

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY
TR.CIVIL MISCELLANEOUS PETITION No.295 OF 2014

ORDER:

1 This petition is filed under Section 24 of CPC seeking to withdraw O.S.No.16 of 2010 from the file of the Court of Senior Civil Judge, Jangaon, Warangal District and transfer the same to the Court of 1st Additional District Judge, Warangal to be tried along with O.S.No.166 of 2012.

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

3 The contention of the learned counsel for the petitioner is two fold viz., 1) The subject matter and parties to both the suits are one and the same and that aspect was not rightly considered by the District Court while dismissing Tr.O.P.No.953 of 2013. 2) If two courts are allowed to pass separate decrees, certainly, it will lead to conflicting judgements as well as multiplicity of litigation.

4 *Per contra*, the learned counsel for the respondent submitted that the cause of action, nature of the reliefs and parties to the proceedings in both the suits are not one and the same and therefore, the present petition is liable to be dismissed. He further submitted that simply because the subject matter of both the suits is one and the same, that itself is not a sufficient ground for transfer of the matter without considering other relevant aspects.

5 The brief facts which are relevant for disposal of this petition are as follows:

6 One Pasunoori Satyanarayana who is the plaintiff in O.S.No.166 of 2012 on the file of the Court of the Principal District Judge, Warangal and father of defendant in O.S.No.16 of 2010 on the

file of the Court of Senior Civil Judge, Jangaon, purchased an extent of Ac.3-22 guntas of land in Sy.No.537/B of Palakurthy village under a registered sale deed in the year 1985. The said Satyanarayana sold an extent of Ac.0-20 guntas in favour of Smt. Pasumarthi Aruna (1st defendant in O.S.No.166 of 2012). It is the case of said Satyanarayana that he repurchased Ac.0-20 guntas of land from the said Aruna under a simple document. In the year 2008, Satyanarayana executed a gift deed in respect of the suit schedule property in favour of his daughter by name Kaveti Parvathi, who is the defendant in O.S.No.16 of 2010. Pasumarthi Aruna executed a gift deed in respect of the suit schedule property in favour of her daughter by name Pasumarthi Keerthi who is the 3rd defendant in O.S.No.166 of 2012. The said Pasumarthi Keerthi in turn sold an extent of 840 sq. yards to one Nalla Nagaiah @ Nagireddy, who is plaintiff in O.S.No.16 of 2010 under a registered sale deed and another extent of 1580 sq. yards under a General Power of Attorney-cum-agreement of sale dated 16.01.2010.

7 Satyanarayana filed O.S.No.166 of 2012 on the file of the Court of 1st Additional District Judge, Warangal against Pasumarthi Aruna, Pasumarthi Apparao, Pasumarthi Keerthi and Nalla Nagaiah @ Nagireddy for specific performance of agreement of sale dated 19.12.2000 and also for a declaration that the registered gift deed dated 13.02.2008 executed by the said Pasumarthi Aruna in favour of her daughter Pasumarthi Keerthi in respect of Ac.0-20 guntas of land as null and void.

8 Nalla Nagaiah @ Nagireddy filed O.S.No.16 of 2010 on the file of the Court of Senior Civil Judge, Jangaon for declaration that he is the absolute owner of plaint A and B schedule properties and for a consequential perpetual injunction against Kaveti Parvathi

who is the daughter of Pasunoori Satyanarayana.

9 The defendant in O.S.No.16 of 2010 filed Tr.O.P.No.953 of 2013 on the file of Principal District Judge, Warangal seeking to withdraw O.S.No.16 of 2010 pending on the file of the Court of Senior Civil Judge, Jangaon and to transfer the same to the Court of 1st Additional District Judge, Warangal. The said Tr.O.P. was dismissed on 01.04.2014.

10 The learned counsel for the respondent has drawn my attention to the ratio laid down in the following decisions.

i). **Burma Gnaneshwar Rao Vs. E. Rajamani**^[1] wherein this Court held as under:

“A cursory glance of these litigations and also contents of the complaints would go to show that the contesting party is not a party to O.S.No.172 of 2000 on the file of II Additional District Judge, Ranga Reddy concerned. In the light of specific stand taken by the contesting respondent because merely certain documents in all the suits may be common, cannot be a ground for the purpose of ordering transfer, by exercising power under Section 24 of the Code of Civil Procedure. The contention that there may be conflicting judgments if the respective suits are proceeded within the concerned Courts cannot be accepted. Hence, no reason to order the transfer CMPs as prayed for by the petitioners.”

ii) **M. Ramakrishna Sastry Vs. M. Seetaramaswamy**^[2] wherein this Court held as under:

“5. The second respondent herein is not a party to O.S.No.56 of 1990 and he has nothing to do with the reliefs sought for in that suit. Therefore, the parties to the two suits are not common.

