

(1996) 10 MAD CK 0006

In the Madras High Court

Case No : C.R.Ps. No"s. 1689, 1801 and 1802 of 1996

Mr. Champalal Jain and three others

APPELLANT

Vs

M. Superchand and nine others

RESPONDENT

Date of Decision : 08-10-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), Order 21 Rule 97, 47
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 26

Citation : (1996) 10 MAD CK 0006

Hon'ble Judges : Jagadeesan, J

Bench : Single Bench

Advocate : R. Thiyagarajan, for the Appellant; A. Thiyagarajan, for the Respondent

Judgement

Jagadeesan, J.—By consent of both the counsel, the Civil Revision Petitions themselves are taken up for final disposal. The respondents 1 to

9 herein filed R.C.O.P.3297/91 for eviction on the ground of unauthorised sub - lease, R.C.O.P.3183/91 for fixation of fair rent and

R.C.O.P.776/92 for eviction on the ground of willful default. All the R.C.O.Ps were filed against Mr. M. Srinivasa Rao, who is the tenant of the

premises. There is no dispute that (he respondents had purchased the property. R.C.O.P. 776/92 was decreed ex parte on 30.4.9-2. The

respondents filed execution petition in E.P.63K/92 to execute the order of eviction. Mr. Champalal Jain, the petitioner in C.R.P. 1689/96, one of

the petitioners in C.R.P. 1802/96 filed M.P. 614/93 in E.P. 638/92 in R.C.O.P. 776/92 u/s 47C.P.C contending that the ex parte order of

eviction cannot be executed, as the same is a collusive and fraudulent one. He also filed application M.P. 1056/92 to implead himself as

party/respondent in the said Execution Petition. One Mrs. Mahender Kaur. the petitioner in C.R.P. 1801/93. one of the petitioner in C.R.P.

1802/96 has filed M.P. 1057/92 to implead him as party/respondent in the said Execution Petition. The Rent Controller had dismissed all the

applications by common order dated 19.8.94

2. Aggrieved by the order of the Rent Controller, Mr. Champalal Jain preferred an appeal in R.C.A. 714/94 before the Appellate Authority

against the order in M.P. 1056/92 in E.P. 638/92 in R.C.O.P. 776/92. Mr. Mahender Kaur also preferred an appeal R.C.A. 716/94 against the

order of dismissal in M.P. 1057/92 in the above said Execution Petition. The Appellate Authority by common order dated 21.3.96 had dismissed

the said appeals, against which they have preferred revisions in C.R.P. 1689/96 and C.R.P. 1801/96 respectively before this Court. Mr.

Champalal Jain did not prefer any appeal against the order in M.P. 614/93 which was filed u/s 47, C.P.C. (In the certified copy of the order of the

Rent Controller it is mentioned as Mrs. Mahendra Kaur. The mistake has happened because it is so described in some of the petitions; whereas

Mahendra Kaur had signed. Hence it has to be taken that only Mr. Mahendra Kaur is the petitioner)

3. Both Mr. Champalal Jain as well as Mrs. Mahendra Kaur who are the petitioners herein filed M.P. 687/92 in R.C.O.P. 3297/91 filed by the

respondents to evict the chief tenant on the ground of unauthorised sub-letting. The petitioners along with five others filed the said application to

implead themselves in the main R.C.O.P on the ground that they are the authorised sub-tenants under Mr. M. Srinivasa Rao, the respondent in all

the R.C.O.Ps.

4. The Rent Controller dismissed the said application on 27.4.94 and subsequently passed an order of eviction by allowing the R.C.O.P. on

29.4.94.

5. The petitioners preferred R.C.A.433/94 on the file of Appellate Authority. The Appellate Authority had concurred with the reasoning of the

Rent Controller and dismissed the appeal. Aggrieved, the petitioners filed C.R.P. 1802/96 before this Court.

