

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30 .01.2009

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

Tr.C.M.P.No.428 of 2008 and
M.P.Nos.1 and 2 of 2008

Mr.Byju Nizeth Paul ... Petitioner/1st Defendant/1st
Respondent in M.P.2/08
& Petitioner in M.P..No.1/08

vs.

1.A.Johnson,
for himself and on behalf of
all the Members of CSI Diocese
of Kanyakumari. 1st Respondent/Plaintiff
(Petitioner in M.P.No.2/08)

2.Church of South India Synod
No.5, Whites Road, Royapettah
Chennai-14

3.C.S.I. Diocese of Kanyakumar
rep. by its Secretary for himself
and on behalf of all Members of
Diocese, Nagercoil.

4.Executive Committee of Kanyakumari
Diocese, rep. by its Secretary
for himself and on behalf of
Members of Diocese, Nagercoil.

5.Bishop,
Kanyakumari Diocese,
Church of India. Respondents/Defendants 2 to 5

Transfer petition has been filed to withdraw the suit in
O.S.No.6657 of 2008 pending on the file of the VIII Assistant Judge,
City Civil Court, Chennai and transfer the same to any other
competent court in Kanyakumari District.

For petitioner : Mr.V.T.Gopalan, Senior counsel
for Mr.S.Ashok Kumar.

For respondents: Mr.Venkatachalapathy, Senior counsel,
for Mr.S.Conscious Elango for R.1
Mr.A.R.Nixon for R.2 and R.5
Mr.Kalyanasundaram, for
Mr.G.Sethuraman, for R.3 & R.4

O R D E R

The petitioner / first defendant has filed this transfer petition praying for issuance of an order by this Court to withdraw the suit O.S.No.6657 of 2008 pending on the file of learned VIII Assistant Judge, City Civil Court, Chennai, and to transfer the same to any other competent Court in Kanyakumari District.

2. The case of the petitioner / first defendant is that the cause of action in the plaint is against the fifth defendant and that the cause of action has arisen at Nagercoil in Kanyakumari District and that the plaintiff and all the defendants except the second defendant are residing in Kanyakumari District and inasmuch as the entire cause of action has arisen within the jurisdiction of Kanyakumari District, the learned VIII Assistant Judge, City Civil Court, Chennai has no territorial jurisdiction to entertain the suit and therefore, prays for transferring the suit O.S.No.6657 of 2008 from the file of the learned VIII Assistant Judge, City Civil Court, Chennai and to transfer the same to any other competent Court in Kanyakumari District.

3. The stand of respondents 3 and 4 is that the fifth respondent, the Bishop, who is the spiritual head of the Kanyakumari Diocese and its administrative head left for Lambeth Conference at London between 08.07.2008 and 10.08.2008 and has remained absent during the period in Kanyakumari Diocese and though he has appointed the Vice President of Kanyakumari Diocese in his capacity as a President of the Diocese as Commissary, it is invalid as the appointment is not with the approval of the Executive Committee of the Diocese as per Clause 14 Chapter V of the Constitution of the Church of South India and as per C.S.I. Kanyakumari District Diocese Constitution and the Vice President as per clause 62.5 of the C.S.I. Constitution has powers to act for the President during his absence and therefore, the Vice President and other officers convened a Special Executive Committee meeting of the Diocese on 12.07.2008 to accept his resignation of the post of Treasurer appointed in the place of Treasurer Dr.Moses, who resigned to go abroad for his personal affair and on his return, he asked to resign enabling the Diocese to appoint him or any other person as Treasurer, since it has been a stop gap arrangement, he has been re-appointed as Treasurer

and the Executive Committee has passed this resolution.

