

HON'BLE SRI JUSTICE S. RAVI KUMAR

Tr.C.M.P.No.37 of 2016

ORDER:

This petition is filed to withdraw O.S.No.27 of 2015 from the file of I Additional District Judge, Warangal and transfer the same to Chief Judge, City Civil Court, Hyderabad or any other Court in Hyderabad, Secunderabad or in Ranga Reddy.

2. Petitioner herein is D.1 in the above referred O.S. No.27 of 2015. Respondents No.1 and 2 herein filed the above referred suit for recovery of money from petitioner and respondents No.3 to 5. According to affidavit filed in support of transfer petition, all the negotiations and mediations in respect of sale of property situated at Madanpalli village of Shamshabad Mandal, took place at the residence of petitioner at Hyderabad, and that he is a senior citizen, aged about 88 years and a freedom fighter and is suffering from old age ailments and that he cannot move from Hyderabad to Warangal. He further stated that Doctors advised him not to undertake strenuous and long travels outside Hyderabad, therefore he cannot travel to Warangal frequently to instruct and ensure the trial of the suit, in support of his defence, as the distance between Warangal and Hyderabad is 130 KMs. It is further contended that other defendants to the suit are also residents of Hyderabad and the suit is filed only to harass and create hurdle to him. For these reasons, he prayed for transfer of O.S.No.27 of 2015 from I Additional District Judge, Warangal to Chief Judge, City Civil Courts, Hyderabad or any other Court in Secunderabad or in Ranga Reddy.

3. Plaintiffs resisted the application and filed counter

disputing the affidavit averments of petitioner and contended that deponent is also a senior citizen of 64 years, and in the suit, petitioner herein was set ex parte, and it is ripe for trial. It is further stated that wherever cause of action took place the suit has to be filed in that vicinity, but not as per the whims and fancies of the concerned parties. It is further stated that residence of petitioner or his age is not the criteria for territorial jurisdiction and that there are no merits in the petition and liable to be dismissed.

4. Heard both sides.

5. Advocate for petitioner submitted that as per the averments of para-3 of plaint, the entire transaction with regard to sale of landed property of A.4-00 gts., took place at the residence of petitioner in Hyderabad and even the cheques were issued at Hyderabad and besides that petitioner is 88 years old, with old age ailments, and it is difficult for him to travel all the way from Hyderabad to Warangal. He submitted even according to the plaint averments, all the witnesses are from Hyderabad and it will be difficult not only for the petitioner herein but also for the witnesses to travel all the way from Hyderabad to Warangal, therefore, by taking the convenience of the parties and witnesses, the request of petitioner for transfer of O.S.No.27 of 2014 from Warangal to Hyderabad may be considered.

6. Advocate for plaintiffs i.e., respondents No.1 and 2 opposed the petition and submitted that part of cause of action was at Hanamkonda and plaintiffs have every right to institute the suit as per cause of action. He submitted that petitioner herein filed a petition for rejection of the plaint, only when a petition was filed to summon him for cross-examination with reference to the affidavit, he filed in support of petition to reject the plaint under

Order VII Rule 11 CPC, this transfer petition is filed. He submitted that as on today petitioner herein has not even filed his written statement. Therefore the inconvenience expressed by him is not tenable.

7. I have perused the material papers including the affidavit and counter affidavit of the parties. As seen from the record, petitioner herein filed I.A.No.235 of 2015 for rejection of plaint on the ground of lack of jurisdiction and that petition was dismissed on merits and revision petition against that order was also dismissed, therefore the jurisdiction aspect has already decided and on that ground petitioner now cannot seek any transfer.

8. The only ground now urged on behalf of petitioner is that inconvenience of petitioner and his age. According to petitioner, it will be difficult for him to travel from Hyderabad to Warangal for defending suit filed by respondents No.1 and 2 herein. Admittedly, till today, no written statement is filed on behalf of petitioner.

9. As rightly pointed out by advocate for plaintiffs the question of defending case would arise only when there is a contest, further, if petitioner feels any inconvenience, because of his age and ailments to go to warangal for giving evidence as a witness in the said suit he can as well request the Court for appointment of Advocate Commissioner to record his evidence at his residence, therefore, that cannot be a ground to transfer this suit. Further, when the written statement is not filed and it is not even known what is the defence or the objection for petitioner for the claim of plaintiffs, it is hypothetical to accept the contention of petitioner that it is difficult for him to travel from Hyderabad to Warangal to give instructions to his advocate for defending him in the suit.

10. Considering these aspects, I am of the view that there are no grounds to consider the request of petitioner for transfer of suit from Warangal to Hyderabad.

11. Accordingly, this Transfer Civil Miscellaneous Petition is dismissed. No costs. Miscellaneous Petitions, pending in this petition, if any, shall stand closed.

S. RAVI KUMAR, J

Date: 08-06-2016.

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