6. Mr. R. Thiagarajan, the learned counsel for the petitioners contended that the order of eviction obtained by the respondents in R.C.O.P.776/92

cannot be executed against the petitioners herein, since the respondents had obtained the order of eviction without impleading the sub-tenants. The respondent M. Srinivasa Rao though appeared in the earlier stage of the proceedings in R.C.O.Ps, subsequently remained ex parte and allowed the said R.C.O.Ps to be ordered. Hence the order of eviction is collusive and fraudulent decree obtained by the respondents against the petitioners herein and as such the same cannot be executed. Further the application filed by the petitioner u/s 47, C.P.C ought to have been treated as one under Order 21, Rule 97, C.P.C, since the rights of the petitioners are very much involved in the execution of the order of eviction obtained by the respondents. So far as C.R.P 1801/96 is concerned, the counsel for the petitioners contended that the sub-tenants are necessary parties to give a final adjudication in the matter. In accordance with Order 1. Rule 10(2) C.P.C. the respondents ought to have been impleaded as party/respondents in the main R.C.O.P. 3297/91 filed by the respondents on the ground of unauthorised sub-lease.

7. Mr. A. Thiagarajan, the learned counsel for the respondents, on the contrary, contended that, in the rent control proceedings the subtenants are not necessary parties. If an order of eviction is passed against the chief tenant the said order will be binding on all the sub-tenants, unless it is proved by the sub-tenants that the order of eviction is a collusive or fraudulent one. Further only Mr. Champalal Jain filed the petition u/s 47C.P.C. in M.P. 614/93 in E.P. 638/92 in R.C.O.P. 776/ 92. The said application was dismissed by the Rent Controller, against which no appeal had been preferred and as such that order has become final: Both the petitioners have filed R.C.A.714/94 and R.C.A. 716/94 against the order dismissing the applications filed by them to implead themselves as party/respondents in the execution petition and the, present revisions C.R.P. 1689/96 and C.R.P. 1801/96 are against the said orders. Since no appeal or revision has been filed against the order dismissing the application u/s 47C.P.C. it is not open to the petitioners now to contend that the eviction order obtained in R.C.O.P. 776/92 is a collusive and fraudulent decree. Even otherwise the petitioners had failed to make out a case that the order of eviction obtained by the respondents in R.C.O.P. 776/92 is collusive and fraudulent decree. Hence both the authorities below have carefully considered the contention of the petitioners and rejected their plea and as such

no interference is called for by this court under the revisional jurisdiction.

8. I carefully considered the contention of both the counsel. In fact Mr. R. Thiagarajan, the learned counsel for the petitioner very much stressed on

the fact that the respondents had obtained an exparte order of eviction against the principal tenant in R.C.O.P. 776/92. The chief tenant had

remained exparte and as such the order of eviction is collusive and fraudulent one which cannot be executed against the petitioners. The petitioner

has filed application u/s 47, C.P.C contending that the eviction order cannot be executed and the said application ought to have been treated as

one under Order 21, Rule 97, C.P.C. A full fledged enquiry ought to have been conducted by the Rent Controller in view of the bar of the

separate civil suit. Mr. R. Thiagarajan had advanced so much of arguments on the ground that the application M.P. 1056/92 filed by Mr.

Champalal Jain is u/s 47, C.P.C. A perusal of the records reveal that the said M.P. 1056/92 is an application filed by Mr. Champalal Jain to

implead himself in the execution petition. The application filed by Mr. Champalal Jain u/s 47C.P.C is M.P. 614/93 in E.P. 638/92 which was also

dismissed by the Rent Controller. Against the said order no appeal has been preferred. Since that order has become final, at this juncture, it is not

open to the counsel for the petitioners to raise any plea on the basis of the application filed u/s 47C.P.C.

9. Even otherwise, since the counsel has raised the plea to give a quietus to the matter, it is better to deal with that also. The only grievance of the

petitioners is that the order of eviction in R.C.O.P. 776/92 was an ex parte order and as such it is a collusive and fraudulent decree. Even in the

notes of submissions, the counsel for the petitioners has quoted the point for consideration in these revisions is:

Whether the collusive and fraudulent decree obtained by the respondents without impleading the sub - tenants is executable against the petitioners?

