

HON'BLE SRI JUSTICE S. RAVI KUMAR

Tr.CIVIL MISCELLANEOUS PETITION No.508 of 2015

ORDER:

This petition is filed to withdraw O.S.No.1147 of 2013 from the file of Principal Senior Civil Judge, Vijayawada and transfer the same to XIV Additional District Judge, Vijayawada to be tried along with O.S.No.402 of 2013.

2. First petitioner herein is one of the defendants in O.S.No1147 of 2013 on the file of Principal Senior Civil Judge, Vijayawada which is filed for recovery of Rs.3,87,500/- based on promissory note. O.S.No.402 of 2013 is filed by the very same plaintiff along with some other plaintiffs for passing preliminary decree on the basis of mortgage transaction and according to petitioner both the suits have to be tried together to avoid conflicting decisions as scribe and attestors in both the suits are one and the same.

3. First respondent herein filed counter disputing the affidavit averments of petitioner and contended that causes of action for both the suits are different and parties are also different and nature of enquiry is also different, therefore there is no common point in both the suits and that application has to be dismissed.

4. Heard both sides.

5. Advocate for petitioners submitted that first petitioner herein never borrowed any money and both suits are false claims and collusive suits scribe and attestors are common for both

transactions and in order to prove the defence of first petitioner, both suits have to be tried together to avoid conflicting decisions.

6. On the other hand, advocate for respondents submitted that petitioners have not made out any case for transfer and as the transactions in both the suits are distinct and different, there is no scope for conflicting decisions.

7. I have perused the material papers including order of Principal District Judge, Machilipatnam dated 16.07.2015 in Tr.O.P.No.374 of 2014. The very same points were urged before the learned District Judge. District Court held that no common question of law or facts are involved in both the suits and the scope of enquiry in pronote suit O.S.No.1147 of 2013 is completely different from the scope of enquiry in mortgage suit O.S.No.402 of 2013. The learned District Judge recorded that there is no scope for any conflicting decisions as appreciations of evidence in both the suits has to be done on the principles of law pertaining to promissory note and mortgage suit.

8. As seen from the material, learned District Judge has rightly observed that no common question of law or facts are involved in both the suits and the claim and causes of action and even parties are distinct and different in both suits. Simply because attestors and scribe are common, request of petitioner for common trial cannot be accepted.

9. For these reasons, I am of the view that there is no necessity of common trial and the request of petitioner for such a common trial cannot be accepted. Therefore, this petition is liable to be dismissed.

10. Accordingly, the Transfer Civil Miscellaneous Petition is

dismissed. No costs. Miscellaneous Petitions, if any pending, in this petition, shall stand closed.

S. RAVI KUMAR, J

Date: 15-02-2016
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