4. Added further, on 02.08.2008, the Vice President and other Officers convened the regular Executive Committee meeting to resolve certain pending issues and the Executive Committee passed five or six resolutions that have been moved in the regular meeting and that the fifth respondent - Bishop on his return from abroad, has stayed the two proceedings of the Executive Committee by his stay order dated 11.08.2008 by virtue of his power under Clause 62.4 of the Kanyakumari Diocese Constitution and that a copy of the same has been sent to the second respondent Moderator and that the first respondent herein viz., A.Johnson initiated suit O.S.No.4468 of 2008 on the file of the learned VIII Assistant Judge, City Civil Court, Chennai to declare the stay order of the Bishop dated 11.08.2008 as null and void and to restrain the other defendants in the suit viz., the other respondents and the petitioner herein from interfering with the functions of the present Executive Committee and that an order of status quo has been granted in the interim application against which respondents 2 and 5 have filed C.R.P.Nos.3294 and 3295 of 2008 and they have been allowed by this Court remanding the matter and directed I.A.Nos.16120 and 16121 of 2008 to be disposed of afresh within a time frame.

5. It is significant to point out that when I.A.Nos.16120 and 16121 of 2008 have come up for hearing on 06.11.2008, at that time, the petitioner / first defendant has filed this present transfer petition praying for transfer of the suit O.S.No.6657 of 2008 from the file of learned VIII Assistant Judge, City Civil Court, Chennai to any other competent Court in Kanyakumar District.

6. The substance of the contention of respondents 3 and 4 is that as per Chapter XI Rule 4 of the C.S.I. Constitution, whenever any legal proceedings are to be instituted, the same shall be instituted only in such Courts within whose territorial jurisdiction the office of Diocese or of the Synod and / or its Secretariate at that time situated and that the Secretariate or Head Office of the Synod is situated at No.5, Whites Road, Royapettah, within the territorial jurisdiction of this Court and the Moderator second defendant / respondent is impleaded as the Highest Officer of the Synod and hence, the present suit is maintainable in law within the jurisdiction of the City Civil Court, Chennai and that respondents 3 and 4, being the Executive Administration Body, have to function as an elected body and since the fifth respondent is the spiritual leader of K.K.Diocese being its administrative head, it will be appropriate that Court in Chennai within which the second respondent is situated and is approached to resolve the disputes and rightly the suit has been filed against the first respondent herein, etc., and as per Civil Procedure Code, the issue of jurisdiction is to be tried by the Court in which the suit has been filed and therefore, respondents 3 and 4 pray for dismissal of this petition.

7. The first respondent / plaintiff has filed M.P.No.2 of 2008 praying to vacate the stay granted in M.P.No.1 of 2008 dated 16.10.2008 and to dismiss the transfer petition inter alia stating that the first respondent herein has suppressed the material facts that C.R.P.Nos.3294 and 3295 of 2008 filed by respondents 2 and 5 praying to set aside the order dated 19.09.2008 in I.A.Nos.16120 and 16121 of 2008 in O.S.No.6657 of 2008 on the file of the learned VIII Assistant Judge, City Civil Court, Chennai and that both the revision petitions were allowed by this Court on 30.09.2008 on the basis that the trial Court has not passed the order of injunction assigning the reason and among other things, this Court has directed the trial Court to take up the applications and consider the same on merits and in accordance with law, within fifteen days from the date of filing of the counter by the revision petitioner and that to defeat the directions given by this Court, by suppressing the civil revision petitions and order passed thereto, the petitioner / first defendant has filed this transfer petition on the same grounds that have been raised in the civil revision petition and not accepted by this Court, etc.

8. The pith and substance of the stand of the first respondent / plaintiff (petitioner / first respondent in M.P.No.2 of 2008) is that he has filed a memo before the trial Court giving up the petitioner in this transfer petition inasmuch as no relief is claimed against him and therefore, the transfer petition has to be dismissed by this Court.

9. The learned counsel for the petitioner/first defendant/second defendant urges that except the second respondent and other respondents/defendants at Nagercoil, Kanyakumari District and that the fourth defendant viz., the Executive Committee of Kanyakumari Diocese is having office at Nagercoil and that the second respondent/second defendant is within the jurisdiction of the City Civil Court, Chennai and that no cause of action has been attributed to the second respondent/second defendant and that the second respondent/second defendant is nothing to do with the cause of action of the plaint and that the second respondent/second defendant Church of South India, Synod, Chennai-14 is only a formal party so as to number the plaint before the City Civil Court and only for the purpose of directing the jurisdiction of the City Civil Court, Chennai the second respondent/second defendant has been arrayed as one of the parties to the suit and that there is no territorial jurisdiction for the City Civil Court, Chennai to take the plaint on file and therefore prays for allowing the Transfer Civil Miscellaneous Petition by means of directing the withdrawal of the suit O.S.No.6657 of 2008 pending on the file of the VIII Assistant City Civil Court, Chennai and to transfer the same to any other competent Court in Kanyakumari District.