At the outset it may be slated that the words "collusive" and "fraudulent" cannot go together. There is a subtle distinction between "conclusion" and

"fraud", which is very clear from the reported judgement of this court in Varadammal and Another Vs. Ambalal J. Vyas and Others,) relying upon

the judgment of the Supreme Court reported in Nagubai Ammal and Others Vs. B. Shama Rao and Others, as under:

There is a fundamental distinction between a proceeding which is collusive and one which is fraudulent. Collusive in judicial proceedings is a secret arrangement between two persons that the one should institute a suit against the other in order to obtain the decision of judicial tribunal for some sinister purpose. (Wharton's Law Lexicon, 14th ed 0.212). In such a proceeding the claim put forward is fictitious, the contest over it is unreal and the decree passed therein is a mere mask having the similitude of a judicial determination and worn by the parties with the object of confounding third parties. But when a proceeding is alleged to be fraudulent, what is meant is that the claim made therein is untrue but that the claimant has managed to obtain the verdict of the Court in his favour and against his opponent by practicing fraud on the court. Such a proceeding is started with a view to injure the opponent and there can be no question of its having been initiated as the result of an understanding between the parties. While in collusive proceedings the combat is a mere sham, in a fraudulent suit it is real and earnest. Hence it is clear that there cannot be a collusive and fraudulent decree. Both the words cannot conjoin together. It should be either "collusion" or "fraud".

10. Further to consider the plea of collusion, it is necessary to see whether necessary averments have been made in the petition. A perusal of M.P. 614/93 reveals that Mr. Champalal Jain has moved this court in Application No. 1891/93 bringing to the notice of this court the atrocious manner in which the sale transaction was affected which resulted in a great loss of revenue to the Government of India and also the thousands of beneficiaries under the trust and that he has got a good chance of success in the said application which was filed for setting aside the sale in favour of the respondents. Under these circumstances, E.P.638/92 is not maintainable. Further he understands that some of the slum dwellers also moved this court in Application No. 517/93 for setting aside the sale. In view of the pendency of those proceedings, he has filed the application u/s 47C.P.C to dismiss the execution petition.

11. It has been repeatedly held by this court as well as the Apex Court that whenever any allegation is made pertaining to "fraud" or "collusion", the parties who raise such plea should specify the full particulars in the

pleadings. In the case reported in Rakkammal v. Meyyappan Ambalam (1991-2-L.W. 491) the Division Bench of this court has held as follows:

Here again, the: pleadings, namely, the objections put forth on behalf of the first respondent are totally devoid of particulars. Under the law, it is necessary to plead fraud specifically and give particulars of the fraud. The burden of proof of fraud is on the person, who alleges fraud, which should be proved by cogent evidence. Courts have always laid down that in the matter of proof of fraud, suspicion cannot take the place of proof and fraud should be proved by direct cogent evidence. Conjectures and suspicions cannot take, the place of proof. The same principles govern the allegations of collusion also.

12. In the absence of any detail with regard to the plea of collusion or fraud in the petition filed by Mr. Champalal Jain in M.P. 614/93 the Rent

Controller is right in dismissing the application without treating the same as one filed under Order 21, Rule 97C P.C. Even other wise, as pointed

out earlier, the petitioner Mr. Champalal Jain had not challenged the order of dismissal of M.P.614/93 and as such the whole argument of the

learned counsel for the petitioners is totally misconceived. More over since the counsel for the petitioners was engaged half - way through he might

not have noticed the related matters out of which these revisions arise.

13. Now the only issue remains for consideration is whether the application M.P. Nos. 1056 & 1057 of 1993 filed by the petitioners herein in E.P.

638/ 92 in R.C.O.P. 776/92 to implead themselves in the said execution petition and M.P. No. 687/92 in R.C.O.P. 3297/91 can be entertained.

14. There is no dispute that R.C.O.P. 776/92 had been decreed ex parte as early as 30.4.92. When the R.C.O.P. had been disposed of either on

merits or ex parte against the chief tenant, the sub - tenants are bound by the same. It is well settled principle that the sub - tenants had no

independent right de hors the right of the chief tenant. Hence there is absolutely no necessity for the sub - tenants to be impleaded in the execution

proceeding. The only right for them is to object to the execution of the order of eviction as provided u/s 26 of the Tamil Nadu Buildings (Lease and

Rent Control) Act, which runs as follows:

26. Order under the Act to be binding on sub-tenants:- Any order for the eviction of a tenant passed under this Act shall be binding on all sub -

tenants who were made parties in the application for eviction but any person who became a sub - tenant after the date of the, application for

eviction shall be bound by the order of eviction and be evicted as if he were a party to the proceedings, provided that such order was not obtained

by fraud or collusion.

