

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TR.C.M.P.Nos.753 and 754 of 2014

ORDER:

Tr.C.M.P.No.753 of 2014 is filed by the petitioners under Section 24 C.P.C., to withdraw O.S.No.79 of 2014 from the file of the Additional District Judge cum SC & ST (POA Court), Vizianagaram, and transfer the same to the file of the Principal District Court, Vizianagaram, to try along with O.S.No.50 of 2007 pending on the file of Principal District Court, Vizianagaram.

2. Tr.C.M.P.No.754 of 2014 is filed by the petitioners under Section 24 C.P.C. to withdraw O.S.No.507 of 2014 from the file of the Senior Civil Judge Court, Vizianagaram and to transfer the same to Principal District Court, Vizianagaram, to try along with O.S.No.50 of 2007 pending on its file.

3. The question involved in both the matters is one and the same and the parties are also one and the same, hence, I am inclined to dispose of both the matters by passing this common order.

4. The facts leading to filing of the present petitions are briefly as follows: The mother of the respondent filed O.S.No.50 of 2007 seeking perpetual injunction against the petitioners herein and the same is pending on the file of Principal District Judge Court, Vizianagaram. The respondent filed a suit for injunction in O.S.No.79 of 2014 against the petitioners herein on the file of Additional District Judge – cum - SC & ST (POA) Court, Vizianagaram. The respondent also filed O.S.No.507 of 2014 seeking perpetual injunction against the petitioners on the file of Senior Civil Judge Court, Vizianagaram. The respondent herein is the son of the plaintiff in O.S.No.50 of 2007.

5. Learned counsel for the petitioners Sri Srikanth submitted that the cause of action, the nature of the suits as well as parties are common in all the three suits. Therefore, it is a fit case to allow the transfer petitions. Learned counsel for the respondent

submitted that the cause of action for filing of above referred three suits are different, therefore, the present petitions are not maintainable. He further submitted that O.S.No.50 of 2007 is coming up for arguments, therefore, the question of trying suit O.S.No.79 of 2014 and 507 of 2014 along with O.S.No.50 of 2007 does not arise.

6. It is an admitted fact that the respondent herein filed O.S.No.79 of 2014 against the petitioners seeking perpetual injunction to an extent of 56 cents in Sy.No.182/18 of Kothavalasa village. The respondent also filed O.S.No.507 of 2014 seeking perpetual injunction against the petitioners in respect of an extent of Ac.0.28 cents of land in Sy.No.57/18 of Kothavalasa village. It is also an equally admitted fact that the mother of the respondent filed O.S.No.50 of 2007 on the file of the Principal District Court seeking perpetual injunction against the petitioners herein in respect of an extent of Ac.1.00 of land in Patta No.388 and Sy.No.57-a of Kothavalasa village. The predominant contention of the learned counsel for the petitioners is that the plaintiff in O.S.No.50 of 2007 has taken a specific plea that he inherited the property covered under three suits. He further submitted that the respondent has taken a plea that his mother executed a gift deed in his favour in respect of the property covered in O.S.No.79 of 2014 and 507 of 2014. If the suit O.S.No.50 of 2007 is disposed of, it may leads to conflict of judgments. It is not in dispute that all the three suits are filed seeking perpetual injunction. It is an axiomatic that in a suit for perpetual injunction if the Court ought not to have express any opinion with regard to the validity or otherwise of the gift deed purported to have been executed by the plaintiff in O.S.No.50 of 2007 in favour of the plaintiff in O.S.No.79 of 2014 and 507 of 2014. It is needless to say in a suit for perpetual injunction, the Court has to consider who was in possession of the property as on the date of filing of the suit. A perusal of the record reveals that the cause of action for filing of O.S.No.50 of 2007 arose on 17.09.2007, whereas, the cause of action for filing O.S.No.79 of 2014 arose on 14.07.2014. Cause of action for filing O.S.No.507 of 2014 arose on 05.07.2014. It is an admitted fact that the cause of action is different in each suit. The cause of action in all the three suits is not one and the same. Simply because the plaintiff in O.S.Nos.79 of 2014 and 507 of 2014 is the son of the plaintiff in O.S.No.50 of 2007, that itself is not a sufficient ground to transfer the matter without looking into other attending circumstances. The plaintiffs are not common in all the three suits. At the time of arguments, learned counsel for the respondent submitted that in O.S.No.50 of 2007, the evidence was closed way back in the year 2012 and it is coming up for arguments.