10. The learned counsel for the petitioner/first defendant

submits that where a Court has no jurisdiction it cannot take up the matter and therefore the order passed by a Court of law having no jurisdiction is a nullity in the eye of law. According to the learned counsel for the petitioner/first defendant, a perusal of the plaint in O.S.No.6657 of 2008 on the file of the VIII Assistant City Civil Court, Chennai reveals that in the list of documents filed under Order 7 Rule 14(2) of the Civil Procedure Code in the plaint, there is no document connecting the second respondent/second defendant and as such the second respondent/second defendant is an unnecessary party.

11. The learned counsel for the petitioner in support of his contention that where a Court has no jurisdiction in regard to a subject matter of suit it cannot take up the cause or matter and an order passed therein is a nullity cites the decision HARSHAD CHIMAN LAL MODI V. DLF UNIVERSAL LTD. AND ANOTHER, (2005) 7 SUPREME COURT CASES at page No. 791, wherein it is inter alia held that

'objections as to territorial and pecuniary jurisdiction have to be taken at the earliest possible opportunity, and in any case before settlement of issues, and cannot be allowed to be taken at a subsequent stage - However, where a Court has no jurisdiction over subject matter of suit it cannot take up the cause or matter, and an order passed therein is a nullity and invalidity of a null decree can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings, etc.,'

He also relies on the decision ALCHEMIST LTD. AND ANOTHER V. STATE BANK OF SIKKIM AND OTHERS, (2007) 11 SUPREME COURT CASES at page No.335, whereby the Honourable Supreme Court has held that

'Whether the facts averred by writ petitioner constitute a part of cause of action has to be determined on the basis of question whether such facts constitute a material, essential or integral part of the cause of action and in determining the said question, the substance of the matter and not the form thereof has to be considered.'

Moreover in the aforesaid decision at Page No.345 in paragraph No.33, it is held as follows:-

"....33. Allowing the appeal and setting aside the order of the High Court, the Supreme Court held that none of the facts pleaded by A constituted a cause of action.

'Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court

concerned." (Adani Exports Ltd. case (2002) 1 SCC 567: AIR 2002 SC 126:JT (2001) 9 SC 162, SCC pp.573-74, para 17.)'

Yet another decision UNION OF INDIA AND OTHERS V. ADANI EXPORTS LTD. AND ANOTHER, (2002) 1 SUPREME COURT CASES 567 at Page No.568 is relied on the side of the petitioner/first defendant whereunder it is inter alia observed that

'Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. Applying this principle one would see that none of the facts pleaded by the respondents falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the Courts at Ahmedabad.'

12. Per contra, the learned counsel for the first respondent relies on the decision of this Court GEETHA V. SEERALAN, 2001 (2) TNLJ at Page No. 130, wherein it is held that

' Presence of party is not necessary prior to the date of trial and that the distance is not a necessary factor in the matrimonial original proceedings where a transfer of an original petition sought for from one Sub Court to another Sub Court.'

He further prays into service the order of this Court in C.R.P.NPD No.3505 of 2007 dated 07.11.2007 between C.S.I. Diocese of Kanyakumari represented by its Secretary for himself and on behalf of all the members of Diocese and G.Sam Edwin Raj whereby and whereunder in paragraph Nos.11 and 13 it is observed as follows:-

'...11. On the face of it, I do not see any reason to interfere with the suit pending in the Courts below at this stage. The points raised by Mr.C.Ravichandran are all defences available in the suit. As it is correctly pointed out by the learned counsel for the respondents, when once the trial Court has granted an order of injunction as early as on 06.09.2007, it is known as to how the revision petitioners have not taken any steps to file an application to vacate the order of injunction. When such an effective remedy is available, it is not known as to why they have approached this Court under Article 227 of the Constitution of India for striking off the plaint on the grounds which are stated above.