The above provision makes it clear that if the sub-tenants are made parties, in the main R.C.O.P., the order of eviction will be binding on the sub -

tenants and it is not open to the sub - tenants to challenge separately the order of eviction. Once they are not the parties in the main R.C.O.P. it is

open to them to attack the order of eviction on the ground of collusion or fraud. In this case, though Mr. Champalal Jain had filed application u/s

47. C.P.C. in MP. 614/93, he has not chosen to challenge the order of eviction on such grounds and further more he was satisfied with the order

of dismissal of the said application by the Rent Controller, since he has not preferred any appeal. Hence at this stage, it is not open to the

petitioners to seek for impleading themselves in the execution proceedings. The petitioners had the right and liberty to challenge the order of eviction

without getting themselves impleaded as party/respondents in the execution proceedings. Mr. Champalal Jain had also exercised that right and

failed. Mr. Mahender Kaur had filed the petition to implead him and did not object to the execution of the order of eviction by filing any application

either u/s 47, C.P.C or under Order 21, Rule 97, C.P.C. Having failed to do so, it is not open to him to challenge the matter hereafter, due to his

conduct which I shall refer lower down.

15. The counsel for the petitioners cited the following authorities:- (1) Kamta Prasad and Others Vs. Smt. Vidyawati and Others, (2) State Bank

of India Vs. The Podar Mills Ltd. and Others, , (3) an unreported judgment of"" this court in Amichand & others x, VII Judge, Court of Small

Causes. Madras (W.A. No 2 of 1994 (DB), (4) Seetharami Reddy v. Joseph Vilangabhan (1995II MLJ 463 = 1995-2-L.W.556), (5) S.P.

Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, . (6) Bhanwar Lal v. Satyanarain (1995) 1 SCC 6), (7) Babulal

v. Rajkumar (1996 (2) SC (JT) 716), (8) Kullammal v. Perumal (1996 (MLJ 37), and (9) Natarajan v. Nachimuthu Chettiar (1984 II MLJ 50) to

find support for his proposition that the application filed u/s 47, C.P.C ought to

have been treated as an application under Order 21, Rule 97, C.P.C and dealt with on merits and also that the respondents had obtained an order of eviction without impleading the petitioners and the same would amount to collusive and fraudulent decree. In view of the reasons given by me above, I am of the opinion that it is unnecessary to refer to these judgments in detail.

16. So far as the implead petition filed by the petitioners in M.P. 687/92 in R.C.O.P. 3297/91 the authorities below had dismissed the said

application on the ground that the sub - tenants need not be necessarily impleaded as party/respondents in the eviction proceedings, since they do

not have any independent right for themselves barring the right of the chief tenant. The case of the petitioners is that they are the authorised sub -

tenants under the chief tenant, since the original landlord has permitted the sub - lease. For this the petitioners relied upon Ex. P8 a letter dated

27.12.1979 written by the Honorary Secretary of Thatikonda Rajamannar Trust, who is the predecessor in title. In the said letter, it reads as

follows:

We have for acknowledgement your letter dated 24.12.1979. We confirm hereunder the terms and conditions agreed upon during our discussions.

Seven terms and conditions have been mentioned in the said letter of which clause - 6 reads as follows:

The tenant has the right to sub - let the premises.

On the basis of this clause, now the petitioners counsel contend that M. Srinivasa Rao, the respondent in the R.C.O.Ps is empowered to sub -

lease the premises to the sub - tenants and hence the petitioners are the authorised sub - tenants Since R.C.O.P. 3297/93, has been filed for

eviction on the ground of unauthorised sub - lease, it is necessary that the petitioners should be impleaded as respondents. The lower court has

dismissed the said application on the ground that Ex. P8 is only a xerox copy and the original was not forthcoming before the court and further

none concerned with the said document had been examined before one court Apart from this, the said letter dated 27.12.79 reads as follows:

Please confirm your agreement to the terms contained in this letter. Kindly also arrange to pay the arrears of rent upto 31.12.1979 at an early date.

