

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

TRANSFER C.M.P.No.465 of 2015

ORDER:

This petition is filed under Section 24 C.P.C., to withdraw O.S. No.23 of 2014 from the file of the Junior Civil Judge Court, Suryapet and transfer the same to file of Junior Civil Judge Court, City Civil Court, Secunderabad, for trial and disposal in accordance with law.

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

3. A perusal of the record reveals that the petitioner herein filed O.S. No.8 of 2012 on the file of Junior Civil Judge Court, Thungathurthy against the respondents herein for partition of 'A' and 'B' schedule properties and allot 5.5 share to her. The petitioner filed Transfer CMP No.438 of 2013 on the file of this court seeking transfer of O.S. No.8 of 2012 from the file of Junior Civil Judge Court, Thungathurthy to City Civil Court, Secunderabad. This court disposed of Transfer CMP No.438 of 2013 on 12.9.2013 with the following observation:

"In view of the rival contentions, I do not consider it appropriate to transfer the suit to Secunderabad. However, both parties agreed for transfer of the suit to the Court of Junior Civil Judge at Suryapet, Nalgonda District."

A perusal of the above order clearly indicates that this court allowed Transfer CMP No.438 of 2013 with the consent of both the parties. After transfer, the suit was renumbered as O.S. No.23 of 2014 on the file of Junior Civil Judge Court, Suryapet.

4. Learned counsel for the petitioner submitted that defendant

No.5, who is physically challenged lady, died on 04.1.2015; therefore, there is no hurdle for transfer of the suit from Suryapet to Secunderabad. He further submitted that majority of the defendants are residing in Secunderabad.

5. In a suit for partition, at the first instance, the court has to pass a preliminary decree subject to plaintiff succeeded in the suit. After passing preliminary decree, Advocate Commissioner will be appointed to ascertain the mesne profits and partition the suit schedule properties in terms of the preliminary decree. If the suit is transferred to Secunderabad the parties have to bring the witnesses from Thungathurthy to Secunderabad. The defendants will face much difficulty to bring the witnesses from Thungathurthy to Secunderabad. As observed earlier, if the suit is decreed, Advocate Commissioner has to visit Thungathurthy to partition the suit schedule properties by metes and bounds. For the convenience of the petitioner, others shall not be penalized.

6. In the earlier Transfer CMP No.438 of 2013 itself, this court made an observation that it is not a fit case to transfer the suit from Thungathurthy to Secunderabad. It seems that the Transfer CMP No.438 of 2013 was allowed on the sole ground that the parties therein have agreed for transfer of the suit from Thungathurthy to Suryapet. Mere convenience of the petitioner by itself is not a valid ground to transfer the suit. While disposing the petitions of this nature, the court has to take into consideration the ground realities as well as inconvenience likely to be caused to the parties to the proceedings.

7. Taking into consideration the scope of the suit filed by the petitioner, it is not a fit case to transfer the suit from Suryapet to Secunderabad in the interest of both the parties. The petitioner has

not made out grounds much less valid grounds for transfer of O.S. No.23 of 2014 from the file of Junior Civil Judge Court, Suryapet to Junior Civil Judge Court, City Civil Court, Secunderabad.

8. Hence, the Transfer CMP is dismissed. Miscellaneous petitions, if any, pending in this transfer petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 22.9.2015.

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