

HON'BLE SRI JUSTICE S. RAVI KUMAR

Tr.C.M.P.No.737 of 2015

ORDER:

This petition is filed to withdraw O.S.No.263 of 2015 from the file of III Additional District Judge, Tirupati, Chittoor District and transfer the same to III Additional District Judge, Rajampet, Kadapa District.

2. As per the affidavit filed in support of the petition, petitioners are residents of Sattupalle village, Pengallur Post & Mandal, YSR District and plaintiff i.e., respondent herein is a resident of USA and the suit is filed through GPA holder through un-registered GPA in the name of Shiva Kumar, who is resident of Proddatur, Kadapa District and the schedule property i.e., item, No.1 is within the jurisdiction of Kadapa District and the other 5 items shown in the plaint are small extents situated within the jurisdiction of Tirupati and that petitioner is an aged person and that there is no cause of action within the jurisdiction of Tirupati, therefore O.S.No.263 of 2015 is to be transferred from Tirupati Court to Rajampet Court, Kadapa District.

3. Respondent filed counter disputing the affidavit averments of petitioners and according to his counter, the properties are joint family properties, which are in joint possession and enjoyment and item No.1 is ancestral property and as items No.2 to 5 are within jurisdiction of III Additional District Judge, Tirupathi, Chittoor District, suit was filed before that Court and the objection with regard to jurisdiction is not sustainable and it is not a ground for transfer of suit. It is further contended that plaintiff is *dominus litis* and right to choose the Court is his choice and

defendant cannot demand for the court of his choice, therefore, the application is liable to be dismissed.

4. Heard both sides.

5. Both sides submitted their arguments in support of contentions of their clients.

6. I have perused the material papers including the affidavit of petitioners and counter-affidavit of respondent. The main objection appears to be with regard to jurisdiction of Tirupati Court.

7. As rightly pointed out by advocate for respondent that cannot a ground for transfer and it is a defence available for defendants to be raised before trial Court and on that ground the suit cannot be transferred. The other ground is that two of the petitioners are aged persons and suffering with ailments and it is difficult for them to attend Tirupati. Here, the presence of petitioners is not necessary for every adjournment before trial Court as it is a suit where they can be represented by advocate. Their presence may be required only at the time of giving evidence. Even for that, if they feel any inconvenience, they can invoke the provisions for appointment of advocate commissioner to record their evidence at the place of their choice by showing sufficient reasons, so that cannot be a ground for transfer of suit.

8. On a scrutiny of the material, I am of the view that there are absolutely no grounds to exercise the powers under Section 24 of CPC to transfer the suit from Tirupati Court to Rajampet Court, Kadapa District.

9. For these reasons, this transfer CMP is devoid of merits

and liable to be dismissed.

10. Accordingly, this Transfer Civil Miscellaneous Petition is dismissed. No costs. Miscellaneous Petitions, pending in this petition, if any, shall stand closed.

S. RAVI KUMAR, J

Date: 24-06-2016.

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