
(2014) 01 MAD CK 0106

In the Madras High Court

Case No : Tr.C.M.P. (MD) Nos. 2, 3 of 2014 and M.P. (MD) Nos. 1 & 1 of 2014

Sathu Dharmananda Saraswathi Swamigal Trust

APPELLANT

Vs

Sree Shanmuga Seva Sangam Nattar Trust

RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Citation : (2014) 1 CTC 726

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Judgement

N. Kirubakaran, J.—The Petitioner is the original Plaintiff, who filed a Suit in O.S. No. 310 of 2013, before the Sub-Court, Palani, for permanent injunction restraining the Respondent herein from interfering with the peaceful possession and enjoyment of the Petitioner's Trust. In the said Suit, an interlocutory Application in I.A. No. 464 of 2013 was filed seeking for ad-interim injunction. The Respondent filed an Interlocutory Application in I.A. No. 477 of 2013 to vacate the ad-interim injunction. After hearing both the parties, the Trial Court dismissed the same on 29.10.2013 and allowed injunction Application in I.A. No. 464 of 2013. Aggrieved by the said Orders dated 29.10.2013 made in I.A. Nos. 464 & 477 of 2013, the Respondent filed C.M.A. Nos. 23 & 24 of 2013 respectively before the District Court, Dindigul. The said proceedings are sought to be transferred by the present transfer Civil Miscellaneous Petitions. Mr. S. Ramu, learned Counsel appearing for the Petitioner would contend that when the matter was called on 2.1.2014, the learned Judge did not even grant time for filing Counter Affidavit and posted the matter on 3.1.2014, on which date, the Counter was filed. Thereafter, he pressurized the Petitioner to argue the matter and argument of the Petitioner was heard on 4.1.2014 and the matter is posted for orders on 7.1.2014. He would submit further that the attitude of the learned Judge and the remarks he made during argument make suspicion that he is prejudiced against the Petitioner and he is in favour of the Respondent. Further, he would submit that the Petitioner was threatened by the Respondent at

Dindigul Court and therefore due to security reason also, he seeks transfer of the Appeals to some other Court.

2. In support of the transfer Civil Miscellaneous Petitions, Mr. S. Suresh Kumar Isaac Paul, the lower Court Counsel, who sent a Complaint against the learned District Judge, Dindigul, on 2.1.2014 is also present before this Court and made his submissions. He would submit that the Petitioner was threatened in the Dindigul Court and therefore, on security reasons, the present Transfer Civil Miscellaneous Petitions were filed and a Memo was also filed before the Appellate Court on 2.1.2014 stating that Transfer Civil Miscellaneous Petitions filed before this Court. Even thereafter, the learned Judge did not adjourn the matter. Once a Memo has been filed stating that Transfer Civil Miscellaneous Petitions have been filed, the usual practice is to adjourn the matter without hearing. However, the learned Judge did not adjourn the matter and insisted to argue the matter. Therefore, under pressure only he was made to argue the matter.

3. Heard Mr. S. Ramu, learned Counsel appearing for the Petitioner in both Transfer Civil Miscellaneous Petitions, Mr. V. Meenakshi Sundaram, learned Counsel appearing for the Respondent in Tr.C.M.P. (MD) No. 2 of 2014 and Mr. C. Arulvadivel @ Sekar, learned Counsel appearing for the Respondent in Tr.C.M.P. (MD) No. 3 of 2014.

4. A perusal of the records would reveal that the Respondent herein suffered an Order of Interim Injunction before the Trial Court and that was the reason why C.M.A. Nos. 23 & 24 of 2013 have been filed before the District Court, Dindigul. The urgency, according to the Respondent, is that "Thai Poosam" festival falls on 17.1.2014 and therefore the Respondent sought for earlier disposal of the Appeals. In view of the above circumstances, the Appellate Court wanted both the parties to argue the matter. It is submitted that "Thai Poosam" festival falls on 17.1.2014, which has to be celebrated in the suit property.

5. Though the learned Counsel appearing for the Petitioner makes it as if the matter came up on 2.1.2014 for the first time and without giving time the Appellate Court insisted the Petitioner to argue the matter, it is represented by the learned Counsel appearing for the Respondent that the Petitioner was served with advance copies in the Appeals even prior to filing of the Appeals as the Petitioner filed Caveat Petition. Thereafter, the matter came up on 6.12.2013 and was adjourned for filing counter to 13.12.2013, 19.12.2013 and 22.12.2013. The Lower Court Counsel, Mr. S. Suresh Kumar Isaac Paul, who appeared before this Court, has submitted in his argument that he only volunteered before the Appellate Court on 22.12.2013 that he would file Counter Affidavit on behalf of the Petitioner herein. Hence, the Lower Appellate Court posted the matter on 2.1.2014. Without arguing the matter, on 2.1.2014 it seems that the learned Counsel appearing for the Petitioner in the Lower Court wanted the matter to be adjourned as there was a threat to the Petitioner. First of all, there is no necessity for the party to appear before the Appellate Court as it is not a Trial Court. Moreover, even before the Trial Court, the appearance of the parties is

necessary only during the trial. Therefore, the alleged threat to the Petitioner should be invented for the purpose of the case. Even assuming for a moment that there is a threat, it will not have any impact upon the proceedings as the Counsel for the parties will take care of the proceedings. It is always open to the aggrieved parties to approach the Police to give Complaint regarding alleged threat and the alleged threat cannot be employed to transfer the matter to some other Court.

