

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.614 of 2016

ORDER:

This is an application under Section 24 of the Code of Civil procedure requesting to withdraw and transfer A.S.No.1 of 2015 on the file of the Court of the learned Senior Civil Judge, Huzurnagar, Nalgonda District, to this Court to be heard and disposed of in accordance with the procedure established by law along with S.A.No.335 of 2011 pending on the file of this Court.

2. Notice before admission came to be ordered on 20.09.2016. Despite service of notice, the respondent does not appear and resist the petition.

3. Heard *Sri P.Venu Gopal*, learned senior counsel appearing for the petitioner.

4. The facts of the case, in brief, are as follows:

The 1st respondent herein filed O.S.No.251 of 2004 on the file of the Court of the learned Junior Civil Judge, Kodad, Nalgonda District, with the following prayer:

“(i) to pass a preliminary decree of partition of the plaint schedule properties by metes and bounds into four equal shares for the plaintiff and for defendants 1 to 3;

(ii) to appoint a Commissioner to get measure the plaint schedule properties of item No.1 to 3 of 'A' schedule on metes and bounds into four equal shares;

(iii) to allot one such share to this plaintiff with delivery of separate possession;

(iv) to order the eviction of the 4th defendant from item No.1 of “B” schedule and to deliver the separate possession of due 1/4th share of the plaintiff;

(v) to award all costs of the above suit; and

(vi) to grant any such relief or relief deems fit and proper in the above said circumstances in the interests of justice.”

(Reproduced verbatim)

The petitioner herein is arrayed as the 4th defendant in the suit. She resisted the said suit by filing written statement. On merits, the learned Junior Civil Judge, Kodad, preliminarily decreed the said suit on 29.01.2008. Assailing the judgment and the preliminary decree in the said suit, the petitioner herein filed A.S.No.17 of 2008 on the file of the Court of the learned II Additional District Judge, Nalgonda at Suryapet. The said appeal was also dismissed. Assailing the judgment and decree in A.S.No.17 of 2008, the petitioner herein filed Second Appeal No.335 of 2011 on the file of this Court. Along with the appeal, she had also filed S.A.M.P.No.833 of 2011. The said second appeal is pending.

While so, the 1st respondent herein filed, before the Court of the learned Junior Civil Judge, Huzurnagar, Nalgonda District, an application in I.A.No.171 of 2009 in O.S.No.251 of 2004 under Order XXVI Rule 13 of the Civil Procedure Code, for appointment of an advocate commissioner for partition of the properties. Upon receipt of the Commissioner's report, a final decree was passed on 02.02.2015. And on deposit of the required amount towards the value of non-judicial stamps the final decree was granted. Aggrieved thereof, the petitioner herein filed A.S.No.1 of 2015 on the file of the Court of the learned Senior Civil Judge, Huzurnagar, Nalgonda District. Thus the second appeal assailing the preliminary decree is before this Court, while the first appeal assailing the final decree is on the file of the Court of the learned Senior Civil Judge, Huzurnagar, Nalgonda District.

5. Learned senior counsel while reiterating the pleaded the case of the petitioner would submit that in the facts and circumstances stated both the appeals are to be heard and disposed of by this Court and hence, the transfer of A.S.No.1 of 2015 on the file of the Court of the learned Senior Civil Judge, Huzurnagar, Nalgonda District, is being sought to the file of this Court for being

heard and disposed of along with S.A.No.335 of 2011 pending on the file of this Court for avoiding multiple litigation and conflicting decisions.

6. As already noted, the respondent/ plaintiff is not resisting the petition.

7. It is necessary, having regard to the facts, to hear both the first appeal suit and second appeal together for proper appreciation of the issues involved and to avoid multiplicity of proceedings and conflicting decisions. Hence, this Court finds that this is a fit case to exercise jurisdiction vested under Section 24 of the Code.

8. In the result, the Tr.C.M.P is allowed. A.S.No.1 of 2015 is withdrawn from the file of the Court of the learned Senior Civil Judge, Huzurnagar, Nalgonda District, and is transferred to the file of this Court for hearing and disposal, in accordance with the procedure established by law, along with Second Appeal No.335 of 2011 pending on the file of this Court. Interim order shall continue till the process of transmission of the record from the Senior Civil Court, Huzurnagar, to this Court is completed.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

03rd November, 2016

Note: The Registry is directed to communicate a copy of this order to the learned Senior Civil Judge, Huzurnagar, to enable to transmit the duly indexed record to this Court for consideration along with the second appeal.

(B/ o)
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