...13. Regarding the jurisdictional issue, prima facie I am satisfied that the second defendant is situated at Chennai and on the basis of which it could be seen that the City Civil Court at Chennai has jurisdiction to decide the

suit. In view of the said fact, I do not see any reason to interfere at this stage. Further, for the purpose of striking off the plaint, Order 6 Rule 16 of C.P.C. contemplates three instances, which reads as follows:

Striking out pleadings- The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of process of the Court.'

13. The learned counsel for the third respondent submits that Section 24 of the Civil Procedure Code deals with the general power of transfer and withdrawal in respect of the High Court or the District Court and that as per the Constitution of Synod, if the second defendant or the Bishop or the Secretary is in a particular place, the Court in which the office is situated will have jurisdiction to deal with the matter and that the Transfer Civil Miscellaneous Petition filed by the petitioner/first defendant is not the solution or the relief and that in the order of Civil Revision Petition Nos.3294 and 3295 of 2008 dated 30.09.2008 at paragraph Nos.8 to 10, it is among other things observed as follows:-

'...8. It is always open to the revision petitioners to file their counter affidavit in both the applications immediately and on such counter being filed, the trial Court shall take up the applications and consider the same on merits and in accordance with law within 15 days from the date of filing of the counters by the revision petitioners. The revision petitioners are directed to file their counter affidavits within a week from the date of receipt of copy of this order.

9. In the result, both the Civil Revision Petitions are allowed. No costs. Connected miscellaneous petitions are also closed.

10. However, it is represented by the learned counsel for the first respondent that as on date, the present executive Committee is functioning as per the Order dated 19.09.2008 and the same may be permitted to function till the disposal of the interim application. The learned senior counsel for the revision petitioners has no objection for the above request made by the learned counsel for the first respondent. Hence, I direct the present executive committee to continue the functioning until orders are passed on

merits in I.A.No.16121 of 2008.'

and that the territorial jurisdiction plea has been raised and the same has not been accepted and this order passed by this Court cannot be modified by filing a Transfer Civil Miscellaneous Petition and moreover, the first respondent/Plaintiff in the suit has filed a memo dated 06.11.2008 before the trial Court in O.S.No.6657 of 2008 stating that 'no relief is prayed for against the first defendant and that the first respondent/first defendant is hereby given up from the above suit and this may be recorded' and therefore the Transfer Civil Miscellaneous Petition filed by the petitioner/first defendant has now become an infructuous one and therefore prays for dismissal of the Transfer Civil Miscellaneous Petition.

14. Continuing further, the learned counsel for the third respondent contends that the first respondent in C.M.P.No.2 of 2008/petitioner in Tr.C.M.P.No.428 of 2008 has not appeared before this Court in the Civil Revision Petition PD Nos.3294 and 3295 of 2008, though he is a party to the Civil Revision Petitions and therefore the filing of the Transfer Civil Miscellaneous Petition by him is nothing an abuse of process of law and moreover he cannot succumb the procedure prescribed in the Civil Procedure Code.

15. The learned counsel for the third respondent has invited the attention of this Court to Section 20 of the Civil Procedure Code which recognise the territorial jurisdiction of a Court of law, among other things, wherever the cause of action wholly are in part arises. In a restricted way, 'cause of action' refers to the circumstances forming the infraction of the right or immediate occasion for the action. In a wider way, it means the essential condition for the maintainability of the suit, including not only the infraction of right but the infraction coupled with the right itself. In an compendious way, it refers to every fact by which it will be necessary for the plaintiff to prove if traversed, in order to support his right to the Judgment of the Court. However it is left to be decided in each and every case as to where the cause of action arises.

