

HON'BLE SRI JUSTICE S. RAVI KUMAR

TRANSFER C.M.P.No.235 of 2016

ORDER:

This petition is filed to withdraw O.S.No.432 of 2015 from the file of XI Junior Civil Judge, City Civil Court, Secunderabad, and transfer the same III Senior Civil Judge, City Civil Court, Secunderabad, to be tried along with O.S.No.133 of 2015.

2. Petitioner herein is defendant in O.S.No.432 of 2015 and according to her affidavit she filed O.S.No.133 of 2015 before

III Additional Senior Civil Judge, City Civil Court, Secunderabad, when the respondents tried to interfere with her property and while the matter stood thus, respondents filed O.S.No.432 of 2015 for injunction before XI Junior Civil Judge, City Civil Court, Secunderabad. She stated that parties are common and are claiming same property and the only issue is identification dispute and if the suits are tried separately, there will be possibility of conflicting judgments, therefore, to avoid multiplicity of litigations, both the suits have to be tried together. For these reasons, O.P.No.432 of 2015 pending before XI Junior Civil Judge, City Civil Court, Secunderabad, has to be withdrawn and transferred to III Senior Civil Judge, City Civil Court, Secunderabad.

3. Respondents filed counter disputing the affidavit

averments of petitioner and they referred to the facts relating to both the suits in their counter and contended that though the parties are same, they are claiming different properties in its extent and survey numbers and that the boundaries are also different and that there is no identification dispute as contended by petitioner. It is further contended that the land claimed by them and land claimed by petitioner are different and situated in different survey numbers with different boundaries, therefore, there is no identification dispute and the remedy of petitioner, if any, is only under the Boundaries Act and that the apprehension of petitioner that there will be possibility of conflicting judgments in both the suits is incorrect, therefore, transfer petition is liable to be dismissed.

4. Heard both sides.

5. Both sides submitted their arguments supporting the contentions raised by their respective clients.

6. I have perused the plaint copies in both the suits, particularly, the schedules appended to the suits. Though advocate for petitioner contended that the dispute is only with regard to survey number, on a reading of plaint averments with reference to the schedules mentioned therein, it appears prima facie that both the properties are different and it is not a identification dispute and it is a dispute of boundaries, which has to be decided independently, therefore, the apprehension that there would be conflicting judgments is not well founded.

7. For these reasons, I am of the view that there are no grounds for transfer of O.S.No.432 of 2015 from XI Junior Civil Judge, Secunderabad to III Senior Civil Judge, City Civil Court, Secunderabad and both the suits have to be tried independently and both the trial Courts shall dispose of the suits independently not being influenced by any of the observations made in this order.

8. With the above observation, transfer C.M.P. is dismissed.

9. Miscellaneous petitions pending, if any, shall stand closed.

S. RAVI KUMAR, J

26th July 2016.

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