6. Thus the subject-matter, causes of action, nature and character of the suits are quite distinct and different and there are no common questions of law or facts involved in these two suits. Therefore, there is no necessity of common trial.”

11 Let me consider the facts of the case on hand in the light of the legal principle laid down in the cases cited supra.

12 It is an admitted fact that the subject matter of the both the suits i.e. Ac.0-20 guntas originally belongs to Pasunoori Satyanarayana, who is the plaintiff in O.S.No.166 of 2012. It is also an admitted fact that the said Satyanarayana sold Ac.0-20 guntas of land to Pasumarthi Aruna, the first defendant in the said suit. Thereafter, the said Aruna and Satyanarayana executed gift deeds in favour of their respective daughters in respect of the said Ac.0-20 guntas. The contention of Satyanarayana is that Pasumarthi Aruna re-conveyed Ac.0-20 guntas of land to him under a simple document.

13 The contention of the learned counsel for the petitioner is that O.S.No.166 of 2012 is a comprehensive suit in view of issue No.4 framed in it, which reads that **“Whether the plaintiff is entitled for declaration that the gift deed dated 12.02.2008 is null and void?”** The validity of two gift deeds is not in question in both the suits. The nature of evidence to be adduced in both the suits is not one and the same so far as two gift deeds are concerned. In such circumstances, I am unable to accede to the contention of the learned counsel for the petitioner that O.S.No.166 of 2012 is a comprehensive suit, which is filed for the relief of specific performance.

14 O.S.No.166 of 2012 is filed for specific performance of agreement of sale and the same is governed by Section 20 of Specific Relief Act. O.S.No.16 of 2010 is filed for declaration, which is governed by Section 34 of Specific Relief Act. It is needless to say that the relief of specific performance is discretionary relief. No doubt, the Court has to exercise the discretionary power conferred on it under Section 20 of the Specific Relief Act judiciously by following sound principles of law. In a suit for declaration, the plaintiff may succeed or fail basing on the strengths or weaknesses

of his or her case. The Court cannot grant the relief of declaration basing on the weaknesses or laches on the part of the defendant. This clearly indicates that the scope of trial in O.S.No.16 of 2010 is entirely different to that of the suit in O.S.No.166 of 2012. The cause of action for filing O.S.No.16 of 2010 is entirely different to the cause of action in O.S.No.166 of 2012.

15 Another interesting aspect in this case is Nalla Nagaiah @ Nagireddy the plaintiff in O.S.No.16 of 2010 and Pasunoori Satyanarayana the plaintiff in O.S.No.166 of 2012 are the main contesting parties. Nalla Nagaiah is shown as defendant No.4 in O.S.No.166 of 2012. For one reason or the other, no relief is sought against the said Nalla Nagaiah in O.S.No.166 of 2012. Similarly, P.Satyanarayana is not a party to the suit in O.S.No.16 of 2010. Likewise Kaveti Parvathi is not a party to O.S.No.166 of 2012.

16 The material placed on record clinchingly establishes that the main and contesting party in O.S.No.166 of 2012 is not a party to O.S.No.16 of 2010 and *vice versa*. The facts of the case on hand are almost identical to the facts of the case in Burma Gnaneshwar Rao case (1 supra).

17 As observed earlier, the cause of action, nature of the suit and the relief sought for in both the suits are not one and the same. No common questions of fact or law are involved in both the suits. Even if two courts are allowed to conduct separate trial, there is no possibility of conflicting judgments. The learned Principal District Judge, Warangal has considered various aspects in right perspective and dismissed the Tr.O.P.No.953 of 2013. Merely because the subject matter of both the suits is one and the same, it would not outweigh the other attending circumstances and relevant aspects for allowing the petition.

18 Having regard to the facts and circumstances of the case and also in view of the principle laid down in the cases cited supra, I am of the considered view that the petitioner is not entitled to the relief as sought for.

19 Accordingly, the Tr.CMP is dismissed as devoid of merit. As a sequel, miscellaneous petitions if any pending in this Tr.CMP shall stand closed.

T. SUNIL CHOWDARY, J.

Date: -07-2015
Kvsn

[\[1\]](#) 2003 (6) ALD (NOC) 117

[\[2\]](#) 1995 (3) ALD 6