

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Tr.C.M.P.No. 376 of 2015

ORDER:

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This petition is filed by the petitioner to withdraw A.S.No.361 of 2010 from the Court of XV Additional District Judge, Ranga Reddy District to be tried along with A.S.No.121 of 2011 pending the file of this Court.

The brief facts of the case are that the petitioner is the absolute owner and possessor of land in Sy.No.29, admeasuring Ac.02-24 guntas at Kondapur Village, Ghatkesar Mandal, Ranga Reddy District and when the respondents tried to interfere with the possession of the petitioner over the petition schedule land, the petitioner filed O.S.No.1876 of 2009 on the file of VIII Additional Senior Civil Judge, Ranga Reddy District for perpetual Injunction. The respondents 1 and 2 filed O.S.No.1071 of 2002 for seeking partition in respect of land in Sy.No.29 and also other lands. Since the subject matter of O.S.No.1876 of 2009 is also part and parcel of subject matter of O.S.No.1071 of 2002, the petitioner got transferred the suit in O.S.No.1876 of 2009 to be disposed of along with the suit in O.S.No.1071 of 2002. It is further stated that after transfer VIII Senior Civil Judge, Ranga Reddy District decreed O.S.No.1876 of 2009 in favour of the petitioner and dismissed the suit filed by

the 1st and 2nd respondents in O.S.No.1071 of 2002 by way of separate judgments dated 29-11-2010. Thereafter, the 1st and 2nd respondents filed Appeal in A.S.No.361 of 2010 against the judgment and decree in O.S.No.1876 of 2009 and whereas A.S.No.121 of 2011 on the file of this Court against the judgment and decree in O.S.No.1071 of 2002. Since the subject matter in

A.S.No.361 of 2010 is part of the subject matter in A.S.No.121 of 2011, the present CMP is filed.

Counter is filed by the respondents 1 and 2 opposing the same stating that the cause of action in two suits are different and it is further stated that two suits are disposed of by separate judgments. It is further stated that the parties are also not same in both the suits and sought for dismissal of the same.

Heard learned counsel for the petitioner and the learned counsel for the respondents.

Learned counsel for the petitioner submits that since the subject matter of land in Sy.No.29 is the subject matter in both the suits and both appeals arising out of the same, both appeals should be tried together.

On the other hand, learned counsel for the respondent submits that all the parties in the suit are not made as parties in the Transfer CMP, on that sole ground, the Transfer CMP is liable to be dismissed. He also submits that the cause of action in both the suits are different and parties are different. As such, sought for dismissal of Transfer CMP.

In this case, it is to be seen that both the appeals i.e. A.S.No.361 of 2010 and A.S.No.121 of 2011 have not been filed against the common judgment and cause of action appears to be different in both the appeals as contended by learned counsel for the respondent and the parties are not also common in both the matters and more so, in the Transfer CMP the respondents 3 and 4 are shown in the cause title stating that they are not necessary parties.

In view of the above, since all the parties are not common and cause of action appears to be different in both the appeals and the Appeal in A.S.No.361 of 2010 arose out of O.S.No.1876 of

2009 filed for simplicitor Injunction, whereas O.S.No.1071 of 2002 was filed for partition, I do not see any reason to transfer A.S.No.361 of 2010 pending on the XV Additional District Judge, which arose out of O.S.No.1876 of 2009 filed for simplicitor injunction.

Accordingly, the Transfer CMP is dismissed. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

27-01-2016
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