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Masiammal Vs. Narasakka,

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Court : Chennai

Decided On : Nov-08-2004

Reported in : 2004(5)CTC727; (2005)1MLJ62

Judge : A.K. Rajan, J.

Acts : Constitution of India - Article 227

Appeal No. : C.R.P.(P.D.). No. 2371 of 2003 and C.M.P. No. 17929 of 2003

Appellant : Masiammal

Respondent : Narasakka, ; N. Markandan, ; N. Desingh, ; Smt. Unamma, ; B. Kumar and B. Ramesh

Advocate for Def. : R. Sivakumar, Adv.

Advocate for Pet/Ap. : T.S. Sivagnanam, Adv.

Disposition : Petition allowed

Judgement :
ORDER

A.K. Rajan, J.

1. This revision petition has been filed against the order dated 28.3.2003, made in Memo dated 18.3.2003 passed by the District Munsif, Kothagiri.

2. The brief facts that are necessary for disposal of the case are as follows:

The plaintiff filed O.S. No. 164/80 for partition before the Sub-Court, Ooty. Thereafter, on 22.4.82, the District Judge, Ooty, transferred the suit to the District Munsif Court, Coonoor and it was renumbered as O.S. No. 16/1984 and issues were also framed. On 12.6.1995, the same was transferred to District Munsif Court, Kothagiri by the District Judge, Ooty, and it was renumbered as O.S. No. 1/1995. P.W.1 has been examined in chief on 21.4.99 before the District Munsif, Kothagiri. On 18.3.2003, a memo was filed on behalf of the defendants 56 to 61 respondents herein stating that the District Munsif, Kothagiri has no territorial jurisdiction to decide that suit. Counter has also been filed. The impugned order was passed on 28.3.2003. Against which, this civil revision petition has been filed.

3. Learned counsel appearing for the revision petitioner submits that a case was transferred to the District Munsif Court, Kothagiri, by the District Judge by an administrative order. The said order is perfectly valid and the same cannot be disobeyed by the District Munsif, Kothagiri. If really the defendants 56 to 61 are aggrieved, they could move a transfer application before the District Court, Ooty. In the memo filed by the counsel for defendants 56 to 61, the District Munsif, Kothagiri, cannot pass an order that the said Court has no territorial jurisdiction.

4. Learned counsel appearing for the respondents submits that it is only an administrative order by which transfer of the case was made by the District Judge, Ooty. It is not a judicial order of transfer. Under such circumstances, the District Munsif, Kothagiri, has got a right to decide the matter; since he has no territorial jurisdiction and he has no power to decide that suit. Therefore, the order passed by the District Munsif,Kothagiri, is legally sustainable. The civil revision petition has no merits and it has to be dismissed.

5. At this juncture, it is relevant to point out Section 24(1) of C.P.C. which reads as follows:

'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 proceedings pending before it for trail or disposal to any Court subordinate to it and competent to true or dispose of the same, or

b).....'

It is seen that under Section 24(1) the District Court on its own motion without notice to the parties to the suit, may transfer any suit for trial or disposal, to any Court subordinate to it and competent to try or dispose of the same. The District Judge, Ooty, has exercised his power conferred under Section 24(1) of the C.P.C. When such an order has been exercised by the District Judge, the District Munsif or any other Subordinate Judge cannot question or decide the matter that the Court has no territorial jurisdiction and cannot pass such an order. Therefore, the said impugned order amounts to insubordination or refusal to obey the order of the District Court. If any party aggrieved by such an administrative order of transfer, such aggrieved party should have filed an appropriate petition before the District Judge, Ooty and have obtained orders. The District Munsif cannot come to the conclusion that the District Judge has passed an order without taking note of the territorial jurisdiction. It is not for the District Munsif to question the propriety of the order passed by the District Judge. He should have simply rejected the memo or directed the parties to approach the District Judge and seek for transfer of the matter. In such circumstances, the order passed by the District Munsif is patently illegal and he has exceeded his power. Therefore, the order is not legally sustainable. Hence, the same is set aside. The civil revision petition is allowed.

5. Considering the facts that the suit has been filed as early as 1980 and already quarter century was passed and that P.W.1 has been examined in chief before the District Munsif, Kothagiri in the year 1999, the District Munsif Kothagiri, is directed to continue with the trial and disposed of the suit expeditiously within a period of three months from today. The parties in the suit are directed to co-operate with the District Munsif, Kothagiri, for the disposal of the case. Neither the plaintiff nor the defendants can raise any technical reasons and delay the trial of the suit. The District Judge shall monitor the progress of the case.

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