

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P. No.344 of 2015

ORDER:

This petition is filed under Section 24 of CPC seeking to withdraw E.P.No.163 of 1985 in O.S. No.393 of 1983 from the file of the Principal Senior Civil Judge Court, Visakhapatnam together with applications filed therein including Execution Application filed under Order XXI Rule 97 of CPC, to the file of XI Additional District Court, Visakhapatnam to be tried and disposed of along with O.S. No.55 of 2012.

2. The parties in this petition will hereinafter be referred to as they are arrayed before the court below to avoid confusion.

3. The contention of learned counsel for the petitioners is two fold:

(1) the parties to and the subject matter in E.P. No.163 of 1985 and O.S. No.55 of 2012 are one and the same; therefore, in order to avoid conflicting of judgments, it is a fit case to allow the transfer petition; and

(2) the learned District Judge has not considered the relevant aspects in right perspective and dismissed T.O.P. No.1430 of 2014 on assumptions and presumptions.

Per contra, learned counsel for the second respondent submitted that the petitioners have been filing different suits and petitions with an ulterior motive to harass the second respondent. He further submitted that the previous petition filed by the petitioners under Order XXI Rule 97 of CPC was dismissed; therefore, it is not a fit case to transfer the E.P. No.163 of 1985.

To substantiate the argument, learned counsel for the petitioner has drawn my attention to the following decisions:

- i. **Nirmala Devi v Arun Kumar Gupta** wherein it was held that where the decision in one suit will have a direct impact on the others, the court can transfer the suit while exercising the jurisdiction under Section 24 of CPC.
- ii. **Kulwinder Kaur alias Kulwinder Gurcharan Singh v Kandi Friends Education Trust**, wherein it was held as follows: *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.

Let me consider the facts of the case on hand, in the light of the above legal principles.

4. The second respondent had filed O.S.No.393 of 1983 on the file of Principal Senior Civil Judge, Visakhapatnam against the first respondent and her husband, who are parents of petitioner Nos.1 to 5, basing on the promissory note for recovery of money. After full-fledged trial, the suit was decreed in favour of the second respondent. The second respondent filed E.P. No.163 of 1985 in O.S. No.393 of 1983 for sale of house belongs to first respondent and her husband in order to realise the decretal amount. With the consent of executing court, the second respondent participated in the auction conducted on 16.4.1986 and bid was knocked down in her favour being the highest bidder. The executing court confirmed the sale in favour of the second respondent after following the procedure contemplated under C.P.C. The second respondent herein filed E.A. No.105 of 1991 in E.P. No.163 of 1985 for delivery of house property. The defendants in O.S. No.393 of 1983 filed E.A. No.657 of 1986 in E.P. No.163 of 1985 in O.S. No.393 of 1983 under Order XXI Rule 90 of CPC to set aside the sale conducted on 16.4.1986 on various grounds. The executing court, after affording reasonable opportunity to both parties, dismissed the E.A. No.657 of 1986 on 10.12.1991. Feeling aggrieved by the order in E.A. No.657 of 1986, the Judgment Debtors in E.P. No.163 of 1985 filed CRP No.100 of 1992 on the file of this court and the same was dismissed on 19.8.1995. Feeling aggrieved with the order in CRP No.100 of 1992, the Judgment Debtors filed S.L.P. No.5773 of 1996 on the file of Hon'ble Apex Court and the same was dismissed on 29.8.1997. The first respondent herein is a party to E.A. No.657 of 1986.

5. After exhaustion of remedies available to the defendants – Judgment Debtors, the petitioners, who are the sons and daughters of the Judgment Debtors, came into picture by filing O.S. No.217 of 1998 on the file of II Additional Senior Civil Judge Court, Visakhapatnam for partition of the E.P. schedule property. The petitioners also filed I.A. No.533 of 1998 in O.S. No.217

of 1998 seeking interim injunction restraining the second respondent from taking delivery of the property in E.A. No.105 of 1991. Initially, the trial court granted interim injunction in favour of the petitioners and thereafter the injunction petition was dismissed on 30.12.1999. The petitioners herein filed CMA No.52 of 2000 challenging the orders passed in I.A. No.533 of 1998 in O.S. No.217 of 1998. This court, after hearing both parties, dismissed CMA No.52 of 2000 on 01.8.2000. The petitioners have not prosecuted O.S. No.217 of 1998 and thereby allowed the learned II Additional Senior Civil Judge, Visakhapatnam to dismiss the suit for non-prosecution on 03.2.2003.

