
(2013) 10 MAD CK 0158

In the Madras High Court

Case No : Tr. C.M.P. No. 29 of 2013 and M.P. No. 1 of 2013

N. Sundar and N. Chandrasekaran

APPELLANT

Vs

N. Suresh Babu and C. Muruganandham

RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2013) 5 LW 704

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : M. Kalyanasundaram, for Mr. G. Sethuraman, for the Appellant; A. Seshan for R1, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—This Tr. C.M.P. has been filed u/s 24(1)(b) of the Code of Civil Procedure, seeking an order to transfer the suit in O.S. No. 45 of 2012 from the file of the Principal District Court, Thanjavur to the file of the Original side of this Court. The suit was filed by the first respondent herein against the petitioners and the second respondent herein, seeking partition and separate possession of half share in the suit schedule properties and to direct the first petitioner/D1 to pay Rs. 20,000/- towards the past income of the suit property and future income or profits for the share of the plaintiff till delivery of possession of his share of property is given to the first respondent/plaintiff and to pass final decree in terms of preliminary decree to be passed.

2. During the pendency of the suit, the petitioners herein, who are defendants 1 and 2 have approached this Court, by way of filing this Tr. C.M.P., seeking an order to transfer the aforesaid suit in O.S. No. 45 of 2012, pending on the file of the Principal District Court, Thanjavur, to the file of the Original side of this Court to be disposed according to law.

3. Mr. M. Kalyanasundaram, learned Senior counsel appearing for the petitioners herein submitted that the first item of property is located at Aynavaram,

Chennai-23, to an extent of 3837 sq. ft. of land with a construction of ground floor. According to him, the value of the said property is Rs. 1,72,66,500/- and the second item is 2 1/2 cents of agricultural land, situated at Vilangudi village, Kumbakonam Taluk, an ancestral property, within the territorial jurisdiction of Nanninalam Munsif Court, Thanjavur District and the value of the said property is at Rs. 59,250/- and the total value of both the properties is Rs. 1,73,25,750/- and out of which, half share is valued at Rs. 86,62,875/- and that the Court fee has been paid u/s 37(2) of Tamil Nadu Court Fee and Suit Valuation Act. According to the learned Senior counsel, the main item of the suit property is situated at Chennai and therefore, the first respondent/plaintiff could have filed the suit only at Chennai. However, the suit was filed before the Principal District Judge, Thanjavur, which causes inconvenience to the petitioners/defendants 1 and 2.

4. The petitioners have further stated that if the suit is tried by the Court at Thanjavur, they have to engage counsel to defend their case at Thanjavur and they have to go to Thanjavur to conduct the case, that would cause serious loss, harm and also prejudice to the petitioners/defendants 1 and 2.

5. Per contra, Mr. A. Seshan, learned counsel appearing for the first respondent submitted that the first item of property was purchased by late. Nagarajan, father of the plaintiff and the first defendant, in the year 1965 and it was originally a vacant site and the second item is an ancestral property, an agricultural land. Late Nagarajan, father of the plaintiff and first defendant had put up construction, in the site purchased by him. When the construction was put up by him, the petitioners 1 and 2/defendants 1 and 2 were minors. During the life time of father Nagarajan, the second petitioner, Chandrasekaran, one of his sons, was given in adoption to his elder sister and hence, according to the plaintiff, the second petitioner is not entitled to any share in the suit schedule property.

6. It is an admitted fact that the petitioners and the first respondent are sons of late Nagarajan. The first respondent/plaintiff has pleaded that the second petitioner is not entitled to any share in the property, since he was given in adoption and therefore, the first petitioner and the first respondent are entitled to half share each. However, the same has to be decided by the Court, based on the evidence.

7. The short point involved in this Tr. C.M.P. is whether the petitioners are entitled to seek transfer of the suit filed in O.S. No. 45 of 2012, pending on the file of the Principal District Judge, Thanjavur.

8. Learned Senior counsel appearing for the petitioners contended that the jurisdiction of the Court has to be decided, based on the value of the properties. According to him, the first item of property is an extent of 3837 sq. ft. of land with a superstructure at Aynavaram, Chennai-23 and the second item of property is an agricultural land at Vilangudi village, Kumbakonam Taluk, Thanjavur District

in R.S. No. 190/6A, 0.32.0 hectares. Admittedly, the value of the property situated at Aynavaram, Chennai is comparatively more, as per the plaint averments and therefore, learned Senior counsel for petitioners submitted that the first respondent/plaintiff could have filed the suit, seeking partition before the High Court (Original Side).

