. However, there will be no order as to costs. Consequently, C.M.P. Nos.7493, 7495, 7497, 7499, 7501, 7503 and 8780 to 8782 of 1998 are disposed of as unnecessary.