

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI
Transfer Civil Miscellaneous Petition No.599 of 2016

ORDER:

This is a petition under Section 24 of the Code of Civil Procedure, 1908, by the petitioners-defendants 2 and 5 (father and daughter) in OS.no.54 of 2016 on the file of the Court of the learned Senior Civil Judge, Gurazala, requesting to withdraw the said suit from the file of the said Court and transfer the same to the Senior Civil Court of Ranga Reddy District at L.B. Nagar, for trial and disposal in accordance with law.

2. I have heard the submissions of *Sri J. Rajeswar*, learned counsel for the petitioners-defendants 2 and 5; *Sri G.V. Ramana Murthy*, learned counsel for the 1st respondent-plaintiff; and of *Sri A. Samir Kumar Reddy*, learned counsel for the 2nd respondent-1st defendant. I have perused the material record.

3. The parties shall hereinafter be referred to as they are arraigned in the suit.

4. The case of the defendants 2 and 5 in support of their request for transfer, in brief, is as follows: - 'The plaintiff and the defendants 1 to 3 are brothers. The 3rd defendant was given in adoption to one Annapureddy Saida Reddy. As such, he became a member of the family of the said Saida Reddy. The plaintiff filed the suit for partition of 10 items of the plaint schedule property. Items 3 to 10 of the plaint schedule properties are situate within the territorial jurisdiction of Senior Civil Court at Ranga Reddy District; item no.2 is situated within Nalgonda District, which is adjacent to Ranga Reddy District; item no.1 of the plaint schedule property is alone situated within Guntur District. As most of the properties are situate within the territorial jurisdiction of the Court at Ranga Reddy District, the appropriate Court to deal with the matter is the Senior civil Court at Ranga Reddy District; and, if the suit is

transferred to the Court at Ranga Reddy District, it would be convenient for the parties and witnesses to appear before that Court and give evidence. The suit is instituted by the plaintiff in collusion with the 1st defendant in the suit. Therefore, it is, in the interests of justice, to transfer the suit as prayed for in the petition.'

5. The plaintiff and the 1st defendant filed detailed counters denying the allegations made by the defendants 2 and 5. It is, *inter alia*, contended in the counters as follows: - 'The defendants 2 and 5 came to this Court with false allegations by wrongly mentioning the date of the death of the mother. One of the issues for consideration in the suit is with regard to a Will which is being disputed as a forged Will. The plaintiff is a driver in APSRTC of Macherla Depot within Guntur District. The 1st defendant is a Teacher and a resident of Pentachintala Village of Guntur District. The 1st petitioner herein, that is, the 2nd defendant is a businessman. In the facts and circumstances of the case, no grounds are made out for ordering transfer of the suit. If anyone of the properties is situated within the territorial jurisdiction of a particular Court, the suit for partition can be instituted in that Court. Therefore, the transfer petition is liable to be dismissed.'

6. The learned counsel for the 1st defendant would submit that the 1st defendant is a Teacher and is a resident of Pentachintala. He supports the case of the plaintiff saying that if the suit is transferred it would be difficult for the 1st defendant who is working as a Teacher to attend the Court proceedings in the Court at Ranga Reddy District and that therefore the transfer petition is liable to be dismissed.

7. I have bestowed my attention to the facts and submissions. The facts are narrated, shorn of un-necessary details, as in this proceeding for transfer it is not necessary to deal with serious contentions which the parties traded in their pleadings in the suit. The plaintiff is a Driver working in APSRTC of

Macherla Depot is not in dispute. He brought the suit against the defendants, including the petitioners herein, for partition stating *inter alia* that the plaint schedule properties are liable for partition being joint family properties. As rightly pointed out by the learned counsel for the plaintiff, the suit for partition can be instituted in a Court within the local limits of whose jurisdiction one of the immovable properties liable for partition is situate. In the case on hand, item no.1 of the plaint schedule property is situated within the limits or territorial jurisdiction of the Court of the Senior Civil Judge at Gurazala of Guntur District. Even the property mentioned in item no.2 of the plaint schedule is situated in Nalgonda District. Therefore, the Court at Gurazala is having jurisdiction to entertain and try the suit is not in dispute. Reference may also be had to Section 17 of the Code of Civil Procedure, 1908, which provides that where a suit is to obtain relief respecting immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situated. In *Dhannalal v. Kalawatibai and Others* ([2002] SUPP1SCR19) the Supreme Court held as follows: 'Plaintiff is dominus litis, that is, master of, or having dominion over, the case. He is the person who has carriage and control of an action. In case of conflict of jurisdiction, the choice ought to lie with the plaintiff to choose the forum best suited to him unless there be a rule of law excluding access to a forum of plaintiff's choice or permitting recourse to a forum will be opposed to public policy or will be an abuse of the process of law.' It is only baldly alleged in the petition that transfer as sought for, if permitted, would be convenient to the witnesses to be examined in the suit, without giving names of the proposed witnesses and their places of residence. Further, the 2nd defendant is a businessman and the 5th defendant who is his daughter is a student. Whereas the plaintiff and the 1st defendant, who is supporting the plaintiff in the present proceeding, are both employed and working respectively as Driver in RTC, Macherla Depot and

Teacher in a School at Rentachintala, which are within the local limits of the Courts at Guntur. In the facts and circumstances of the case the petitioners, defendants 2 and 5, cannot be permitted to pick and choose the Court at Ranga Reddy District on the ground that it suits their convenience and seek transfer of the plaintiff's suit, more particularly when they are unable to show any special circumstances to accept their plea. Further, on weighing the conveniences and inconveniences of the parties and the competing probabilities and on consideration of the legal principles applicable, this Court is of the considered view that the choice of the plaintiff deserves to be accepted and shall prevail as the choice lies with the plaintiff to choose the forum best suited to him.

8. On the above analysis, this Court is of the considered view that there is no merit in the petition seeking transfer of the suit.

9. In the result, the petition is dismissed. No costs.

Miscellaneous petitions pending if any in this TRCMP shall stand closed.

M. SEETHARAMA MURTI, J

29th December, 2016
Vjl