
(2016) 11 MAD CK 0119

MADRAS HIGH COURT (MADURAI BENCH)

Case No: Tr.C.M.P.(MD)No. 458 of 2016 and C.M.P.(MD).No. 9182 of 2016

Reshma Begam

APPELLANT

Vs

Syed Nawab Jan

RESPONDENT

Date of Decision: Nov. 3, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 24

Citation: (2017) 172 AIC 568 : (2016) 6 CTC 703 : (2016) 8 MLJ 600

Hon'ble Judges: Mr. S.M. Subramaniam, J.

Bench: Single Bench

Advocate: Mr. T. Vadivelan, Advocate, for the Respondents Nos. 1 and 2; Given up, for the Respondent No. 3; Mr. T.R. Jeyapalam, Advocate, for the Petitioners

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mr. S.M. Subramaniam, J. - The present petition seeking transfer is filed under Section 24 of C.P.C. to transfer E.P.No. 91 of 2014 in R.C.O.P.No. 64 of 2011 pending before the I Additional District Munsif Court, Trichy to the III Additional District Munsif Court, Trichy to be tried along with the suit in O.S.No. 743 of 2016.

2. The facts in nutshell in the present case on hand is that the 2nd and 3rd petitioners are minor children of the 1st petitioner. The father of respondents 1 and 2 is Syed Hussain. He and his wife, Banubi purchased the subject property bearing old door No. 4G, new door No. 20, Rahmaniapuram, Thiruchirappalli through a registered sale deed dated 07.02.1947. The petitioner states that the said Syed Hussain passed away leaving behind his wife and children, Syed Akbar, Syed Nawab Jan, Sydani Beevi, Syed Mehaboob Basha, Syed Umar and Syed Ameer Basha. All of them inherited the estate of Syed Hussain. Out of them, Syed Umar passed away without any marriage and another son, Syed Ammer Basha passed away on 17.02.2003 leaving behind his sons Syed Jakir Hussain and Syed Jabir Hussain and

daughters Fatima Begam and Riswana Begam. The 1st petitioner is the wife of Syed Jakir Hussain. The said Syed Jakir Hussain passed away on 14.08.2013 at the age of 37 leaving behind the petitioner and his two sons as his heirs. After the demise of the husband of the 1st petitioner, she continued to live in the same place. Subsequently, she was served with a notice in E.P.No. 91 of 2014 by the I Additional District Munsif Court, Trichy. The petitioner came to know that the respondents 1 and 2, who are paternal uncles of 1st petitioner's husband had fraudulently obtained a settlement deed from their mother Banubi on 11.03.2010 in respect of the entire property. The petitioner states that the said Banubi did not have title over the entire property. Therefore, she could not execute settlement deed in respect of the entire subject property. The respondents 1 and 2 have filed an eviction petition against the husband of the 1st petitioner and his property in R.C.O.P.No. 64 of 2011 on the file of III Additional District Munsif Court, Trichy. Their claim was that the husband of the petitioner was a tenant in the property. The relationship between the 1st petitioner and her husband was suppressed in their petition. Further, they have suppressed the fact that 1st petitioner's husband is one of the co-sharers of the subject property. The III Additional District Munsif had passed an ex parte decree of eviction against the husband of the 1st petitioner on 11.09.2013. But on the date on which the ex-parte order of eviction was passed, the 1st petitioner's husband was not alive. He passed away on 14.08.2013. Therefore the decree had been passed against a dead person and it is null and void. On receipt of notice in the execution petition, petitioners filed a suit in O.S.No. 743 of 2016, which is pending before the III Additional District Munsif Court, Trichy for declaration that the ex parte order of eviction dated 11.09.2013 passed in R.C.O.P.No. 64 of 2011 on the file of III Additional District Munsif Court, Trichy is null and void. This apart the petitioners had also filed a suit for partition in O.S.No. 175 of 2014 on the file of III Additional District Court, Trichy against all the co-sharers and that suit is also pending. While so, E.P.No. 91 of 2014 alone is pending before the I Additional District Munsif Court, Trichy. The Execution Court is insisting the petitioners that unless and otherwise, an order of injunction is obtained from the III Additional District Munsif Court, Trichy an order of delivery will be passed and in the event of an order of delivery is passed, the rights of the petitioners will be prejudiced. The apprehension of the petitioner is that an order of delivery may be passed by the I Additional District Munsif Court, Trichy. Hence, the present petition for transfer is filed.

3. This Court raised the question whether the present petition for transfer is maintainable under Section 24 of the Code of Civil Procedure, since the prayer sought for is transfer of E.P.No. 91 of 2014 from the file of I Additional District Munsif Court, Trichy to the file of III Additional District Munsif Court, Trichy, for which the District Court shall be approached under Section 24 of the Code of Civil Procedure at the first instance.

