

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Transfer C.M.P.No.542 of 2016

ORDER:

This Transfer Civil Miscellaneous Petition under Section 24 of the Code of Civil Procedure, 1908, ('the Code') is filed by the plaintiff in the two suits, viz., O.S.No.1200 of 2015 on the file of the Court of the I Senior Civil Judge, City Civil Court, Hyderabad, and O.S.No.194 of 2012 on the file of the Court of the learned XXV Additional Chief Judge, City Civil Court, Hyderabad, requesting to withdraw the former suit and transfer the same to the latter Court for trial and disposal of both the suits by the latter Court.

2. The case of the plaintiff/petitioner in support of the said request, in brief, is this:

O.S.No.1200 of 2015 is filed against the defendants/respondents herein for mesne profits and cancellation of two registered sale deeds mentioned in the pleadings of the said suit and for other reliefs. O.S.No.194 of 2012 is also filed by him against the very same parties for partition and for passing a preliminary decree and for allotment of the claimed share after conversion of joint possession into separate possession. The parties and the subject matters of both the suits are one and the same. The principal issues that arise for determination are also same; and the evidence that is likely to be adduced by the parties would also be common. If both the suits are tried and disposed of by one Forum, it would be just and convenient and saves time and money of the parties and the said course obviates the likelihood of passing of conflicting judgments and decrees in the suits.

3. *Per contra*, the case of the contesting defendants is this:

The decision in the suit for mesne profits would depend upon the decision in the suit for partition. Therefore, there is no likelihood of the Courts arriving at conflicting decisions, even if the suits were to be tried and

disposed of by different Courts. The relief insofar as the cancellation of sale deeds is barred by law of limitation. In the suit for partition, the affidavit in lieu of examination-in-chief was already filed and a Commissioner was appointed to record the cross-examination of the said witnesses. Therefore, though the properties and the parties are common, there is no need to bring the two suits to the file of one Court and direct disposal of both the suits by one Court after consolidation of the suits as sought for by the plaintiff/petitioner herein.

4. I have bestowed my attention to the facts and I have perused the material record including the copies of plaints in both the suits. It is not in dispute that the parties and the subject matters of both the suits are common. It is in the interests of both the parties that both the suits shall be tried and disposed of by one Court in view of the fact that the issues that incidentally arise for consideration in both the suits would be one and the same; and the decision of the Court in one suit will have a bearing on the decision on the issues that fall for determination in the other suit. It also appears *prima facie* that the evidence that is likely to be adduced by the parties in support of their respective contentions would also be the same. Therefore, if both the suits are brought to the file of one Court for disposal; simultaneously or by consolidation, it would obviate the necessity of repetition of evidence in the two suits and the said course saves money and time of the parties. Though in the counter, it is stated that the relief insofar as the cancellation of sale deeds is barred by law of limitation and that the plaintiffs' success in the suit for mesne profits would depend upon the decision in the suit for partition, it is not the stage to go into the said issues and make any observations which will have a bearing on the merits of the contentious issues involved in the suits. In the well considered view of this Court, the said contentions are not only untenable at this stage but also are not germane for consideration. Further, since the trial in one suit has not commenced and PW1, whose chief affidavit was filed,

was not cross examined in the other suit, the ends of justice would be met if the relief as sought for is granted. Viewed thus, this Court finds that there is merit in the request of the petitioner.

5. In the result, the Transfer Petition is allowed and O.S.No.1200 of 2015 on the file of the court of the learned I Senior Civil Judge, City Civil Court, Hyderabad, is withdrawn and is transferred to the file of the Court of XXV Additional Chief Judge, City Civil Court, Hyderabad, for trial and disposal along with O.S.No.194 of 2012 pending on the file of the said latter Court. It is made clear that the transferor Court shall forthwith send the duly indexed record of O.S.No.1200 of 2015 to the Transferee Court and on receipt of the said records, the transferee Court shall consolidate both the suits and conduct joint trial by recording common evidence in O.S.No.194 of 2012, which is a comprehensive suit for partition, and dispose of both the suits by following the procedure established by law and by rendering a common judgment. Considering the fact that one of the suits is a sufficiently old suit and as both the parties are willing to cooperate for speedy trial, the transferee Court is directed to dispose of both the suits as directed, as expeditiously as possible, and at any rate, not later than three months from the date of receipt of a copy of this order.

No costs.

Miscellaneous petitions, if any, pending shall stand closed.

M. SEETHARAMA MURTI, J

08th December, 2016
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