

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Tr.C.M.P.Nos.455 And 456 of 2015

COMMON ORDER:

-
-

Transfer CMP.No.455 of 2015 is filed by the petitioner for transfer of O.S.No.681 of 2011 from the file of Principal Senior Civil Judge, Warangal to the Court of V Additional District Judge, Warangal to be tried along with O.S.No.14 of 2008.

Transfer CMP.No.456 of 2015 is filed by the petitioner to withdraw I.A.No.1468 of 2012 in O.S.No.502 of 2009 from the file of Principal Senior Civil Judge, Warangal and transfer both to the Court of V Additional District Judge, Warangal to be tried along with O.S.No.14 of 2008.

The case of the petitioner is that the petitioner filed O.S.No.681 of 2011 against the respondents for cancellation of registered gift settlement deed bearing Nos 797 of 2008 situated at Ellambazar, Warangal and the respondents are sons of his brother. One Oleti Muralikrishna filed O.S.No.14 of 2008 for specific performance of agreement of sale in respect of very same house, which is pending on the file of V Additional District Judge, Warangal basing on agreement of sale said to have executed by mother of the petitioner. The petitioner also filed another suit in O.S.No.502 of 2009 for partition and a preliminary decree was passed and in that suit, I.A.No.1468 of 2012 filed for passing final decree. Since the suit schedule property in both the suits is one and the same i.e. in O.S.No.681 of 2011 and I.A.No.1468 of 2012 and O.S.No.14 of 2008 to be tried together alleging that Transfer OP.Nos.306 and 307 of 2013 were filed before Principal District Judge's Court, Warangal and the same was dismissed vide

common order dated 04-02-2014 without assigning any reasons.

Learned counsel for the petitioner submits that since the suit schedule property in all the suits and I.A. is one and the same, in order to avoid conflicting judgments, it is better to try both suits and I.A. in one Court.

On the other hand, learned counsel for the respondents submits that the plaintiff in O.S.14 of 2008 is not a party in transfer OP and the District Court rightly dismissed the same. He also submits that in O.S.No.14 of 2008 the sole defendant died and suit is abated. He also submits that cause of action in all the suits is different.

It is to be seen that O.S.No.14 of 2008 filed by one Oleti Murali Krishna has abated by the death of sole defendant, though the learned counsel for the petitioner states the application for setting aside abatement is pending. Until it is allowed, it cannot be said that O.S.No.14 of 2008 is pending. When once, O.S.No.14 of 2008 is abated, the question of transfer of O.S.No.681 of 2011 and I.A.No.1468 of 2012 to be tried along with O.S.No.14 of 2008 does not arise. Though O.S.No.14 of 2008 is not sought to be transferred, but the purpose for filing transfer CMPs is O.S.No.681 of 2011 and I.A.No.1468 of 2012 to be tried along with O.S.No.14 of 2008. But there are no grounds made out by the petitioner to transfer these matters, as observed by the Court below. The plaintiff in O.S.No.14 of 2008 is also not made as party in the transfer OPs. In view of the same, it cannot be said that order passed by the District Court refusing to transfer of suits and I.A. is erroneous.

Accordingly, Transfer CMPs are dismissed. However, liberty is granted to the petitioner to institute fresh Transfer CMP after O.S.No.14 of 2008 was restored.

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

A.RAJASHEKER REDDY,J

04-01-2016
Nvl