6. It appears that after dismissal of CMA No.52 of 2000, the petitioners again filed E.A. No.1247 of 2000 in E.A. No.105 of 1991 in E.P. No.163 of 1985 in O.S. No.393 of 1983 under Order XXI Rules 97, 98, 99 and 101 CPC. The executing court dismissed E.A. No.1247 of 2000 on 05.12.2002. Feeling aggrieved with the order passed in E.A. No.1247 of 2000, petitioners filed A.S. No.362 of 2005 on the file of this Court. This Court dismissed the said appeal on 03.11.2011. It is not in dispute that the petitioners have not challenged judgment and decree passed in A.S. No.362 of 2005; therefore, the orders passed in the appeal became final and binding on the petitioners.

7. The petitioners once again filed O.S. No.55 of 2012 on the file of XI Additional District Court, Visakhapatnam against respondents for partition of E.P. schedule property. The petitioners filed Transfer O.P. No.1430 of 2014 on the file of Principal District Court, Visakhapatnam for transfer of E.P. No.163 of 1985 in O.S. No.393 of 1983 from the file of Senior Civil Judge Court, Visakhapatnam to XI Additional District Court, Visakhapatnam to be tried along with O.S. No.55 of 2012 and the same was dismissed on 04.3.2015.

8. It is an admitted fact that the parties to and the house property covered in E.P. No.163 of 1985 and O.S. No.55 of 2012 are one and the same. The second respondent obtained money decree in the year 1985. As observed earlier the defendants in O.S. No.393 of 1983 are none other than the parents of the petitioners. The parents of the petitioners carried the matter up to Supreme Court but could not succeed in setting aside the auction conducted on 16.4.1986. Thereafter, the petitioners filed suits, interlocutory applications and E.As, one after the other successfully postponing the delivery of property in favour of the second respondent. The petitioners filed O.S. No.217 of 1998 for

partition of E.P. schedule property and allowed the court to dismiss the same. For the self-same relief, the petitioners filed O.S. No.55 of 2012. At the time of arguments, learned counsel for the second respondent submitted that the second respondent filed petition under Order VII Rule 11 of CPC for rejection of O.S. No.55 of 2012. If this court expresses any opinion with regard to the maintainability of the second suit, the same may cause prejudice to one of the parties to the proceedings; therefore, this court is not inclined to express any opinion in view of the scope of transfer petition. The fact remains the petitioners once again filed executing application (*E.A. No.203 of 2015 as submitted by the learned counsel for the second respondent*) under Order XXI Rule 97 of CPC. As observed earlier, the petitioners filed E.A. No.1247 of 2000 in E.A. No.105 of 1991 in E.P. No.163 of 1985 under Order XXI Rule 97 of CPC. A perusal of the record clearly reveals that the petitioners have been filing suits and E.As one after the other for the self-same relief with an intention to drag on the proceedings in E.P. No.163 of 1985, on one ground or the other, as long as possible. This Court is not inclined to express any opinion whether E.A. No.203 of 2015 is maintainable or not in view of dismissal of E.A. No.1247 of 2000. This aspect has to be considered by the appropriate court at appropriate time.

9. While exercising the jurisdiction under Section 24 of CPC, this court can transfer the matter from one court to another to avoid multiplicity of proceedings and conflicting of judgments. Admittedly, the execution proceedings and the suit proceedings are pending within the precincts of the District Court Complex, Visakhapatnam. The parties belong to Visakhapatnam city. The court shall not lose sight of the conduct of the parties while exercising discretionary power. If really, the petitioners feel that there is possibility of conflicting of judgments, what prevented them to take similar objection when O.S. No.217 of 1998 is pending on the file of II Additional Senior Civil Judge Court, Visakhapatnam. This also indicates the hidden agenda of the petitioners for filing the petitions one after the other. The fact remains that E.A. No.105 of 1991 filed by second respondent in E.P. No.163 of 1985 is pending since long time. Unfortunately the poor lady—second respondent herein was forced to move around the entire hierarchy of the courts in the country for the last 30 years.

10. The orders passed by the court shall not give an impression to the litigant

public that the Judgment Debtors and their legal representatives can restrain the Decree Holders from enjoying the fruits of the decree for whatever period they want by initiating different proceedings under C.P.C. The parents of the petitioners and the petitioners have fought against the poor lady by filing suits and execution applications and of course their remedies have exhausted in the first round of litigation. Once again, the petitioners have come up with O.S. No.55 of 2012 on the file XI Additional District Court, Visakhapatnam by creating an impression that the present suit is a fresh one. This is one of the classic cases where the litigation has been prolonging for so much length of time by availing the provisions under C.P.C.

11. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited supra, if this court allows the petition to transfer E.P. No.163 of 1985 to be tried along with O.S. No.55 of 2012, it would amount to abuse of process of law. The court shall not allow the petitions, which are filed to defy or circumvent the decree passed by the competent civil court. The petition lacks merits and bona fides.

12. In the result, the Transfer CMP is dismissed. There shall be no order as to costs. Miscellaneous petitions if any pending in this transfer petition shall stand closed.

T. SUNIL CHOWDARY, J

Date: 01.10.2015

YS