

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
COIMBATORE.**

Present: **Thiru. M. CHRISTOPHER, B.A., B.L.,**
I Additional District Judge, Coimbatore
Principal District Judge, Coimbatore.(FAC)

Monday, this the 19th day of March 2018.

TRANSFER ORIGINAL PETITION No. 348/2017

A.Sakthivel

... Petitioner

/vs/

1. N. Rathinavel
2. N. Subramaniam
3. Bank of India,
Rep. by its Branch Manager
4. Saraswathi

. ... Respondents

This petition is coming on 13.02.2018 for final hearing before this Court in the presence of **Tvl. G. Vinod, Boobathy,** Advocates for the petitioner, and **Thiru. R. Balasubramanian,** Advocate for the 1st & 2nd respondents, **Thiru. R.V. Gurunathan,** Advocate for the 3rd respondent and **Thiru. M. Ruthrasekar,** Advocate for the 4th respondent and upon hearing both side arguments, perusing petition, counter statement and other relevant records, having stood over for consideration till this date (19.03.2018) this Court made the following:

ORDER

This petition is filed under Section 24 and r/w section 151 of CPC seeking the relief to transfer Appeal suit in A.S.77/2013 pending on the file of II Additional Subordinate Judge, Coimbatore to any other Subordinate Court, having same jurisdiction.

2. Point for consideration:

Point:

3. The 1st respondent in A.S.No. 77/2013 on the file of II Additional Subordinate Judge, Coimbatore has filed this petition seeking transfer of said appeal from the file of II Additional Subordinate Judge, Coimbatore to any other court having same jurisdiction. The respondents herein have filed the appeal in A.S.No.77/2013 against the decree and judgment dated 21.06.2012 in O.S.No. 2308/2006 passed by the III Additional District Munsif, Coimbatore. The respondents/appellants have filed the petition under Order 41 Rule 2 to file the additional grounds in the appeal, the said petition was numbered as I.A. No. 84/2016. The said application was finally heard by the said Court on 22.11.2017 and posted for orders on the same day. The Court has made orders as such the petition call along with main petition. Hence, this petition is closed. Further, appellants side arguments heard and respondents side arguments by 27.11.2017. The Court has passed an order without notice to the petitioner herein. Further, the respondents/appellants have argued in the main appeal in the absence of the petitioner herein. The Presiding Officer has acted in a biased and in a prejudice manner by hearing arguments in the main appeal when the matter is posted for orders in I.A. No. 84/2016. Hence, the petitioner prayed for transfer.

4. In this case, the 3rd and 4th respondents have made an endorsement as no counter. Further the respondents 1 & 2 have filed a counter statement stating that, all the allegations made in the petition are false. The petitioner has filed this petition only for drag on the proceedings in A.S.No.77/2013. Further contended that appeal was posted on 22.11.2017 and the petitioner was also present in the court and as such only in the presence of the petitioner, the IA was closed and argument heard. The appeal was passed over in the morning on 22.11.2017, it is the duty of the counsel to be present when the case is called. The respondents herein are the only affected parties and they have been subjected to so many difficulties by the petitioner with the judgment and decree of the suit. The apprehension alleged against the Presiding Officer is false. There is no balance of convenience or any justifiable reason to stay the proceedings in A.S.No. 77/2013.

5. This Court has considered the petition and the reasons stated therein, this Court finds no merits in the reasons stated by the petitioner. But the petitioner has stated that relying the contention made in the petition, he prayed for transfer of the appeal. This Court has called for the remarks from the said Court. The Presiding Officer has stated that no objection to transfer the appeal. Hence, considering all these aspects and as per the endorsement made by the petitioner that he is not insisted for the contention raised against the Presiding Officer, this Court is inclined to transfer the appeal pending before the II Additional Subordinate Judge, Coimbatore. Accordingly, the A.S. No. 77/13 is ordered to be withdrawn and transfer the same to the file of III Additional Subordinate Judge, Coimbatore. Accordingly, this petition is allowed. The point is answered.

6. In the result, this petition is ALLOWED without costs. The Appeal suit in A.S. No. 77/2013 pending on the file of the II Additional Subordinate Judge, Coimbatore, is ordered to be withdrawn and the same is transferred to the file of the III Additional Subordinate Judge, Coimbatore.

Dictated to steno-typist, transcribed by her, typed by her, corrected and pronounced by me this Order in open Court on this, the 19th day of March 2018.

Sd/- M. CHRISTOPHER,
I ADDITIONAL DISTRICT JUDGE,
PRINCIPAL DISTRICT JUDGE,
COIMBATORE(FAC).

Copy to:

The II Additional Subordinate Judge, Coimbatore.
The III Additional Subordinate Judge, Coimbatore.

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FAIR ORDER IN

Tr.O.P. No. 348/2017

Dated : 19.03.2018

PDJ, CBE

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