4. At this juncture it is relevant to read Section 24 of the Code of Civil Procedure, which is extracted hereunder :

"24. General power of transfer and withdrawal.- (1) 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) re transfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of any order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, -

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it."

5. The learned counsel for the petitioner argued that this concurrent jurisdiction is vested on both the High Court as well as the District Court, and therefore, the aggrieved person can choose any one of the Forum, either High Court or District Court to file a petition to transfer a case from one Court to another, irrespective of the fact that whether they situate within the District or outside the District. Further, the learned counsel contended that the intention of the Legislation is to give option

to the litigants to choose any Forum, either the High Court or the District Court concerned.

6. This Court is unable to accept such an interpretation offered by the learned counsel for the petitioner in view of the fact that if such an option is given to the litigants in all circumstances, it will create an ambiguity and the litigants are free to choose either the High Court or District Court and the original jurisdiction granted to the Appellate Court, namely, the District Court will be curtailed. Therefore, the power vested with the District Court need not be taken away and the intention of the legislation is not exactly so under the Code of Civil Procedure. Section 24 of the Code of Civil Procedure enumerates that the High Court or District Court may at any stage transfer any suit, appeal or other proceedings pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same. Sub Clause (3)(a) of that Section states that the Court of Additional and Assistant Judges shall be deemed to be subordinate to the District Court. A reading of the entire Section unambiguously portrays the intention of the Legislation that wherever applicable, the transfer petition is to be filed before the District Court and wherever the transfer is not maintainable before the District Court concerned the petition for transfer is to be filed before the High Court. It is not their intention that the litigants can choose the Forum, either High Court or District Court in all situations. If we permit such a situation then the High Court will be flooded with transfer petitions, which cannot be entertained. This apart while entertaining such applications for transfer by the High Court, the power of the District Court is taken away or usurped by the High Court. This will create a wrong precedent. The power already exists under Section 24 to District Court, namely, appellate Court cannot be usurped or taken away by the High Court in ordinary circumstances. In exceptional circumstances, where it is not possible for the District Court to exercise the power of transfer, the High Court can entertain the same, but not the otherwise, since it is always open to litigants to challenge the order of the District Court, if they are aggrieved.

7. In this context, the Hon"ble Supreme Court of India in the case of **Durgesh Sharma v. Jayshree [AIR 2009 Supreme Court 285]** narrated the entire circumstances relating to Sections 22 to 25 of Code of Civil Procedure. Narrating the scope of Section 23 the Hon"ble Supreme Court in paragraph 42 stated as follows :

"42. Interpreting Section 23 of the Code, the Court observed :

"Section 23 indicates under three heads the Court to which an application under Section 22 is to be made. (1) Where the several Courts are Subordinate to the same Appellate Court, the application goes before the latter ; (2) where the several Courts are subordinate to different Appellate Courts but to the same High Court, the application must go to the High Court ; and (3) where the several Courts having jurisdiction over the suit are subordinate to different High Courts, the application must be made to the High Court having authority over the Court in which the suit

has been instituted. In the first two of these cases, the Court empowered to decide under Section 22 also has jurisdiction to transfer under Section 24. But in the third case there is no power of transfer, and the question is whether Section 22, under which the application to be made is one for transfer, can be interpreted to mean that in a case like the present, the Court to which the application is made, being powerless to transfer, may nevertheless direct that the plaint be returned to the plaintiff for presentation to some Court under another provisional jurisdiction."

8. Paragraph 71 of the judgment stated to supra is extracted hereunder :

"In our considered opinion, where several Courts having jurisdiction are subordinate to one appellate Court, an application for transfer may be made to such appellate Court and Court may transfer a case from one Court subordinate to it to an other Court subordinate to it. Likewise, where such Courts are subordinate to the same High Court, an application may be made and action may be taken by the High Court transferring a case from one Court subordinate to it to any other Court subordinate to that High Court. But where such Courts are subordinate to different High Courts, it is only the Supreme Court (this Court) which may pass an order of transfer. In other words, if two courts are subordinate to different High Courts, one High Court has no power, jurisdiction or authority to transfer a case pending in any court subordinate to other High Court to a Court subordinate to other High Court. It is only the Supreme Court (this Court) which may order the transfer."

9. Further contention of the learned counsel for the petitioner is that it is a case filed under the Tamil Nadu Buildings (Lease and Rent Control) Act and therefore the Rent Control Rules permits to file transfer petition before the High Court.

