

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO
CIVIL REVISION PETITION Nos.3459, 3460, 3461, 3462, 3463
and 3466 of 2015

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COMMON ORDER:

Heard the learned counsel for petitioner and the learned counsel for respondents.

2. The petitioner is the plaintiff in O.S.No.28 of 2013, pending on the file of the Court of District Judge, Mahabubnagar. It was filed for specific performance of agreement of sale dated 10.06.2007 in respect of property of an extent of Acs.27-20 guntas out of total land admeasuring Acs.54-38 guntas in Sy.Nos.135 to 140 of Edulapalli Village, Kothur Mandal, Mahabubnagar District. It is submitted by the learned counsel for the petitioner that the said suit is coming up for trial. At that stage, Transfer OP Nos.14, 15, 16, 17, 18 and 20 of 2013 were filed by the plaintiffs in other suits seeking transfer of their suits pending on the file of VII Additional District Judge, Mahabubnagar to be tried along with O.S.Nos.71 of 2012 and 28 of 2013, pending on the file of the Court of District Judge, Mahabubnagar. Such applications were filed in six suits. The learned District Judge made the said six suits into two sets. He categorized O.S.Nos.28/2013, 90/2012 and 33/2013 as set No.1 and rest of the suits as set No.2. In respect of O.S.No.28/2013, which is in set No.1, it is stated that one of the defendants in the said suit is the plaintiff in O.S.No.33/2013, which was filed for permanent injunction. After hearing the parties, the learned District Judge transferred all the suits including the suit O.S.No.28/2013 pending before him to be tried along with other suits to the Court of VII Additional District Judge, Mahabubnagar to dispose them under a common judgment or separate

judgments. It appears that O.S.No.33/2013 was pending on the file of the Court of Junior Civil Judge, Shadnagar and the learned Judge was requested to transmit the entire case record to the Court of VII Additional District Judge, Mahabubnagar.

3. Now the learned counsel for the petitioner submits that no notice was issued to the plaintiff in O.S.No.28/2013, and by virtue of the order passed by the learned District Judge in the transfer petitions on 19.01.2015, his suit was also transferred to the Court of VII Additional District Judge, Mahabubnagar to be tried along with other suits, which in fact was not asked by the petitioners in the transfer petitions. He relied on a judgment of the Supreme Court in **Vivekananda Nidhi v. Asheema Goswami**^[1].

4. The learned counsel for the respondents submits that the interest of the respondents in filing the Transfer OPs is that all the suits, where the subject-matter of the property is common and the parties are interchanged, should be tried by a single Court in order to avoid conflicting judgments.

5. The Supreme Court in the above case observed that in a *suo motu* proceedings, there cannot be any need for issuance of notice, but on an application filed by the parties, notice should be issued to the affected parties and held as follows:

“ 10. Learned Senior Counsel for the respondent is right when he contends that if it is an order passed suo motu under Section 24 CPC, there is no question of issuing notice to the other side. However, the moot question remains whether the order of the learned District Judge was passed suo motu or not. Section 24 CPC itself provides that either on the application of any of the parties and after notice to the parties and after hearing such of them that desired to be heard, or of its own motion without such notice, the High Court or the District Court can at any stage pass appropriate orders under Section 24 CPC, if the conditions provided therein are satisfied. Now, on the

facts of the present case, it is difficult to appreciate how the order of the learned District Judge can be considered to be a suo motu order when he was moved by an application by the respondent and on that application the learned District Judge thought it fit to invoke his jurisdiction and pass an order under Section 24 CPC. Therefore, invoking of powers under Section 24 CPC was not suo motu, but only on the basis of the abovesaid application. Once that conclusion is reached the statutory provisions of Section 24 start operating and whatever may be the ultimate nature of the order, the notice had to go to the other side. This, unfortunately, was not done in the present case. Therefore, only on this short ground, the impugned order of the District Judge dated 14-12-1995, as well as the order of the High Court confirming the same are set aside. As a consequence thereof, the transferred suit which is now, we are told, pending before the 10th Court of the District Judge, Alipore, has to be kept pending awaiting further orders as indicated hereinbelow. Therefore, the application of the respondents under Section 24 of the Code of Civil Procedure is restored to the file of the learned District Judge, Alipore. It will be for the District Judge, Alipore, after issuing notice to the appellants who are the contesting parties in the application under Section 24 CPC and after hearing both the parties, to pass appropriate orders thereon."

6. Admittedly, in the instant case, no notice was issued to the petitioner herein, who is the plaintiff in O.S.No.28/2013. Now it appears that pursuant to the orders of the learned District Judge dated 19.01.2015, all the suits were transferred to the Court of VII Additional District Judge, Mahabubnagar.

7. In the circumstances, the learned VII Additional District Judge, Mahabubnagar, is directed to hear the petitioner herein, who is the plaintiff in O.S.No.28/2013, with regard to his point of view on the clubbing of his suit along with other suits and pass appropriate orders in the matter. Till such time, the hearing in O.S.No.28/2013 shall be kept in abeyance. However, this order shall not be construed as a stay in respect of other suits. The learned VII Additional District Judge, Mahabubnagar shall fix a

date for hearing of the petitioner and dispose of the same within a period of 30 days from the date of receipt of a copy of this order.

8. The Civil Revision Petitions are allowed to the extent indicated above. There shall be no order as to costs. Miscellaneous petitions pending, if any, in all the Civil Revision Petitions shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 01.09.2015
TJMR

[\[1\]](#) (2000) 10 SCC 23