
(1976) 03 MAD CK 0057
In the Madras High Court

Sri Pamban Kumaragurubara Swami Temple	APPELLANT
Vs	
K. Subramanya Mudaliar	RESPONDENT

Date of Decision : 29-03-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16, 24

Citation : (1976) 2 MLJ 209

Hon'ble Judges : P.R. Gokulakrishnan, J

Bench : Single Bench

Judgement

P.R. Gokulakrishnan, J.—This is a petition to transfer O.S. No. 65 of 1972 on the file of the Principal Subordinate Judge's Court, Chingleput, to the Principal Judge, City Civil Court, Madras. The transfer is prayed for only on the ground of convenience. The respondent therein has filed O.S. No. 65 of 1972 on the file of the Principal Subordinate Judge, at Chingleput for getting possession of 52 cents of land purchased by him in R.S. No. 172/2 at Timvanmiyur village. In respect of this land, the petitioner submits that the same is part of the land purchased by hire as early as 4th June, 1929. Under that purchase, the petitioner has acquired 3 acres and 11 cents wherein the Samadhi of Pamban Swami is situated. As per the allegation in the transfer petition, the petitioner has covered it with a fence wherein the Samadhi of Pamban Swamigal stand. It is further contended by the petitioner that both the plaintiff and the defendant in the suit are residents of Madras, that Thiruvannamiyur is nearer to the City Civil Court at Madras, rather than to the Chingleput Sub-Court, that almost all the witnesses, both who know the facts and also worshippers therein are within the jurisdiction of the City Civil Court, Madras, that the petitioner is aged more than 78 years suffering from blood pressure, that most of the witnesses who have to be taken for the purposes of giving evidence in the suit who are all residing at Madras are all aged persons, and that in the interests of all the parties concerned, it is better that the suit is transferred to the City Civil Court, Madras.

2. This transfer petition is opposed on the ground that the petition for transfer is

belated, that settlement proceedings were conducted at Chingleput, wherein the petitioner also gave evidence, that the settlement proceedings ended in favour of the respondent herein, and as such, there is no merit in the defence put forth by the petitioner herein in the main suit, and that the property is situate within the jurisdiction of the Chingleput Court, and as per Section 16, CPC the suit has to be tried only at the Chingleput Court.

3. I have been taken through the facts of the case in detail and also the affidavits filed by the respective parties herein. No doubt, Section 16 of the CPC says that:

Subject to the pecuniary or other limitations prescribed by any law, suits -

- (a) for the recovery of immovable property with or without rent or profits;
- (b) for the partition of immovable property;
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- (d) for the determination of any other right to or interest in immovable property;
- (e) for compensation for wrong to immovable property;
- (f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits, of whose jurisdiction the property is situate.

4. There is no difficulty in appreciating the provisions of Section 16, and also the correctness of the suit filed before the Chingleput Court. But the transfer is prayed for only u/s 24 of the Civil Procedure Code. Section 24. gives general power of transfer, and withdrawal. It States:

On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice the High Court or the District Court may, at any stage-

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court Subordinate to it and competent to try or dispose of the same; or
- (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and
 - (i) try or dispose of the same ; or
 - (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
 - (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

5. Thus, it is clear Section 24 is wide enough to confer powers upon the High and

the District Court for the purpose of transferring a suit. The convenience of the parties concerned is one of the criteria for the purpose of transferring the suit. No doubt, the suit is of the year 1972. It was posted in the ready list only during 1975. Immediately, the petition for transfer has been filed. Unfortunately the transfer petition was pending for over six months now. That need not stand in the way of appreciating the facts alleged by the petitioner herein to have the transfer be has played for. It is clear from the facts of the case that the Court at the City of Madras is nearer to the suit property, rather than the Chingleput Court. The settlement proceedings referred to above ought to have been conducted either at Saidapet or at Chepauk, Madras-5. There is no difficulty in appreciating the fact that both the plaintiff and defendants reside at Madras and the petitioner herein is aged more than 78 years having blood pressure.

6. Very strong ground has been made out on the basis of convenience to all the parties concerned to order the transfer as prayed for.

7. In these circumstances, O.S. No. 65 of 1972 on the file of the principal Subordinate Judge's Court, Chingleput, will Stand transferred to the file of the Principal judge, City Civil Court at Madras. It is Open to the Principal Judge, City Civil Court, Madras, to have the same posted before any of the Judges presiding over. the City Civil Court. Since the suit is of the year 1972, the Principal Subordinate Judge, Chingleprt, will take immediate steps to have the-papers transmitted to the Principal Judge, City Civil Court, Madras immediately. The Principal Judge, City Civil Court, Madras, will give necessary directions for the purpose of disposing of the suit on or before 30th of July, 1976., There will be no order as to costs.