From the above extracted portion, it is clear that the terms and conditions have

been intimated to the chief tenant, which means it is only an offer and that is why the chief tenant has been requested to confirm his agreement to the terms contained in the said letter. There is nothing on record to show that the chief tenant has confirmed those conditions mentioned in the letter dated 27.12.79. In the absence of any such confirmation by the chief tenant, it cannot be taken for granted that Ex.P8 gives a right of such lease, When the petitioners have totally failed to establish their claim that they are the authorised sub - tenants and in the absence of statutory requirement of impleading the sub -lessees as party/respondents to the main R.C.O.P, the petitioners cannot claim by way of right to implead themselves as party/respondents. As already pointed out, the main R.C.O.P. 3297/91 itself had been disposed of subsequent to the dismissal of the M.P. 687/92 filed by the petitioners for impleading themselves in the said R.C.O.P. In view of the disposal of the main R.C.O.P. 3297/91 nothing survives in this C.R.P. I am of the opinion that the orders of the courts below do not suffer from any infirmity seeking for interference of this court. In fact, when the said letter Ex.P8 was produced before this court in a connected proceeding, the Division Bench of this court has held as follows in O.S.A. 4 and 5 of 1995 filed by the very same petitioners:

The other ground that is averred in the plant and also in the application is that the 11th defendant has colluded with defendants 2 to 10 who remained exparte in the rent control proceedings and has suffered an order which is detriments to the petitioners herein. Merely because the 11th defendant remained exparte, no inference can be drawn that it is collusive. In fact no materials are placed before us to show that an order was obtained due to collusion.

In this connection, the rights of the petitioners are also to be considered. According to the averments in the plaint both these appellants came into occupation of the premises in 1978 and 1972 respectively and they are in possession on the basis of the authorised sub lease. For the said purpose, they rely on a copy of a letter dated 27.12.1979. It is set out in. page 3 of the typed set. We have gone through the said letter. It is only an offer by the landlords. Whether it was accepted by the 11th defendant is not in evidence. Even if we take that letter as true and genuine, the same also cannot help the appellants herein. As stated earlier, the appellants

claimed themselves to be in possession of the land and building from 1978 and 1972, respectively. But the letter on which the petitioners rely on is dated 27.12.1979 But we do not find anything in that letter that the occupation of these petitioners was recognised by the landlords. When all the respondents dispute the right of the petitioners as authorised sub - lessees, there must be something on record to show that their sub - lease was recognised by the 1st respondent. We do not find anything in evidence to support the claim of the appellants. For that reason also, we are not inclined to interfere with the order of the learned Judge.

In view of the above extracted Division Bench decision, I am of the opinion that even otherwise the petitioners have not made out any case to

implead themselves as party/respondents in the said R.C.O.P. The finding of the Division Bench would also lend support for any view that the

petitioners have not made out any case for collusion between the respondents herein, and the said Srinivasa Rao, the chief tenant. Subsequent to

the dismissal of the application M.P. 687/92, the main R.C.O.P had been disposed of on 29.4.94 and as such nothing survives in the matter.

17. So far as the Division Bench judgment referred to above. In O.S.A. 4 and 5 of 1995 is concerned, the counsel for the petitioners contended

that this order has been passed by the Division Bench in an interlocutory application, arising out of the order of the single Judge. Since the main suit

is pending, the rights of the parties have to be decided in the suit and as such the findings given by the court in the interlocutory proceedings cannot

have a final say in deciding the rights of the parties. Though I agree with the learned counsel for the petitioners, it is to be seen that the petitioners

had invited these orders in the proceedings taken out by them for various reasons. Even though it is an interim order, still such interim orders are set

aside at the time of disposal of the suit. The said interim orders will be in force and binding between the parties. As on today, the said order of the

Division Bench is binding between the parties and as such there is nothing wrong in relying upon the said bindings of the Division Bench.

