

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.389 of 2016

ORDER:

This is an application filed by the petitioner under Section 24 of the Code of Civil procedure, 1908, ('the Code') requesting to withdraw O.S.No.10 of 2014 on the file of the Court of the learned VI Additional District Judge, at Sddipet of Medak District, and transfer the same to any Court of a learned Additional District Judge (Fast Track Court), Hyderabad, for trial and disposal in accordance with the procedure established by law.

2. Notice before admission came to be ordered on 08.08.2016. The notices sent to respondents 2, 3, 4 were returned with endorsement 'left' and the notice sent to respondent No.12 was returned with an endorsement 'not claimed'. In view of the afore-stated endorsements, this Court is satisfied that there is deemed service on the respondents 2, 3, 4 and 12. The remaining respondents are served with notices. Despite service of notice, the said respondents did not appear and resist the petition.

3. I have perused the material record.

4. Heard *Sri J.Vijay Kumar Goud*, learned counsel appearing for the petitioner, who is one of the defendants in the aforestated suit.

5. The case of the petitioner, in brief, is as follows:

The plaintiffs/ respondents 1 to 4 herein filed the said suit O.S.No.10 of 2004 on the file of the Court of the learned VI Additional District Judge at Sddipet, Medak District, with the following prayer:

- (i) to pass a preliminary and final decree for plaintiffs 18/48th share in the suit properties, situated at Manoharabad village, described in plaint schedule lands and appoint advocate commissioner to divide the properties into 48 equal shares and to allot 6 such shares to the plaintiffs 1, 2 and the 1st defendant and allot 3 such shares to the plaintiffs 3 and 3, allot 16 such shares to the defendant No.2 and allot 8 such shares to the defendant No.7, after making suitable provision for burial ground in Sy.Nos.722 and 723;

- (ii) award costs of the suit; and,
- (iii) grant such other relief which the Honourable Court may deem fit and proper in the circumstances.”

(Reproduced verbatim)

The respondents 1 to 4 herein purposefully suppressed facts and played fraud upon the Court below at the time of filing the suit by not adding the petitioner as well as some other family members as parties to the suit; the plaintiffs did so in order to snatch away their valuable rights. After coming to know of the filing of the suit, the petitioner, along with her sisters, namely, Waheeda Banu and Zubeda Banu, took steps immediately and filed I.A.No.553 of 2014 under Order I Rule 10 of the Code, before the Court below, for their impleadment. The Court below on contest allowed the said petition, by order dated 29.10.2014. Pursuant to the said order, the petitioners in the said IA came on record as defendants in the said suit; and they are contesting the suit in respect of their shares in the suit schedule properties. The subject suit was filed with an ill-motive only for the purpose of cancellation of gift deed which was executed by the 2nd defendant in favour of his sons, i.e., the defendants 3 to 6. The plaintiffs and the defendants are all residents of Hyderabad only; whereas the suit property is situated at Manoharabad village, Toopran Mandal, Medak District. The 2nd plaintiff, who is none else than the brother of the petitioner had not approached the Court below with clean hands and suppressed the real facts by stating that his father is having only three brothers and one sister; he gave a false affidavit; his said act is nothing but an offence. The 2nd plaintiff further suppressed the fact that his father is having other lands at Hyderabad and filed the suit at Sddipet with an intention to snatch away the suit properties without the knowledge of the petitioner. The petitioner is facing difficulty in appearing before the Court at Sddipet on the date of each and every adjournment of the said suit. The plaintiffs/ respondents are taking undue advantage of the same and are trying to get the suit decreed. The mother of the petitioner is an old aged lady needs medical care; and the

petitioner is taking care of her mother. Apart from that, the petitioner who is a poor lady is not in a position to bear the traveling expenses and other expenses. The respondents/ plaintiffs are having good financial resources and earning capacities and they are doing business. Hence, the petition is filed requesting to withdraw the suit on the file of VI Additional District Court, at Siddipet, Medak District, and transfer the same to the any Additional District Court (Fast Track Court), at Hyderabad. If the relief is not granted, the petitioner will be put to serious and irreparable loss and hardship.

6. As already noted, even the respondents, who are served with notices, also did not enter appearance.

7. In the instant petition filed for transfer of the suit, the petitioner/ defendant while attributing motives, *mala fides* and acts of suppression of facts to the plaintiffs/ respondents also pleads that the suit was filed without including the properties at Hyderabad in the schedule of the suit. It is also pleaded that the parties, viz., the present petitioner and her sisters, who were not impleaded have come on record by filing an application for their impleadment.

8. Apart from the said contentions, which do not merit consideration in an application of this nature, the other contentions which require consideration, are as under: 'The petitioner is a lady aged 33 years. She is a house wife. Her old aged mother is with her. She is taking care of her mother who needs medical care. The petitioner who is a poor lady is not in a position to bear the traveling and other expenses. The plaintiffs/ respondents are taking undue advantage of the same and are trying to get the suit decreed. The respondents/ plaintiffs are having good financial resources and earning capacities and they are doing business.' It is undisputed that two sisters of the petitioner and the petitioner were also added as parties to the suit at the behest of the petitioner and her said sisters. Be that as it may. It is to be

noted that the 3rd and 4th plaintiffs are also ladies and the 4th plaintiff is a housewife aged 65 years. As of now, no property situated at Hyderabad is the subject matter of the suit. In the suit schedule there are only two items of property; and both the said items of property are situated within the territorial jurisdiction of the Court at Siddipet. Since the suit is one for partition and determination of rights in respect of immovable properties situated at Siddipet, the suit is rightly instituted in the Court at Siddipet, within the local limits of whose jurisdiction the properties are situated. The grounds urged by the petitioner in support of her request for transfer of the suit, on an overall consideration, are not material and relevant and do not merit consideration. When the suit is not concerned, as of now, with the determination of rights in respect of any immovable property situated at Hyderabad and when the properties covered by the suit schedule are not within the local limits of the Courts at Hyderabad, it is not just, fair and proper to withdraw the suit from the Court at Siddipet, which is the competent Court, and transfer the same to any other Court not having jurisdiction. In the well considered view of this Court, the request for transfer of the suit, if considered does not promote the ends of justice. Viewed thus, this Court finds that no grounds much less valid grounds are made out by the petitioner for considering the request of the petitioner.

8. In the result, the Tr.C.M.P is dismissed.

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

M. SEETHARAMA MURTI, J

08th December, 2016

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9. In the result, the Tr.C.M.P No.248 of 2016 is allowed and F.C.O.P.No.1837 of 2015 is withdrawn from the file of the Family Court, City Civil Court, Hyderabad, and is transferred to the file of Family Court, Mahabubnagar, for trial and disposal, in accordance with the procedure established by law.

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

M. SEETHARAMA MURTI, J

08th December, 2016
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