16. It is the further contention of the learned counsel for the third and fourth respondents that as per the Constitution and Rules C.S.I. Kanyakumari Diocese Clause 62.5 speaks of the functions of the Vice-President and that he has independent powers as per Rules and in the absence of the President or at his request during sessions of the Council and/or the Executive Committee, he shall act for the President and in short, in the absence of the President, the Vice-President can act without any limitation and the two meetings have been convened and that a special meeting has been held on 12.07.2008 to consider the resignation of Dharmarao, the Secretary and Treasurer of the third and fourth respondents and another resolution has been passed on 02.08.2008 and some other six ordinary resolutions have

been passed and the Bishop on returning from London, he has passed the stay proceedings dated 11.08.2008 and that each of the Bishop of Diocese 21 are members of the Synod and 21 Diocese are controlled by Synod and without the Bishop no suit can go on and that Synod is the proper party and Order 9 Rule 1 of the Civil Procedure Code speaks of mis joinder and non joinder of parties and that the Synod is in collusion with the Bishop and that the second defendant is situated at Chennai and that the part of cause of action is arisen at Madras and therefore the suit O.S.No.6657 of 2008 filed by the first respondent/Plaintiff before the learned VIII Assistant City Civil Judge, Chennai is maintainable.

17. Countering the submissions, the learned counsel for the petitioner submits that Section 24 of the Civil Procedure Code refers to the unrestricted power of the Honourable High Court to transfer any proceeding from one Court to another and if the petitioner is required to raise the issue of cause of action before the trial Court, then Section 24 of the Civil Procedure Code will not find a place in the Civil Procedure Code and that the cause of action must be with reference to the relief sought for and no relief can be claimed against the Synod and any amount of concerned will not confer jurisdiction on a particular Court to decide the matter if that Court has no jurisdiction and that the Transfer Civil Miscellaneous petitioner herein has been cited as the second respondent in C.R.P. PD Nos.3294 and 3295 of 2008 and that the question of jurisdiction has been raised by some other party and the same has not been put in issue in the Civil Revision Petitions and that the petitioner in the Transfer Civil Miscellaneous Petition, who has been cited as the second respondent in C.R.P. PD Nos.3294 and 3295 of 2008 has not been issued with the notice.

18. The learned counsel for the second and fifth respondents contends that the memo dated 06.11.2008 filed by the first respondent/Plaintiff to the effect that no relief is prayed for against the first defendant and therefore he is given up from the suit cannot be enforced in the eye of law and that the C.S.I. is an unregistered body and that the first defendant is an interested party and that the memo has no relevance at all in connection with the Transfer Civil Miscellaneous Petition.

19. The learned counsel for the first respondent submits that the jurisdiction issue can be raised before the trial Court and that the proper forum is the trial Court where the jurisdiction issue can be agitated and therefore prays for dismissal of the Transfer Civil Miscellaneous Petition.

20. The learned counsel for the third and fourth respondents has referred to Section 9 of the Civil Procedure Code in and by which a Court of law is to try a Civil Suit unless the same is barred and submits that it is the settled law that the jurisdiction of a

particular Court is to be determined on the basis of allegations in the plaint and that the averments in the plaint will have to be borne in mind besides the substance of the relief sought for.

21. At this stage, this Court significantly points out that in the decision NAZIRUDDEEN V. P.ANNAMALAI, AIR 1978 MADRAS at page No.410 it is held that ' the question as to jurisdiction of particular Court decided without taking evidence is illegal'. Further in the decision MOHAN RAWALE V. DAMODAR TATYABA, (1994) 2 Supreme Court Cases 392, at Page No.397, the Honourable Supreme Court has observed that ' so long as the claim discloses some cause of action or raises some questions fit to be tried, mere fact that case is weak and not likely to succeed is no ground for striking it out'. Moreover in the decision D.RAMACHANDRAN V. R.V.JANAKIRAMAN AND OTHERS, (1999) 3 Supreme Court Cases 267 at page No.272 the Honourable Supreme Court has held that 'plaint cannot be rejected partially by dissecting the pleadings in several parts and holding that one of them does not disclose a cause of action'. Also in the decision SERAJUDIN & CO., V. UNION OF INDIA, 1996 A I H C at page No.2288, it is inter alia held that ' the Court within whose jurisdiction the order is communicated will have jurisdiction to try the suit' (R26 of Mines and Minerals Concessions Rules 1960). It is also well settled principle of law that whether facts constituting cause of action are true or not are a mixed question of fact and law and therefore the same require taking of evidence.

