

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER CIVIL MISCELLANEOUS PETITION No.648 of 2014

ORDER:

This petition is filed under Section 24 C.P.C., to withdraw O.S.No.295 of 2012 from the file of the Junior Civil Judge, Badvel, Kadapa District and transfer the same to the I Additional District Judge Court, Kadapa to be tried and disposed of along with O.S.No.24 of 2010.

2. Heard the learned counsel for both the parties and perused the material available on record.

3. The facts leading to filing of the present petition briefly are as follows: The petitioner herein filed O.S.No.24 of 2010 on the file of the I Additional District Judge, Kadapa, against the respondents herein for specific performance of the agreement of sale dated 22.01.2009. The case of the petitioner is that he purchased an extent of Ac.0.82 cents covered in Sy.Nos.161/1 and 164/3 (Ac.0.53 cents and Ac.0.29 cents respectively) of Rangasamudram Village, Kadapa District from respondent Nos.1 to 3. The 4th respondent herein filed O.S.No.276 of 2010 against the respondents No.8 and 9 for perpetual injunction in respect of the property covered in Sy.Nos.161/1 and 164/3 of Rangasamudram village. The 8th respondent herein filed O.S.No.295 of 2012 on the file of the Junior Civil Judge Court, Badvel against the respondents No.1 to 3 for specific performance of agreement of sale dated 22.10.2007 in respect of an extent of Ac.0.42 cents in Sy.No.164/3 of Rangasamudram village. The petitioner herein filed a petition under Order 1 Rule 10 of CPC to implead him as defendant No.4 in O.S.No.295 of 2012 and the same was allowed by the trial Court. Admittedly, no revision petition is filed challenging the order passed by the Junior Civil Judge, Badvel impleading the petitioner as defendant No.4 in that suit.

4. While things stood thus, the petitioner herein filed Transfer O.P.No.363 of 2014 and Transfer O.P.No.364 of 2014 on the file of the Principal District Judge, Kadapa seeking transfer of O.S.No.276 of 2010 and O.S.No.295 of 2012 from the file of the Junior Civil Judge, Badvel to the file of I Additional District Court, Kadapa to be tried and disposed of along with O.S.No.24 of 2010. The learned District Judge allowed Transfer O.P.363 of 2014 and withdrawn O.S.No.276 of 2010 from the file of the Junior Civil Judge Court, Badvel and transferred to the I Additional District Judge, Kadapa to be tried and disposed of along with O.S.No.24 of 2010 and the learned District Judge dismissed the Transfer O.P.No.364 of 2010. Being aggrieved by the orders of the learned District Judge, the petitioner herein filed the present petition.

5. However, the predominant contention of the learned counsel for the respondents is that the present transfer petition is not maintainable in view of dismissal of Transfer O.P.No.364 of 2014 by the District Judge. There is no bar under Section 24 of CPC to file Transfer C.M.P. before this Court after dismissal of the Transfer Petition by the District Court. My view is fortified by the judgment of the Hon'ble Apex Court reported in **Munnangi Ramakrishna Rao vs. Dr Vanukuru Venkata Siva Ramakrishnaprasad & Others**^[1], wherein, it was held as follows:

“The petition under Section 24 of CPC is maintainable even without the order of dismissal of such petition by the District Court being questioned either under Section 115 of CPC or under Article 227 of the Constitution of India.”

6. The facts of the case on hand are similar to the facts of the case cited supra. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am unable to accede to the contention of the learned counsel for the respondent that the present petition is not maintainable under law. Hence, the present petition is maintainable.

7. It is the case of the petitioner that he purchased Ac 0-82 cents in Sy.No.161/1 under agreement of sale, dated 22.01.2009, whereas the case of the 8th respondent is that he purchased an extent of Ac 0.42 cents from respondent Nos. 1 to 3 in Sy.No.164/3 under agreement of sale. Interestingly both parties are tracing their title from respondents No.1 to 3. It is an admitted fact that the suit schedule property claimed by both parties is situated in Sy.Nos.161/1 and 164/3 of Rangasamudram Village. The entire dispute revolves around Sy.No.164/3.

8. For one reason or other, the 8th respondent did not file revision petition challenging the orders passed by the Junior Civil Judge, Badvel impleading the petitioner as defendant No.4 in O.S.No.295 of 2012. If this Court expresses any opinion with regard to the total extent of land in Sy.Nos.161/1 and 164/3, it may cause prejudice to one of the parties to the proceedings. Suffice it to say, while disposing of the matters under Section 24 of CPC, the Court should not enter into controversial issues touching the merits of the main suit. In this type of cases, the test to be applied by the Court is if both courts are allowed to conduct trial separately and independently whether it leads to conflict of judgments or not. If the answer is in the affirmative, certainly the Court has to exercise its power Under Section 24 CPC to secure the ends of justice.

9. In view of the above discussion, I am of the considered view that if O.S.No.24 of 2010 and O.S.No.295 of 2012 are allowed to be tried and disposed of by two different Courts, there is likelihood of conflicting judgments. In the best interest of both parties as well as to secure the ends of justice, I am of the considered view it is just and necessary to conduct trial in all the three matters by the same Court. Learned District Judge, Kadapa has not considered this aspect while dismissing the Transfer O.P.364 of 2014. Therefore, the relief sought by the petitioner deserves to be allowed.

10. In the result, this Transfer Civil Miscellaneous Petition is allowed. O.S.No.295 of 2012 is withdrawn from the file of the Junior Civil Judge, Badvel, Kadapa District and transferred to the file of the I Additional District Judge Court, Kadapa to be tried and disposed of along with O.S.No.24 of 2010. No costs. Miscellaneous petitions, if any, pending in this transfer petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 30.07.2015.

Gv/

[\[1\]](#) 2003(4) ALD 56=2003(4)ALT 570