18. It may be pertinent to note the conduct of the petitioners in pursuing the matter before the Rent Controller as well as the other forums because

only the conduct would reflect the intention of the parties. This is germane to find out whether the petitioners are bonafidely raising any plea in

respect of their right before this court. Subsequent to the exparte order of eviction in R.C.O.P. 776792/ against the principal tenant, the petitioners and four others filed a suit on the file of the City Civil Court, Madras in O. S. 9180/92 seeking for an order of injunction restraining the respondents from evicting the plaintiffs in the said suit. They also filed an application I.A. 19222/92 restraining the respondents therein from entering into the suit property and demolish. The said application was dismissed. In the meanwhile Mr. Champalal Jain and Mr. Mahender Kaur filed another suit O.S. 4773/94 on the file of the City Civil Court, Madras seeking for a declaration that the eviction order obtained by the respondents herein in R.C.O.P. 776/92 is collusive one and for permanent injunction restraining the respondents herein from executing the order of eviction in the said R.C.O.P. They also filed application I.A. 11041/94 seeking for an order of interim injunction restraining the respondents herein from executing the said order of eviction in R.C.O.P.776/92 pending the disposal of the suit. Though interim injunction was granted, subsequently the same was vacated on 30.8.94.

19. While the suit O.S. 9180/92 was pending on the file of the City Court, Madras, Mr. Champalal Jain filed application No. 1891/93 on the file of this court to set aside the sale deeds in favour of the respondents. Subsequently he had set up some other person to file another Application No. 3164/ 93 for the same relief of setting aside the sale deeds. While those applications were pending, since the petitioners failed to obtain any interim order, Mr. Champalal Jain and Mr. Mahender Kaur filed another suit C.S. 1031/94 on the file of this court seeking a decree for permanent injunction restraining the respondents herein from dispossessing them from their occupation. They also filed application Nos. 773 and 774 of 1994 seeking for an order of interim injunction restraining the respondent's herein from dispossessing them pursuant to the eviction order in R.C.O.P.776/92 as well as R.C.O.P. 3297/91, Both the applications were dismissed by this court on 22.11.94. After all these, the respondents had filed the suit C.S.17 and 18 of 1995. against the petitioners herein for mesne profits. The counsel for the petitioners did not dispute the conduct of the petitioners in knocking the doors of different forums to get the relief. Virtually their conduct reveals that having failed before one

forum, they have shifted to another forum without disclosing their failure in their attempt to get a relief in the earlier forum. The learned counsel for

the petitioners simply represented that his clients have been ill advised .It is not the case of petitioners" counsel that having failed be fore the City

Civil Court in two suits, the petitioners have withdrawn these suits and then came to this court by way of another civil suit. All the matters-are

pending in the different forums and the counsels therein have been retained. There is no change of counsel in the respective courts. When the

petitioners had approached this court and got an interim order, in C.S. 1031/94 naturally they might have informed the same to the counsel at City

Civil Court, Madras who is representing their case before that forum. There cannot be any dispute that the concerned counsel in each case were

fully aware about the conduct of the petitioners in knocking the doors of different forums, ultimately seeking the same relief. Only to avoid

embarrassment, the petitioners might have been advised to engage different counsels at different level. It is rather unfortunate that the advocates are

identifying themselves with their clients to this extent and multiplying the litigation under the same cause; especially when the courts are hard pressed

for the disposal of even the genuine cases.

20. The contention of the petitioners" counsel that the application filed u/s 47C.P.C could have been treated as one under Order 21, Rule 97,

CPC can also be rejected due to the conduct of the petitioners. Order 21, Rule 97, C.P.C. provides for a full fledged enquiry at the execution

stage in order to avoid separate suit. When the petitioners have filed three suits, two before the City Civil Court and another before this court for

the same relief of injunction restraining the respondents here in from executing the order of eviction passed in RCOP. 776792, there is absolutely

no necessity for the executing court to entertain either Section 47, C.P.C petition or to convert the same into one under Order 21, Rule 97, C.P.C.

Since the remedy is provided to avoid a separate suit and whereas the petitioners had wantonly avoided the remedy by filing three separate suits. It

is necessary that the matter has to be decided in the suits in detail. When once the petitioners filed separate civil suits, then the applications filed by

them be fore the executing court are not maintainable, as they cannot invoke the jurisdiction of two different forums simultaneously.

21. Before parting with this case, it is necessary for me to observe the following in respect of the conduct of the petitioners as well as the counsel.

