

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TR.C.M.P. Nos.296 & 297 of 2014

COMMON ORDER:

1 Tr.C.M.P.No.296 of 2014 is filed under Section 24 of CPC to withdraw O.S.No.227 of 2012 from the file of the Court of the Senior Civil Judge, Bhimavaram and transfer the same to the Court of the Senior Civil Judge, Razole to be tried along with O.S. No.67 of 2013.

2 Tr.C.M.P.No.297 of 2014 is filed under Section 24 of CPC to withdraw O.S.No.289 of 2011 from the file of the Court of the Senior Civil Judge, Bhimavaram and transfer the same to the Court of the Senior Civil Judge, Razole to be tried along with O.S.No.66 of 2013.

3 The issue involved in both the matters is almost one and the same and hence, I am inclined to pass common order in both the matters in order to avoid inconvenience.

4 The facts leading to the filing of the present petitions are briefly as follows: One Irrinki Usha Rani filed O.S.No.289 of 2011 on the file of the Senior Civil Judge, Bhimavaram for recovery of money basing on the promissory note dated 24.08.2008 alleged to have been executed by Adabala Lakshmi Anandam, who is petitioner in Transfer CMP No.297 of 2014; O.S.No.66 of 2013 is filed by one Pedapudi Satayanrayana on the file of the Senior Civil Judge, Razole for recovery of money basing on the alleged promissory note dated 12.01.2011, alleged to have been executed by Adabala Lakshmi Anandam. One Payasam Ramu filed O.S.No.227 of 2012 on the file of the Senior Civil Judge, Bhimavaram for recovery of money basing on the promissory note dated 12.08.2009 alleged to have been executed by Adabala Venkata Satyanarayana Murthy, who is petitioner in Transfer CMP No.296 of 2014; O.S.No.67 of 2013 is filed by one M.V.V. Surya Prasad on the file of the Senior Civil Judge, Razole for recovery of money basing on the promissory note dated 14.06.2011

alleged to have been executed by Adabala Venkata Satyanarayana Murthy.

5 Heard the learned counsel for both the parties.

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

(1) The plaintiffs in all the suits are only name lenders; that aspect will be proved if all the suits are tried together; and

(2) Conducting of joint trial in all the four suits would certainly enable the defendants to establish that the suit promissory notes are not supported by consideration.

7 *Per contra*, learned counsel for the respondents submitted that the plaintiffs in all the suits are different and the cause of action in each suit is different, therefore, the present petitions are not maintainable.

8 Learned counsel for the petitioners has drawn my attention to the ratio laid down in **Kanuru Basava Punnarao v. Puttagunta Nageswar**

Rao ^[1], which reads as follows:

“Normally the plaintiff has the right to choose the place of suing and the mere convenience of the defendant or his witnesses cannot be a valid ground for the transfer of the suit, but where the defence in all the suits is practically one and the same and common questions of fact and law arise for decision, to secure the ends of justice and to prevent multiplicity of proceedings and also the possibility of conflicting judgments, Courts have generally held that it is better to have all such suits tried at one place only by the same Court. Ultimately the question depends on the interests of justice and not the convenience of one party or the other.”

9 As pointed out by the learned counsel for the petitioners, the defendants, in all the suits, are wife and husband. As rightly pointed out by the learned counsel for the respondents, the plaintiffs are different in all the four suits. O.S.No.227 of 2012 is filed basing on the promissory note dated 12.08.2009; O.S.No.67 of 2013 is filed basing on the promissory note dated 14.06.2011; O.S.No.66 of 2013 is filed basing on the promissory note dated 12.01.2011 and O.S.No.289 of 2011 is filed basing on the promissory note dated 24.08.2008.

10 A perusal of the record reveals that the cause of action is

different in each suit and the promissory notes were executed on different dates. It is needless to say that the plaintiff can file a suit in the Court within whose territorial jurisdiction the cause of action or part of the cause of action arose or where the defendant has been residing or carrying on business. It is not the case of the petitioners that the Courts at Bhimavaram and Razole have no territorial jurisdiction to entertain the suits.

11 There is no doubt even as per the principle enunciated in the case cited supra, if the cause of action in all the suits is one and the same, this Court, while exercising the jurisdiction under Section 24 of C.P.C, can transfer the matters. As observed earlier, the cause of action for filing of each suit is different. The plaintiffs are also different. Whether the suits were filed at the behest of K.V.M.S.Satyanarayana Murthy or whether the promissory notes are not supported by consideration, requires an elaborate trial. It is settled principle of law while disposing of the transfer petitions, the Court is not supposed to express any opinion or enter into controversial issues involved in the suits, touching the merits of the main case. If this Court expresses any opinion on these controversial issues, the same may cause prejudice to one of the parties to the proceedings. The scope of transfer petitions is very limited.

12 Mere taking of common defence in all the suits by itself is not a sufficient ground for transfer of the matters, without considering the other attending circumstances. Simply because the petitioners are senior citizens that itself is not a sufficient ground for transfer of the matters. The Court has to consider the inconvenience to the plaintiffs also. Even if the suits are decided by different Courts, there is no chance of conflicting judgments.

13 O.S.No.289 of 2011 is filed on the file of the Senior Civil Judge, Bhimavaram in the year 2011. O.S.No.227 of 2012 was filed on the file of the Senior Civil Judge, Bhimavaram in the year 2012. The

grounds on which the petitioners are seeking transfer of the suits are very much within their exclusive knowledge from the year 2011 onwards. The petitioners have not taken any steps to file similar type of petitions immediately after filing of the suits. It appears that the petitioners filed the present petitions when the suits are coming up for trial and for the reasons best known to him. The petitioners have not assigned cogent and valid reasons for such delay. The Court shall not lose sight of these facts while deciding the petitions of this nature.

14 The Court has to take into consideration the commonality of the cause of action and the relief sought for. No common question of fact is involved in all these four matters as the promissory notes were executed on different dates, the plaintiffs are different and the witnesses to be examined in all the 4 matters are different. If the matters are transferred, it may cause untold hardship and inconvenience to the plaintiffs. If the matters are transferred to one Court on the ground that all the suits were filed at the behest of K.V.M.S .Satyanarayana Murthy, certainly it would amount to accepting the defence of the petitioners which is not permissible under law. There is no doubt, Section 5 of Limitation Act is not applicable to Section 24 of C.P.C. That does not mean that the parties are entitled to file this type of petitions as and when they feel convenient for them.

15 Having regard to the facts and circumstances of the case, I am of the considered view that the petitioners have not made out grounds, much less valid grounds for transfer of the cases.

16 Hence, these Transfer Civil Miscellaneous Petitions are dismissed. No costs. As a sequel, miscellaneous petitions, if any pending in these civil miscellaneous petitions, shall stand closed.

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T.SUNIL CHOWDARY, J.

Date: 09.07.2015.

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[\[1\]](#) 1999 (6) ALD 707