

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
TR.CMP No.207 of 2015

ORDER:

This petition is filed under Section 24 of CPC to withdraw O.S.No.7 of 2008 from the file of the V Additional Junior Civil Judge Court at Warangal and transfer the same to the I Additional Senior Civil Judge Court at Warangal to be tried along with O.S.No.34 of 2010.

2. Heard both the counsel and perused the material available on record.

3. The petitioners herein filed O.S.No.34 of 2010 on the file of I Additional Senior Civil Judge Court, Warangal for declaration and recovery of possession against the respondents herein in respect of an extent of 968 sq.yds., in Sy.No.107/A1/3 of Bheemaram Village. The second respondent in O.S.No.34 of 2010 filed O.S.No.7 of 2008 on the file of the V Additional Junior Civil Judge Court, Warangal against the petitioners herein for perpetual injunction in respect of an extent of 968 Sq.Yds., in Sy.No.107/A1/3 situated within the limits of G.P.Board Bheemaram Village.

While things stood thus, the petitioners herein filed Transfer O.P.No.995 of 2012 on the file of Principal District Judge, Warangal for transfer of O.S.No.7 of 2008 from the file of V Additional Junior Civil Judge Court, Warangal to the I Additional Senior Civil Judge Court at Warangal for joint trial and disposal but the same was dismissed on 17.04.2014.

4. The predominant contention of the learned counsel for the respondents is that the cause of action for filing of both the suits is not one and the same. Therefore, the learned District Judge has

rightly dismissed the petition. He further submitted that the second respondent is not a party in O.S.No.7 of 2008, therefore the present petition is liable to be dismissed.

5. As pointed out by the learned counsel for the petitioners the subject matter in both the suits is an extent of 968 Sq. Yds., in Sy.No.107/A1/3 of Bheemaram Vilage. The petitioners herein filed a suit in O.S.No.34 of 2010 for declaration and recovery of possession from the first respondent.

6. As rightly pointed out by the learned counsel for the first respondent the plaintiffs in O.S.No.34 of 2010 admitting the possession of the first respondent over the suit schedule property. Both parties are claiming that they are the owners of the property to an extent of 968 Sq Yds in Sy No.107/A1/3. In a suit for perpetual injunction, the Court has to consider whether the plaintiff was in possession of the property as on the date of filing of the suit or not. In a suit for declaration, the burden of proof lies on the plaintiff to establish his case. In a suit for declaration, the plaintiff may succeed or fail basing on the strength of his case and he is not entitled to claim a relief of declaration basing on the laches or defects on the part of the defendants.

7. As pointed out by the learned counsel for the respondent the cause of action for filing of both the suits is not one and the same. The scope of O.S.No.34 of 2010 is wider than the scope of O.S.No.7 of 2008. While deciding the injunction suit, the Court can incidentally look into the title of the parties to the proceedings. The nature of evidence to be adduced in both the suits by the petitioners and the respondents is almost identical. If both the suits are being tried by one Court, to certain extent, the precious time of the Court can be saved. If both the suits are tried

by the same Court, the parties can avoid producing of the same witnesses for two times. If the suits are being tried by two different Courts, the possibility of conflicting of judgments cannot be ruled out completely. Even if O.S.No 7 of 2009 is transferred, the same may not cause any prejudice or effect the rights of the first respondent. In order to avoid multiplicity of litigation and the possibility of conflicting judgments, this Court is of the considered view that it is a fit case to transfer O.S.No.7 of 2008 from the file of V Additional Junior Civil Judge Court, Warangal to the I Additional Senior Civil Judge Court, Warangal for disposal.

8. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. O.S.No.7 of 2008 is withdrawn from the file of the V Additional Junior Civil Judge Court at Warangal and transferred to the I Additional Senior Civil Judge Court at Warangal to be tried along with O.S.No.34 of 2010. The learned I Additional Senior Civil Judge is hereby directed to dispose of O.S.No.7 of 2008 and O.S.No.34 of 2010 within six (06) months from the date of appearance of both parties before him in O.S.No.7 of 2008. No costs.

As a sequel, miscellaneous petitions, if any pending in this petition, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 22.09.2015.

Gv/

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