7. The present petitions are filed to withdraw O.S.No.79 of 2014 and O.S.No.507 of 2014 from respective courts and to transfer the same to the Principal District Judge Court to try along with O.S.No.50 of 2007. When the recording of evidence was closed way back in the year 2012 in O.S.No.50 of 2007, the question of trying O.S.No.79 of 2014 and 507 of 2014 along with O.S.No.50 of 2007 is only an illusion or myth. As observed earlier, the cause of action in all the three suits is not one and the same. The suit schedule properties are also not one and the same in all the three matters.

8. To resolve this issue, this Court is placing reliance on the decision in ***KULWINDER KAUR ALIAS KULWINDER GURCHARAN SINGH v. KANDI FRIENDS EDUCATION TRUST AND OTHERS*** wherein the Hon'ble Apex Court has laid down the following principles while exercising its jurisdiction under Section 24 and 25 of CPC.

“Under the old section the State Government was empowered to transfer a suit, appeal or other proceeding pending in the High Court of that State to any other High Court on receipt of a report from the Judge trying or hearing the suit that there existed reasonable grounds for such transfer provided that the State Government of the State in which the other High Court had its principal seat consented to the transfer. The present Section 25 confers the power of transfer on the Supreme Court and is of wider amplitude. Under the present provision the Supreme Court is empowered at any stage to transfer any suit, appeal or other proceeding from a High Court or other civil court in one State to a High Court or other civil court of another State if it is satisfied that such an order is expedient for the ends of justice. The cardinal principle for the exercise of power under this section is that the ends of justice demand the transfer of the suit, appeal or other proceeding. The question of expediency would depend on the facts and circumstances of each case but the paramount consideration for the exercise of power must be to meet the ends of justice. It is true that if more than one court has jurisdiction under the Code to try the suit, the plaintiff as *dominus litis* has a right to choose the court and the defendant cannot demand that the suit be tried in any particular court convenient to him. The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Cases are not unknown where a party seeking justice chooses a forum most inconvenient to the adversary with a view to depriving that party of a fair trial. Parliament has, therefore, invested this Court with the discretion to transfer the case from one court to another if that is considered expedient to meet

the ends of justice. Words of wide amplitude – for the ends of justice – have been advisedly used to leave the matter to the discretion of the Apex Court as it is not possible to conceive of all situations requiring or justifying the exercise of power. But the paramount consideration must be to see that justice according to law is done; if for achieving that objective the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner's plea for the transfer of the case must be tested on this touchstone."

9. In ***DR.REDDY'S LABORATORIES LIMITED v. PULLETIKURTHI VARAHA CHANDRA BOSE*** wherein it was held that

"necessity or occasion to transfer the suits from one Court to another would arise, if only, there exists any similarity of causes of action or commonality of parties."

10. In ***M.RAMAKRISHNA SASTRY v. M.SEETARAMASWAMY AND ANOTHER*** it was held that

"when the subject matter, causes of action, nature and character of the suits are quite distinct and different and there are no common questions of law or facts involved, there is no necessity of common trial."

11. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that it is not a fit case to allow the petitions.

12. Hence, both the transfer civil miscellaneous petitions are dismissed. As a sequel, miscellaneous petitions, if any filed in this transfer civil miscellaneous petitions, shall stand closed.

T.SUNIL CHOWDARY, J

Date:04.06.2015.

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