

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

Tr.C.M.P.No.52 of 2016

ORDER:

This application is filed to withdraw O.S.No.619 of 2011 from the Court of Principal Junior Civil Judge, Nellore and transfer the same to the Court of I Additional District Judge, Nellore, to be tried along with O.S.No.18 of 2013.

2. According to affidavit of petitioners, they filed O.S.No.619 of 2011 before the Court of Principal Junior Civil Judge, Nellore, against respondents 2 and 3 herein seeking specific performance of agreement of sale in respect of undivided extent of 15 acres out of 20 acres in full extent of 30 acres in survey No.581/2 bearing patta No.241 situated at Duruvulapalam village, Muthukur Mandal, SPSR Nellore District. It is further contended that 3rd respondent herein filed a suit in O.S.No.18 of 2013 on the file of I Additional District Judge, Nellore, for specific performance of alleged agreement of sale dated 02.12.1991 in respect of subject land including 15 acres out of 20 acres in full extent of 30 acres in No.581/2 bearing patta No.241, which is subject matter of O.S.No.619 of 2011 and as the subject property in both suits is one and the same, both the suits have to be tried by one Court to avoid conflicting findings in respect of claim over 15 acres of land in survey No.581/2 bearing patta No.241. It is stated that they moved transfer application before District Court, but the District Court, on misconception of facts, dismissed transfer O.P. by order dated 21.12.2015 holding that properties in both suits are one and the same and that the agreements are different. It is stated that he is advised that this Court has got jurisdiction to entertain Transfer CMP despite dismissal of O.P. by District Court. Therefore, he prayed for transfer of O.S.No.619 of 2011 from the Court of Principal Junior Civil Judge, Nellore, to the Court of I Additional District Judge, Nellore to be

tried along with O.S.No.18 of 2013 for disposal in accordance with law.

3. Heard both sides. No counter is filed by respondents.

4. Advocate for petitioners submitted that petitioners can invoke jurisdiction of this Court under Section 24 of the Code of Civil Procedure, 1908 ('the Code', for brevity) without preferring any revision either under Section 115 of the Code or under Article 227 of the Constitution of India and to support his submissions, he placed reliance on a judgment of Division Bench of this Court in ***Munangi Ramakrishna Rao Vs. Dr.Vanakuru Venkata Siva Ramakrishna Prasad and others***^[1]. He further submitted that as per schedules in both suits, land covered by survey No.581 under Patta No.241 is subject matter in both suits and as both parties are claiming under separate sale agreements, to avoid conflicting findings in respect of 15 acres of land in survey No.581 under patta No.241, both suits have to be tried by one Court.

5. On the other hand, advocate for respondents submitted that both properties are not one and the same and parties are also not one and the same and therefore, contention that there would be conflicting findings cannot be accepted. He further submitted that the learned District Judge clearly recorded a finding that properties in both suits are not one and the same, so also parties are also not one and the same and when agreements are different and suits are based on different causes of actions, request for simultaneous trial is not permissible.

6. I have perused the material papers including the impugned order dated 21.12.2015, so also the copies of schedules of both suits as produced by the advocate for petitioners.

7. Subject matter of the property in O.S.No.619 of 2011 is undivided 15 acres of land out of extent of 20 acres in full extent of 30 acres under patta No.241 in survey No.581/2 of Duruvulapalam village,

Muthukur Mandal, SPSR Nellore District and in Item No.1 of schedule in O.S.No.18 of 2013, 15 acres out of 30 acres in survey No.581/2 is one of the item in that suit.

8. In ***Munangi Ramakrishna Rao***'s case (supra), a reference was made to the Division Bench of this Court to decide on points as to whether a party, who was unsuccessful before District Court in a transfer O.P., without questioning the same either under Section 115 of the Code or under Article 227 of the Constitution of India, can again invoke the jurisdiction of High Court under Section 24 of the Code on the ground of concurrent jurisdiction. A Division Bench of this Court, after examining the law on the subject, answered the said reference holding that a petition under Section 24 of the Code is maintainable even without the order of dismissal of such petition by the District Court, being questioned under Section 115 of the Code or under Article 227 of the Constitution of India. So, in view of the decision of Division Bench of this Court, an application under Section 24 of the Code is maintainable, though a similar relief was refused by the District Court, without challenging the order of the District Court, either under Section 115 of the Code or under Article 227 of the Constitution of India.

9. When in both suits the land in survey No.581 in an extent of 15 acres is in dispute, even though the parties are different, any finding in respect of that land in favour of one party would lead to unnecessary complications. Therefore, to avoid such conflicting findings, I am of the view if both the suits are tried by one Court simultaneously, this contingency can be avoided.

10. For these reasons, O.S.No.619 of 2011 is withdrawn from the Court of Principal Junior Civil Judge, Nellore and transferred to the Court of I Additional District Judge, Nellore, to be tried simultaneously with O.S.No.18 of 2013.

11. This petition is ordered accordingly. As a sequel, miscellaneous petitions, if any, pending in this petition shall stand dismissed.

S. RAVI KUMAR, J

19th July, 2016
Bvv

[\[1\]](#) 2003 (4) ALT 570 (DB)