22. The learned counsel for the petitioner/first defendant (in Tr.C.M.P.428/08) brings it to the notice of this Court the order passed by this Court in C.R.P. PD Nos.2527 to 2529 of 2008 between The Diocese of Tirunelveli (C.S.I.) represented by its Bishop, Bishop Stowe, Post Box No.180, No.16, North High Ground Road, Palayamkottai, Tirunelveli 627 002 and The Church of South India represented by its Moderator, No.5, Whites Road, Royapetah, Chennai 600 014 and 59 others and C.R.P PD Nos.2601 and 2602 of 2008 between A. Devadoss and others and Issac Vetri Selvan and others wherein at paragraph Nos.45 and 46, it is observed as follows:-

"45. There is deliberate suppression of material facts by the respondents/plaintiffs, apart from forum shopping and a total contradictory plea for the alleged cause of action to file the suit, which leads to the inference of fraud being played on the Court below by the respondents/plaintiffs. The impugned orders have been passed against the revision petitioners in C.R.P. Nos.2601 and 2602 of 2008, though specific allegations were raised against them by the respondent/plaintiffs in the plaint, but, without impleading them as necessary parties , behind their back, hence, the order is affected by non-joinder parties, behind their back, hence, the order is affected show forum shopping. In the light of the decisions

referred to above, I am of the view that the aforesaid impugned orders passed by the Court below in I.A.No.6990 of 2008 and I.A.No.9666 of 2008 are expacie illegal and without jurisdiction and fraud has been played on the part of the Court below and therefore the affected parties can maintain the revision petition by invoking Article 227 of the Constitution of Aindia, which is not legally precluded on the facts and circumstances of this case. Therefore, the revision petitions in C.R.P. (PD) Nos.2529, 2601 and 2602 of 2008 are allowed and the impugned order, dated 30.04.2008 passed in I.A.No.6990 of 2008 granting status quo as on 30.04.2008 and subsequent order, dated 21.07.2008 passed in I.A.No.9666 of 2008 granting status quo ante on the date prior to 21.12.2007 are set aside. I am of the considered view that Chapter IV Rule 3 of the Constitution of Diocess of Tirunelveli is not applicable on the facts and circumstances, directing the parties to maintain status quo, prior to 21.12.2007.

46. With the above observations, C.R.P. (PD) Nos.2527 and 2528 of 2008 are dismissed and C.R.P. (PD) Nos.2529, 2601 and 2602 of 2008 are allowed. The trial Court is directed to dispose the suit according to law on merits, within six months from the date of receipt of the copy of this order, without considering the findings of this Court in this revision.'

Also a reference is made to an order passed by this Court dated 11.12.2007 in Application Nos.6913 and 1181 of 2007 and Application Nos. 7394 and 7396 of 2007 in C.S.No.942 of 2007 wherein at Paragraph No.34 it is held as follows:-

'34. In my considered view, mere existence of the Synod at Chennai would not confer jurisdiction upon the original side of this Court. "Cause of action" means every fact which becomes necessary for the plaintiff to prove if traversed in order to support his right. "Every fact" does not mean every piece of evidence. It means substantial facts and circumstances forming infringement of the right or immediate occasion for the action. As discussed earlier, cause of action has substantially and materially arisen only in Thoothukudi. This Court will not assume jurisdiction merely because the Synod is situated within the jurisdiction of this Court.'

23. As far as the present suit O.S.No.6657 of 2008 filed by the first respondent/Plaintiff is concerned, in the cause of action paragraph at Paragraph No.25 of the plaint, it is averred that 'the cause of action has arisen on 16.05.2008, the date of executive committee appointing the commission for settlement of election

disputes, 12.7.2008, on 12.7.2008 date of special meeting of the executive committee, 02.08.2008 date of meeting of the executive committee, 11.8.2008 date of the proceedings of stay by the fifth defendant and that the second defendant is within the jurisdiction of this Court.'