6. Having given an undertaking before the Appellate Court to file Counter Affidavit on 2.1.2014, in all fairness, the Petitioner should have filed Counter Affidavit. Instead, he filed a Memo stating that Transfer Civil Miscellaneous Petitions have been filed and therefore requested the Appellate Court to adjourn the matter. It is evident from the facts that on 2.1.2014, the Petitioner predetermined not to file Counter Affidavit and drag on the proceedings. No laws say that once a Memo is filed stating that transfer Civil Miscellaneous Petition has been filed, the matter should be adjourned. It is very unfortunate to note nowadays that unfounded allegations are sought to be made against the Lower Court Judicial Officers, if the learned Judicial Officers insist for early hearing and disposal of the cases. This is a classic case, in which, the matter is sought to be protracted for ulterior motive putting the blame on the Court. This sort of practice should be deprecated and curtailed, otherwise it will play havoc on justice delivery system. Anybody and everybody cannot be allowed to throw mud on the Lower Court Judicial Officers for their own cause. It is nothing but abuse of process of law. It is equally unfortunate that few Bar members also are the parties to this kind of trend. The Counsel cannot identify with the parties and that is the reason why many Transfer Petitions are being filed making false and vexatious allegations against the Lower Court Judicial Officers. This Court cannot remain mute spectator to these unsavory developments. If any transfer Petition is found to be made with false allegations, the party, who is responsible for this kind of incident, should be made to face the consequences.

7. In Paragraph No. 6 of the Affidavit, it has been stated that the Appellate Court pressurized the Petitioner to file Counter Affidavit on the same day namely on 2.1.2014. It is evident from the averments of the Affidavit as well as during the argument that it is sought to be projected as if on 2.1.2014 alone the Appeal came up for first time. Only the Counsel for the Respondent clarified that the matter was adjourned to various dates namely 6.12.2013, 13.12.2013, 19.12.2013, 22.12.2013 and finally 2.1.2014. The Appellate Court only insisted to file Counter Affidavit as per the undertakings made by the learned Counsel for the Petitioner before the Appellate Court on 22.12.2013. Therefore, there is an attempt by the Petitioner to mislead this Court by suppressing the facts. On this ground alone, the Transfer Petition has to be dismissed.

8. When the Court insisted for filing of Counter Affidavit, after more than a month, it cannot be found fault with and it can not be stated that the Lower Court pressurized the Petitioner to file Counter Affidavit. Yes, the Appellate Court

has committed a mistake for having insisted to file Counter Affidavit. What it should have done, if no Counter Affidavit was filed, it should have decided the matter on merits based on the available records.

9. Thereafter, having Counter Affidavit in hand and failing to file the same itself is not a bona fide act on the part of the Petitioner. On insistence, Counter Affidavit was filed and the matter was adjourned to 3.1.2014 and subsequently the matter was argued on 4.1.2014, on which date, the Court was functioning. Thereafter, the matter was posted for Orders on 7.1.2014. At this juncture only, the present Transfer Civil Miscellaneous Petitions have been filed with unfounded allegations against the Judicial Officer and they are found in Paragraph No. 6, which are extracted as follows:

In addition to that when the matter was called on 2.1.2014, my Lower Court Counsel sought for adjournment for filing Counter, informing the Lower Court that I am going to prefer the Transfer Application before this Hon'ble Court. In spite of that the Court below pressurized us to file Counter on the same day, otherwise the Petition for stay would be allowed. It seems that the threatening made by the one among the henchmen of the Respondent herein is true and the Court below is also indirectly supporting the Respondent herein. The same is also crystal clear evident from the pre-determined comments made by the learned Principal District Judge, Dindigul, that the Respondent has to do "Thai Poosam" works in the disputed property and so that the matter should be heard and decided immediately that too in favour of the Respondent herein.

10. Having given sufficient time to file Counter Affidavit to a party, one can not expect that the Appellate Court should not insist for filing Counter. Judiciary is sought to be blamed for the delay in disposal of the cases, whereas, it is not delaying the disposal on it's own. It is at the insistence of the one party or other as evident from this case. When the party does not want to co-operate with the Court to proceed with the matter, naturally, the Court has to pressurize the party for filing Counter and for co-operation of earlier disposal of the matter. By no stretch of imagination, neither it would be called pressure tactics nor it is unlawful. Therefore, the allegations made against the Judicial Officer or other reasons given for the transfer Petition are not sustainable and the same are rejected.

11. For having made allegations against the Judicial Officers and also to curtail this kind of practice of filing Transfer Petitions making allegations against the Judicial Officers, has to be viewed very seriously by this Court. Otherwise, the functioning of the Lower Court itself would be in jeopardy and no officers would be free to render justice according to law. Therefore, to prevent this kind of practice, this Court awards a sum of Rs. 10,000/- to be paid by the Petitioner to the Hon'ble Chief Justice Relief Fund, Madras High Court, within ten days, from the date of receipt of a copy of this Order.

12. Further, it is made clear that there is no prohibition for the Appellate Court to

proceed with the matter and dispose of the matter as per law. Accordingly, these transfer Civil Miscellaneous Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Call the matter for compliance on 21.1.2014.