

Madras High Court

K.S vs Periyakaruppan on 28 August, 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

TR. C.M.P.(MD)No.113 of 2018

and

C.M.P.(MD)No.2499 of 2018

K.S

... Petitioner

Vs.

1.Periyakaruppan

2.Selvamani

3.Kamaladevi

4.Gopalakrishnan

5.Venkatachalam

6.Janakiraman

7.Shyamaladevi

8.Madhangan

9.Ramamani

... Respondents

PRAYER: Petition filed under Section 227 of Constitution of India, praying to withdraw the O.S.No.7174 of 2011 on the file of XVI- Assistant City Civil Court, Chennai and transfer the same to the Sub Court, Devakottai, Sivagangai District.

For Petitioner : Mr.RM.Arun Swaminathan

For Respondents : No appearance

:ORDER

The petitioner herein is one of the defendants in O.S.No.7174 of 2011 on the file of the XVI Assistant City Civil Court, Chennai. It is a suit for partition.

2.It is seen that some of the items are situate within the territorial limits of Karaikudi.

3.The learned counsel for the petitioner would submit that the petitioner is a HIV positive patient. He has also brought to my notice the provisions of the Human Immunodeficiency virus and acquired immune deficiency syndrome (Prevention and Control) Act, 2017. Chapter XII of the said Act is as under:-

?34.(1)In any legal proceeding in which a protected person is a party or such person is an applicant, on an application by such person or any other person on his behalf may pass, in the interest of justice, any or all of the following order, namely:-

(a) that the proceeding or any part thereof be conducted by suppressing the identity of the applicant by substituting the name of such person with a pseudonym in the records of the proceedings in such manner as may be prescribed;

(b) that the proceeding or any part thereof may be conducted in camera;

(c)restraining any person from publishing in any manner any matter leading to the disclosure of the name or status or identity of the applicant.

(2)In any legal proceeding concerning or relating to an HIV-positive person, the Court shall take up and dispose of the proceeding on priority basis.

35.In any maintenance application filed by or on behalf of a protected person under any law for the time being in force, the Court shall consider the application for interim maintenance and, in passing any order of maintenance, shall take into account the medical expenses and other HIV related costs that may be incurred by the applicant.

36.In passing any order relating to sentencing, the HIV-positive status of the persons in respect of whom such an order is passed shall be a relevant factor to be considered by the Court to determine the custodial place where such person shall be transferred to, based on the availability of proper healthcare services at such place.?

4.Since proactive measures are to be taken by the Court to protect the interest of HIV positive patients, this Court is of the view that his request for transfer deserves to be favorably considered. It is not as if the petitioner is asking for the case to be tried by a Court which does not have territorial jurisdiction. On the other hand, some of the suit items are very much located in Devakottai. Therefore, O.S.No.7174 of 2011 is withdrawn from XVI Assistant City Civil Court, Chennai and transferred to the Sub Court, Devakottai.

5.The learned counsel for the petitioner submits that the petitioner is not having any means to subsist. Therefore, as mandated by Section 34 (2) of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, the suit in question will have to be taken up and disposed of on a priority basis.

6. Therefore, the learned XVI Assistant City Civil Court, Chennai, is directed to transfer the case bundle forthwith on receipt of a copy of this order. The transferred Court namely, the Sub Court, Devakottai, shall dispose of the entire suit proceedings within a period of three months. Thereafter, preliminary decree will be passed within a period of three months and the final decree proceedings shall also be disposed of within a period of four months thereafter. The learned Sub Judge, Devakottai, shall also file a compliance report before the Registry on the expiry of the said period.

7. With the above observations, this petition is allowed accordingly. Consequently, connected miscellaneous petition is closed.

To The XVI- Assistant City Civil Court, Chennai.

NOTE: Registry is directed to suppress the name of the petitioner while issuing the order copy.

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