9. Learned counsel appearing for the first respondent/plaintiff also stated that as per the plaint averments, the plaintiff has stated that the second petitioner is not entitled to any share, since he was given in adoption to the another person. In order to establish the factum of adoption, he has to examine the local witnesses, residing within the territorial jurisdiction of the Court below, probably some senior citizen and if the case is transferred to this Court, that would prejudice the rights of the first respondent/plaintiff. He has further submitted that the plaintiff, being the dominus litis, considering the fact that the second item of property is an ancestral property, which was in possession and enjoyment of the family, prior to the purchase of the first item of property, the first respondent/plaintiff, filed the suit before the Principal District Judge, Thanjavur and as there was no statutory bar in filing the suit before the said Court and therefore, seeking transfer of the suit to the Original Side of this Court is not legally sustainable. In support of his contention, the learned counsel appearing for the first respondent/plaintiff relied on the following decisions:

1. Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and Others,
2. Indian Overseas Bank, Madras Vs. Chemical Construction Company and Others,

10. In Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and Others, , the Hon"ble Supreme Court has held as follows:

14. Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; interest of justice demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If

on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a fair trial in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order.

11. As per Section 24 of the Code of Civil Procedure, General power of transfer and withdrawal of cases, pending before any Subordinate Court is vested with this Court, accordingly, on application of any of the parties and after notice to the parties and after hearing both sides, this Court can transfer any suit or appeal or other proceeding pending before any subordinate court, for trial or disposal to any other Court, subordinate to it, competent to try or dispose of the same. Similar power is vested with the District Judge, if there is need to transfer a case, which is pending before any Court to another Court, which is also subordinate to the District Court and having competency. Admittedly, the suit is pending before the Principal District Court, Thanjavur and therefore, the District Court has no power to transfer the suit to any other Court.

12. It is not the case of the petitioners that the Court below has lack of territorial or pecuniary jurisdiction to try the suit. There are two items of schedule of properties available in the plaint and out of which, the second item of property is admittedly within the territorial jurisdiction of the Court below.

13. In *Maneka Sanjay Gandhi and Another Vs. Rani Jethmalani*, , the Hon''ble Apex Court has held as follows:

Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case.

14. While passing an order, transferring a case, u/s 24 of the Code of Civil Procedure, the paramount consideration must be to see that justice, according to law is done and for achieving that objective, the transfer of the case is imperative, hence, in order to meet the ends of justice, there should be no hesitation to transfer the case, even if it is likely to cause some inconvenience to any party.

15. In *Indian Overseas Bank, Madras Vs. Chemical Construction Company and Others*, , the Hon''ble Apex Court has held as follows:

16. The principle governing the general power of transfer and withdrawal under S. 24 of the Code is that the plaintiff is the dominus litis and as such, entitled to institute his suit in any forum, which the law allows him. The Court should not lightly change that forum and compel him to go to another Court, with

consequent increase in inconvenience and expense of prosecuting his suit. A mere balance of convenience in favour of proceedings in another Court, albeit a material consideration may not always be a sure criterion justifying transfer.

16. Having gone through the decision, this Court is of the view that the aforesaid decision is squarely applicable to the facts and circumstances of this case. As discussed earlier, it is not the case of the petitioners/defendants that the Principal District Court, Thanjavur has no jurisdiction to decide the partition suit, since one of the two items of the schedule of properties is within the territorial jurisdiction of the Court below and similarly, there is no dispute that the Principal District Court, Thanjavur has got jurisdiction, in respect of pecuniary jurisdiction to decide the suit. In view of the fact, one of the two properties is situated within the territorial jurisdiction of the said Court, the first respondent/plaintiff, being the dominus litis, filed a suit before the Principal District Court, Thanjavur, having jurisdiction. During the pendency of the suit, the petitioners, who are defendants 1 and 2 have come forward with this petition, seeking transfer of the case, on the ground that attending the Court at Thanjavur, engaging counsel to defend their case would cause inconvenience to them. As decided by the Hon'ble Apex Court, a mere balance of convenience in favour of proceeding in another Court cannot be a criteria to justify the transfer, when the Court has jurisdiction to try and decide a suit.

17. It is not in dispute that the Principal District Court, Thanjavur has got territorial and pecuniary jurisdiction, to try the partition suit. Hence, in the absence of any statutory bar, merely, based on the inconvenience faced by the petitioners/defendants, they cannot seek transfer of the case from the Principal District Court, Thanjavur to this Court, u/s 24 of the Code of Civil Procedure, in the light of the decisions referred to above.

18. On the aforesaid circumstances, this Court is of the view that the petition, seeking transfer of the suit is liable to be dismissed. However, having considered the facts and circumstances of the case, to meet the ends of justice, I find it just and reasonable to direct the Court below to dispose the suit in O.S. No. 45 of 2012, within six months from the date of receipt of a copy of this Court, solely on merits, uninfluenced by the findings of this Court, if any, in this order. With the above observation, this Tr. C.M.P. is dismissed. Consequently, connected miscellaneous petition is also dismissed. No costs.