10. It is relevant to point out Rule 14 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974 which reads as follows :

"14. Transfer of proceedings from one Controller to another. - The Appellate Authority or the Chief Judge, Court of Small Causes, Madras may transfer a case from the file of one Controller to that of another controller within its or his jurisdiction :-

(i) for administrative grounds ; or

(ii) if the Controller on whose file the case is pending is personally interested and report the matter, or

(iii) if, on an application for transfer by any party in the case the Appellate Authority or the Chief Judge, Court of Small Causes, Madras, is satisfied that there are sufficient grounds for the transfer."

11. Further, the learned counsel for petitioner cited Rule 17, which is extracted below :

"17. Transfer of appeals from one Appellate Authority to another. - The Chief Judge, Court of Small Causes, Madras in respect of cases arising in the City of Madras and the District Courts, in respect of other cases may transfer an appeal from the file of the Appellate Authority before whom the appeal is pending to that of any other Appellate Authority -

(i) if the Appellate Authority before whom the appeal is pending is personally interested in the appeal and reports the matter to the District Court or The Chief Judge, Court of Small Causes, Madras as the case may be ; or

(ii) if, on an application for transfer by any party in the appeal or otherwise, the District Court or The Chief Judge, Court of Small Causes, Madras is satisfied that there are sufficient grounds for such transfer."

12. From all these Rules it is clear that the Appellate Authority alone is competent to transfer the case between the Courts coming within the jurisdiction of such appellate Court. Therefore, the contention of the petitioner cannot be accepted.

13. It is relevant to cite Section 151 of the Code of Civil Procedure, which provides inherent powers of Court.

"151. Saving of inherent powers of the Court - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

14. The intention of Section 151 C.P.C. is to provide substantial justice to the aggrieved persons and it cannot be invoked in each and every case, where there is a procedure to file transfer petition is unambiguously enunciated with regard to transfer. Section 24 of the Code of Civil Procedure categorically states that if the transfer is sought between the Subordinate Courts coming under the administrative control of the District Court then the petition is to be filed before the District Court, and if the transfer is sought for from one Court which is subordinate to one authority to another Court which is subordinate to another authority, it is before the High Court. Such being the position, the transfer petition to transfer a case between two subordinate Courts which is coming under the control of the very same appellate Court, the said transfer petition cannot be entertained by this Court in view of the fact the powers vested to such appellate Court under Section 24 cannot be taken away in a mechanical and routine manner. The inherent power vested under Section 151 C.P.C. has to be exercised sparingly to prevent abuse of process of Court. Therefore, Section 151 C.P.C. cannot be invoked in a routine manner so as to allow transfer of a case in a routine way.

15. This Court in a case **Xxxxx "A" v. Yyyy "B" [2016(4) CTC 834]** invoked the inherent power and declared the marriage as null and void. This Court inclined to consider the extraordinary circumstances and special facts relating to that particular

case and such situation cannot be compared to ordinary circumstances of each and every case so as to invoke the power by the High Court under Section 24 CPC. In special circumstances and extraordinary fact cannot be treated as precedent and all the routine cases where transfer is sought for cannot be treated on par with the case where the High Court has exercised the power under Section 151 of the Code of Civil Procedure and Section 227 of Constitution of India.

16. At present, the litigants are directly approaching the High Court, by filing transfer applications to transfer the cases from one Subordinate Court to another Subordinate Court coming with the administrative jurisdiction of the same Appellate Court namely, the District Court. If such petitions are entertained in a routine manner, this Court is of the view that the power vested with the District Court under Section 24 of the Code of Civil Procedure is taken away and that cannot be the intention of the Legislation under Section 24 of the Code of Civil Procedure. The original jurisdiction of the District Court conferred under Section 24 cannot be usurped in a routine manner so as to defeat the real object and the spirit of Section 24 of the Code of Civil Procedure. Therefore, the litigants are not permitted to choose the forum as per their likes and dislikes which will create ambiguity and the circumstance will arise that one litigant will file a transfer petition before the District Court and his opponent may file another transfer petition before the High Court in order to create inconsistency and such a situation needs to be averted. The jurisdiction of the Courts for filing transfer applications should be definite and clear. By vague and shallow interpretation, the litigants should not be allowed to choose the forum at their choice. If any application for transfer is to be filed, the same is to be filed within the same administrative jurisdiction of the District Court concerned and if it falls within the jurisdiction of different District Courts, then the petition for transfer shall be filed before the High Court. Such an interpretation will have a constructive meaning and will serve the purpose to have a definite jurisdiction in respect of filing of the applications for transfer under Section 24 of the Code of Civil Procedure.

17. In view of the principles stated supra, the Transfer Civil Miscellaneous Petition is not maintainable before this Court and the same is dismissed. The petitioners are granted liberty to approach appropriate Court under Law. No costs. Consequently, connected Miscellaneous Petition is also dismissed.