When the vacate stay petition came up for hearing on 23.8.96 one Junior of Mr. Sampathkumar, the counsel for the revision petitioners requested

the matter to be taken up for final disposal on 29.8.96 at 2.15 P.M. since the arguments involved in the stay petition and in the vacate stay petition

would be the same for the revision petition. Accordingly I posted the matter on 29.8.96 at 2.15 P.M. On that day, Mr. Sampathkumar

represented that he declined to appear for the petitioners and handed over the papers to his clients, since his client has written a letter to My Lord

The Chief Justice marking a copy of the same to myself Accordingly I posted the matter on 30.8.96.

22. I received the copy of the letter written by one of the petitioners Mr. Champalal to My Lord. The Chief Justice wherein he had requested the

matter to be posted before some other learned Judge. He has given three reasons for transfer. One is that I appeared at one stage for the

respondents in C.S. 1031/94 which was filed by the petitioners herein on the file of this court. The other reason is that I decided against him in

C.S. 17 of 1995. The last is that I expressed my views against him on 23.8.96 in open court when the case was called and just adjourned without

even the first fact of the case being submitted.

23. So far as the first ground is concerned, it is patently a lie on the part of the petitioners because I never appeared for the respondents in the said

suit C.S. 1031/94 and in fact I had an occasion to deal with the matter as a Judge and I disposed of the Application Nos.717I to 7174 of 1994 by

order dated 14.12.94. If really I had appeared for the respondents, the petitioner's counsel would have taken an objection at that time. Now the

objection taken by the petitioner in his letter is only an after thought in order to avoid an early disposal and since the reason for transfer is patently a

lie, I decided to take up the matter because the litigants should not be allowed to choose the court of their choice. If the grievance of the petitioners

is a genuine one then I will be the last person to hold the brief. But at the same time I cannot permit the litigants to take the case out of my list under

false pretext because of my strictness in disposal of the cases.

24. So far as the next ground is concerned, it will not stand in my way in taking

up the case. It may be pertinent that my order in C.S. 17/95 had been modified by the Division Bench in appeal but however confirmed by the Apex Court in SL (Civil) No. 19401/95 dated 19.1.96. Because in another proceeding a Presiding Officer passed an order against a litigant it does not mean that the said Presiding Officer is debarred from hearing any of the matters of the said litigant in future.

25. The third ground mentioned by the petitioner is also a lie on the face of it.

26. The counsel for the petitioners also efficiently played his role to remove the case out of my list. After the withdrawal of Mr. Sampathkumar,

Mr. R. Thiagarajan entered appearance. The cases were taken up on 10.9.96 on which date the counsel for the petitioners represented that he

required some more time to read the papers and requested a short adjournment till 13.9.96. Conceding to the request of the counsel for the

petitioners, I posted the matters for hearing on 13.9.96 at 2.15 p.m. and when the matter was taken up, the counsel for the petitioners filed a

memo, which was served on the counsel for the respondents at 2.50 P.M., requesting for an adjournment of 10 days on the ground that the

petitioners have filed two transfer applications No.3492 and 3494 of 1996 on the file of the Original Side of this court to transfer these C.R.Ps for

joint trial along with C.S. 17 and 18 of 1995 pending on the file of the original side. As the Conduct of the petitioners is only to drag on the

proceedings as much as possible, which is very clear from the above stated multiplicity of proceedings, I declined adjournment and insisted for the

matter to be argued. The counsel for the petitioners argued the matter. In fact I passed an order, rejecting the memo on the ground that the counsel

for the petitioners sought to have made representation before me about the inter relatedness of the C.R.Ps with that of the suits on 10.9.96 when

he asked for an adjournment. Now it is clear that the short adjournment had been sought for by the counsel only to file the transfer applications on

the Original Side. Later I was told that the above transfer applications on the Original Side have been dismissed as withdrawn. Though the counsel

for the petitioners had represented that his client has been ill advised in multiplying the proceedings, I am of the opinion that the ill advice is yet to

be stopped. Why I am mentioning this is only to convince my earlier statement made in this order about the identification of the Advocates with

their clients and the extent of the same. Hence there is absolutely no merits in all the Civil Revision Petitions and the same are dismissed with cost of Rs. 5,000/-.