

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Tr.C.M.P.No. 420 of 2015

ORDER:

This petition is filed by the petitioners to withdraw the suit in O.S.No.205 of 2010 from the Court of Senior Civil Judge, Vizianagaram and transfer the same to any Court of Senior Civil Judge, situated at Visakhapatnam or at Kakinada or any other competent Courts nearer to Visakhapatnam.

The case of the petitioner is that the petitioners filed O.S.No.205 of 2010 before the Senior Civil Judge's Court, Vizianagaram against the respondent herein for specific performance of agreement of sale dated 05-01-1966) though it is wrongly mentioned as 05-01-2006).

It is the case of the petitioner that grandfather of the petitioner purchased the suit schedule property under agreement of sale and possession of property was handed over and thereafter executed registered will deed in favour of the 1st petitioner. It is further stated that after the death of grandfather of the 1st petitioner acquired the rights on the suit schedule property. The 1st respondent herein is the legal heir of original vendor filed criminal case in Cr.No.107 of 2010 on the file of I Town Police Station, Vizianagaram alleging that the agreement of sale was forged one. The petitioners were implicated as A-2 and A-3 in the said crime and they were granted anticipatory bail and the said criminal case is at the stage of enquiry. The petitioners counsel could not attend the Court due to his personal inconvenience and as such, the suit filed by them was dismissed for default. Thereafter, the same was restored and the suit is at the stage of trial. The 2nd respondent herein, who is the son of the 1st respondent, is the 2nd defendant in the suit has been threatening the petitioners not to come to Vizianagaram Court for giving evidence. A civil suit in O.S.No.5 of 2009 was pending between the 2nd respondent and one Bali Trinadha Rao and said Trinadha Rao was raided and stabbed by the 2nd respondent and his henchmen. A crime in Cr.No.34 of 2011 was registered before Vizianagaram Rural Police Station in that regard for the offence under Section 307 IPC. It is further stated that the 2nd respondent has been sending messages to them threatening not to attend the Court and not to pursue the suit filed by them. As such, the present Transfer CMP is filed.

This Court granted interim stay on 25-08-2015. Counter and vacate stay petition is filed disputing the sale agreement and also stated that the sale agreement

is dated 05-01-1966 and suit is filed in the year 2010. The respondents filed criminal case against the petitioners. It is also stated that the suit was dismissed for default and in the restoration petition, the petitioners stated that due to illness of the 1st petitioner, they could not attend the Court. They never stated that due to threat from the respondents, they could not attend the Courts. The allegation that they could not attend the Court due to threat from the respondents is invented for the first time. It is also stated that charge sheet is filed after completion of investigation in Cr.No.34 of 2011 and the same is numbered as S.C.No.5 of 2012 and the said case is adjudicated resulting in acquittal of the 2nd respondent on 24-03-2015. The Transfer CMP is filed with all false allegations and the respondents denied the allegations that they are sending messages to the petitioners. They also denied that they have threatened the petitioners. The petitioners have filed I.A.No.590 of 2010 for ad-interim injunction, which was also dismissed on 31-10-2011 by the Senior Civil Judge, Vizianagaram. Against the same, CMA.No.1150 of 2012 was filed and said CMA was also dismissed.

Heard learned counsel for the petitioners, who stated that there is threat to the life of the petitioners and they are not in a position to prosecute the present suit filed on the file of Senior Civil Judge, Vizianagaram.

On the other hand, learned counsel for the respondents stated that only vague allegations are made in the affidavit and the 2nd respondent is acquitted in the criminal case in S.C.No.5 of 2012 on 24-03-2015. As such, the claim made by the petitioners is unfounded.

In this case, it is to be seen that the Cr.No.34 of 2011, in which it is stated that the 2nd respondent is involved charge sheet is filed and the same is numbered as S.C.No.5 of 2012 and he was acquitted in the said case on 24-03-2015. Though Transfer CMP is filed in the month of July, 2015, said aspect is not brought to the notice of this Court. Though the petitioners stated that the respondents are threatening the petitioners, no complaint is lodged by the petitioners. The ground shown in the petition filed for restoration of present suit is that the due to illness of the 1st petitioner, they could not attend the Court. But there is no allegation that there is threat from the respondents for not prosecuting the case. The allegation that they are unable to the Court due to threat from the respondent is made for the first time in the Transfer CMP, but that was not a ground for restoration of suit.

In view of the facts and circumstances, the petitioners have not made out any case for transfer of suit in O.S.No.205 of 2010 pending on the file of Senior

Civil Judge, Vizianagaram and accordingly, the Transfer CMP is dismissed.

As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

19-01-2016
nvl

A.RAJASHEKER REDDY,J