

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER CIVIL MISCELLANEOUS PETITION No.526 of 2014

ORDER:

This petition is filed under Section 24 CPC to withdraw O.S. No.194 of 2010 from the Court of Senior Civil Judge, Madanapalle, and transfer the same to the Court of II Additional District Judge, Madanapalle, for disposal in accordance with law.

2. The contention of learned counsel for the petitioners is two fold: (1) the parties to O.S. No.194 of 2010 and O.S. No.1 of 2012 pending on the file of II Additional District Judge, Madanapalle, are the legal representatives of late Sokkam Lakshmaiah and in order to avoid conflicting judgments, it is just and necessary to try O.S. No.194 of 2010 along with O.S. No.1 of 2012; and (2) both the Courts are situated within the same premises; therefore, no inconvenience will be caused to the respondents. ***Per contra***, learned counsel for the first respondent submitted that the cause of action and the nature of reliefs sought in O.S. No.194 of 2010 and O.S. No.1 of 2012 are different; therefore, the present transfer petition is liable to be dismissed.

3. It is an admitted fact that the first respondent is the daughter and the third petitioner is son of late Lakshmaiah. The first respondent filed O.S. No.194 of 2010 against the third petitioner for declaration that she is absolute owner of an extent of Acs.4.00 of land in survey No.1052/1B of Madanapalle Revenue Village. The third petitioner filed written statement in O.S. No.194 of 2010 contending that he is the absolute owner of the schedule property. The first respondent also filed O.S. No.1 of 2012 against the petitioners and respondent Nos.2 to 6 herein for partition of the suit schedule properties mentioned therein.

4. Admittedly, the other family members of late Lakshmaiah are not parties to O.S. No.194 of 2010. In a suit for partition, the plaintiff has to establish his/her right over the suit schedule property. In a suit for

declaration, the plaintiff may succeed or fail basing on the strength or weakness of his/her case. At the time of arguments, the learned counsel for both the parties, in one voice, submitted that the suit schedule property in O.S. No.194 of 2010 is not the subject matter in O.S. No.1 of 2012. The nature of the relief sought in O.S. No.194 of 2010 is declaration whereas the nature of the relief sought in O.S. No.1 of 2012 is partition of suit schedule properties. It is an admitted fact that the other family members, who are also parties to O.S. No.1 of 2012, have not shown interest to come on record in O.S. No.194 of 2010 claiming right in an extent of Acs.4.00 in survey No.1052/1B of Madanapalle Revenue Village. The witnesses to be examined in both the suits may be different. The first respondent as well as the third petitioner is claiming right and title over the suit schedule property in O.S. No.194 of 2010 basing on the gift deeds purported to have been executed by late Lakshmaiah in their favour. The causes of action and nature of reliefs sought in both the suits are different. Even if the suits are decided by different courts, there is no possibility for conflicting judgments.

5. The learned counsel for the first respondent has drawn my attention to the order of the trial court in Transfer O.P. No.71 of 2013. The trial court has considered all these aspects and arrived at a right conclusion that there is no necessity to club both the suits. The trial court has assigned cogent and valid reasons to its findings. Simply because both the courts are situated within the same premises that itself is not a valid ground for transfer of the cases from one court to another court. I am fully agreeing with the findings recorded by the trial court. Viewed from any angle, the transfer petition lacks merits and *bona fides*.

6. In the result, the Transfer CMP is dismissed. The trial courts are hereby directed to dispose of the suits without being influenced by the observations made in Transfer O.P. No.71 of 2013 or Transfer CMP

No.526 of 2014. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this transfer petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 06.7.2015.

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