

TRANSFER C.M.P. No.109 of 2014

ORDER:

This petition is filed to withdraw O.S.No.27 of 2006 from the file of Senior Civil Judge, Avanigadda, Krishna District, and transfer the same to X Additional District Judge, Machilipatnam, Krishna District, to be tried along with O.S.No.28 of 2009.

2. It is the contention of petitioner that 1st respondent herein filed O.S.No.27 of 2006 before Senior Civil Judge, Avanigadda, for specific performance of agreement of sale dated 22.09.1983 against respondent Nos.2 to 21 herein having purchased the property from respondents for valuable consideration of Rs.2,50,000/- and that petitioner herein was added as 22nd defendant in the said suit as a proper and necessary party. According to him, he filed written statement and denying all the allegations made in the plaint contending that the decree in O.S.No.14 of 2008 on the file of I Additional District Judge, Machilipatnam, Krishna District, was obtained behind the back of petitioner herein and that 1st respondent herein filed O.S.No.28 of 2009 on the file of X Additional District Judge, Machilipatnam, for cancellation of decree in O.S.No.14 of 2008 on the file of I Additional District Judge, Machilipatnam, wherein petitioner herein shown as 1st defendant. As the petitioner is common defendant in O.S.No.28 of 2009 and in O.S.No.27 of 2006 and subject property is also same, both the suits have to be tried by one Court and if they are tried separately, contradicting decisions may come. According to petitioner, in both the suits trial is not yet commenced, therefore, he prayed for transfer of O.S.No.27 of 2006 from Senior Civil Judge, Avanigadda, to X Additional District Judge, Machilipatnam, to be tried along with O.S.No.28 of 2009.

3. Third respondent filed counter disputing the affidavit averments of

petitioner and contended that transfer petition is not maintainable for want of jurisdiction. It is further contended that the trial has already commenced in O.S.No.27 of 2006 and PWs.1 to 5 were examined and Exs.A.1 to A.25 are marked and plaintiff's evidence was closed on 20.12.2012 and DWs.1 and 2 were examined and Exs.B.1 to B.11 are marked and chief affidavits of DWs.3 and 4 are also filed and at that stage I.A.Nos.67 of 2013 and 69 of 2013 are filed. It is further contended that 3rd respondent is not a party to the earlier suit in O.S.No.14 of 2008 and also not a party in O.S.No.28 of 2009, which is filed for cancellation of decree in O.S.No.14 of 2008. It is further contended that as the trial in O.S.No.27 of 2006 is almost over, at which stage petitioner himself has got implicated and the remedy of petitioner is to file a petition under Section 10 of C.P.C. seeking stay of O.S.No.28 of 2009 pending disposal of O.S.No.27 of 2006 and transferring the case at this stage would cause prejudice to respondents and that the application is liable to be dismissed.

4. Heard both sides.

5. Advocate for petitioner submitted Section 10 of C.P.C. has no application because it is only for stay of suit, but not for transfer and as the petitioner herein has sought for transfer, the objection of 3rd respondent with regard to Section 10 of C.P.C. is not tenable. It is further submitted that the property involved in both the suits is one and the same, so also parties are also almost same in both the suits and to avoid conflicting decisions, petitioner herein filed this petition to withdraw O.S.No.27 of 2006 from Senior Civil Judge, Avanigadda and transfer the same to X Additional District Judge, Machilipatnam, both the suits can be clubbed and disposed of.

6. On the other hand, advocate for 3rd respondent submitted that this respondent is not a party to O.S.No.28 of 2009 and he is no way concerned with the decree in O.S.No.14 of 2008 and if the petitioner

feels that the subject matter of both the suits is one and the same, he has to invoke Section 10 of C.P.C., but he cannot seek for transfer of the suit, which is almost at last stage of conclusion of evidence on defendants' side.

7. Now the point that would arise for my consideration in this transfer petition is:

Whether O.S.No.27 of 2006 on the file of Senior Civil Judge, Avanigadda, can be transferred to X Additional District Judge, Machilipatnam, to be tried along with O.S.No.28 of 2009 pending therein?

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POINT :

8. I have perused the material papers including the affidavit of petitioner and counter-affidavit of 3rd respondent. Though the petitioner contended that in both the suits trial has to be commenced, the same appears to be incorrect. As seen from the affidavit of 3rd respondent in O.S.No.27 of 2006 already plaintiff's side evidence is over and defendants' side two witnesses are examined and chief affidavits of two witnesses are already filed and it is at the stage of completion of defendants' side evidence. When subject matter of both the suit is one and the same and the parties are also similar, according to affidavit of 3rd respondent, Section 10 of C.P.C. would come into operation. Now it may be useful to refer to Section 10 of C.P.C., which reads as follows:

10. Stay of Suit: No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Referring this provision, advocate for petitioner submitted that Section 10

of C.P.C. is only in respect of stay of suit and not for transfer and here the request of petitioner is to transfer O.S.No.27 of 2006 from Senior Civil Judge, Avanigadda, to X Additional District Judge, Machilipatnam.

9. No doubt, the prayer and the relief claimed in this petition is under Section 24 C.P.C. for transfer of the suit, but the Court has to see the purpose for which the transfer is sought. As seen from the affidavit of petitioner filed in support of the transfer petition, the purpose is as subject matter and the property are one and the same and parties are also one and same, both the suits have to be tried by one Court. If Section 10 of C.P.C. is read closely, it contemplates a situation where two suits are filed in respect of same subject matter and if it is between the same parties, the Court shall not proceed with the trial of the subsequent suit and trial of that suit has to be stayed till disposal of the earlier suit. When petitioner contended that subject matter of both the suits is one and the same and parties are one and the same, as rightly pointed out by advocate for 3rd respondent, Section 10 of C.P.C. would definitely come into operation and transfer is not the remedy as contended by petitioner. Further, when the suit before Senior Civil Judge, Avanigadda, is at the stage of conclusion and simply because petitioner got himself added as a party to that suit at last stage, he cannot now contend that suit has to be tried with the suit pending before X Additional District Judge, Machilipatnam, where 3rd respondent herein is not a party.

9. For these reasons, I am of the view that the request of petitioner for exercising the powers under Section 24 C.P.C. cannot be accepted and that there are no grounds to transfer of O.S.No.27 of 2006 from Senior Civil Judge, Avanigadda, Krishna District to X Additional District Judge, Machilipatnam, Krishna District.

10. Accordingly, transfer C.M.P. is dismissed.

11. Miscellaneous petitions pending, if any, shall stand closed.

20th June 2016.
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