24. On a careful consideration of the respective contentions, this Court is of the considered view that the first respondent/Plaintiff in the plaint in O.S.No.6657 of 2008 on the file of the VIII Assistant City Civil Court, Chennai in paragraph No.6 has categorically inter alia averred that '....in the circumstances the second defendant, who is duty bound to interfere with the illegal activities of the fifth defendant so as to restore the sound administration and financial management, for the reasons best known is not taking any action, etc.,' and viewed in this perspective, this Court opines that the question of jurisdiction of a particular Court will have to be necessarily decided based on oral and documentary evidence to be adduced by the parties as the case may be and therefore at this stage it cannot be said that the second defendant has nothing to do with the cause of action of the plaint and further in as much as the first respondent/defendant has filed a memo dated 06.11.2008 before the trial Court stating that no relief is claimed as against the first defendant and that the first defendant is given up in the suit, this Court comes to an inevitable conclusion that it is not possible for this Court to order for withdrawal of suit O.S.No.6657 of 2008 pending on the file of VIII Assistant, City Civil Court, Chennai etc., and consequently this Transfer Civil Miscellaneous Petition fails and the same is hereby dismissed to prevent the aberration of justice and to promote the substantial cause of justice. Considering the facts and circumstances of the case, the parties are directed to bear their own costs. The connected miscellaneous petitions are closed.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vri

To
The VIII Asst. City Civil Court,
Chennai.

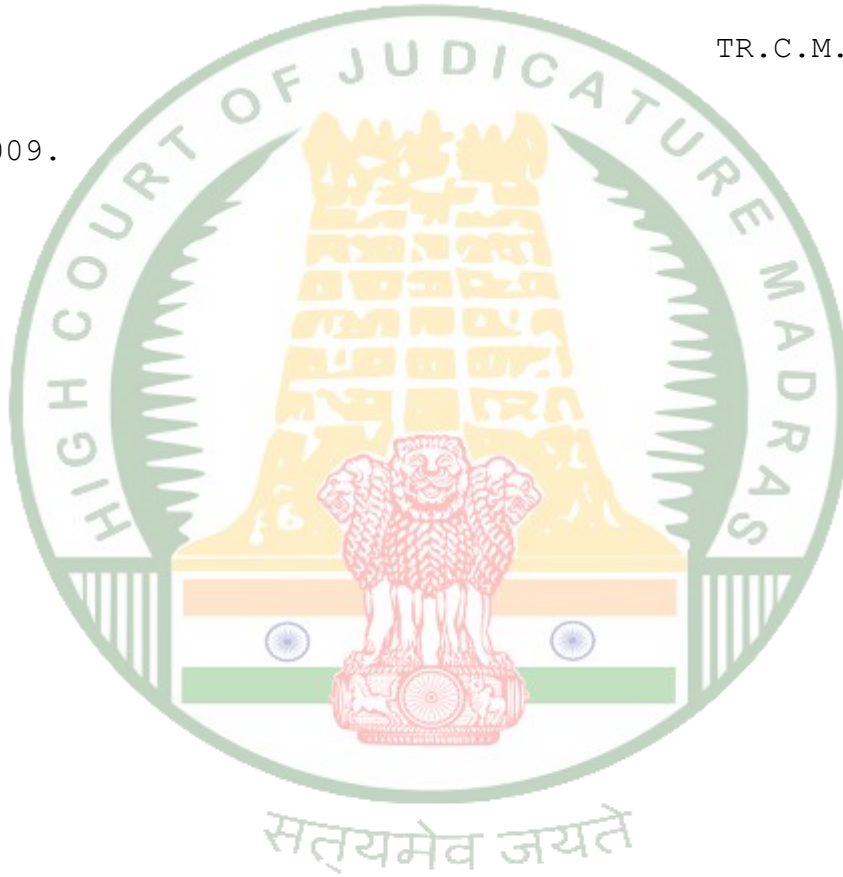
+ 1 CC To Mr.A.R.Nixon, Advocate SR NO.4747

+ 1 CC To Mr.C.Emalias, Advocate SR NO.4692

+ 1 CC To Mr.S.Ashok Kumar. Advocate SR NO.4856

TR.C.M.P.428 OF 2008

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