

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.696 of 2016

ORDER:

This transfer petition is filed by the plaintiff in OS.no.159 of 2016 on the file of the Court of the learned III Additional Chief Judge, City Civil Court, Hyderabad, requesting to withdraw OS.no.2326 of 2010 filed by the 1st respondent herein on the file of the Court of the learned XVI Junior Civil Judge, City Civil Court, Hyderabad, and transfer the same to the former Court, that is, the Court of the learned III Additional Chief Judge, for trial and disposal along with OS.no.159 of 2016 pending on the file of the said Court.

2. I have heard the submissions of *Sri V.V. Narasimha Rao*, learned counsel for the petitioner. I have perused the material record including the present petition and the counter affidavit filed on behalf of the 1st respondent and also the copies of the plaints in both the suits.

3. Though a counter affidavit is filed resisting the application of the petitioner, no submissions are made on behalf of the 1st respondent.

4. The facts necessary for consideration, in brief, are as follows:

The petitioner herein filed OS.no.159 of 2016 on the file of the Court of the learned III Additional Chief Judge, City Civil Court, Hyderabad, for declaration of title and consequential perpetual injunction in respect of part and parcel of land bearing Sy.no.129/ 49/ D2 of an extent of 1050 square yards situate at Road No.12, Banjara Hills, Hyderabad, morefully described in the schedule annexed to the plaint. Much prior to the said suit, the 1st respondent herein filed OS.no.2326 of 2010 on the file of the Court of the learned XVI Junior Civil Judge, City Civil Court, Hyderabad, for a perpetual injunction in respect of property bearing H.No.8-2-685/ P1, 8-2-685/ P, 8-2-685/ P6/ 1 & 8-2-685/ P6 admeasuring 2276.54 square yards as per lay out permit No.16/ 56

dated 05.10.1996 situate at road no.12, Banjara Hills, Hyderabad, morefully described in the schedule annexed to the said plaint.

5. Learned counsel for the petitioner fairly submits that earlier Tr.OP.No.869 of 2016 filed for the same relief on the file of the Court of the learned Chief Judge, City Civil Court, Hyderabad, was dismissed and that later this transfer petition is filed seeking the very same relief. It is not in dispute that this petition is maintainable despite the fact that the Tr.O.P filed earlier was dismissed by the learned Chief Judge.

6. The case of the petitioner herein is that his suit for declaration of title and perpetual injunction in respect of the very same property covered by the plaint schedule in OS.no.2326 of 2010 filed by the 1st respondent is a more comprehensive suit being a suit for declaration of title and that since the suit of the 1st respondent is only a suit for perpetual injunction it is just and appropriate that both the suits shall be decided by one Court to avoid conflicting judgments and that bringing both the suits to the file of one Court would be convenient for both the parties and such a course would sub-serve the ends of justice.

7. A perusal of the counter affidavit of the 1st respondent reflects that the 1st respondent's contention is that the properties covered by the respective schedules of the two suits are totally different and that there is no nexus between the issues that fall for consideration in the two suits and that neither the extents mentioned in the respective plaint schedules nor the numbers and the boundaries of the properties tally and that therefore the properties involved in the two suits are different and distinct, and, hence, there is no connection whatsoever between the two suits and so, both the suits need not be tried and disposed of by one Forum.

8. Learned counsel for the petitioner would submit that the question as to whether the properties are one and the same or not is a matter to be decided

on merits in the suits after full fledged trial, but, the said aspect cannot be prejudged in this transfer petition and that the learned III Additional District Judge granted injunction orders earlier and the same were made absolute by an order dated 02.06.2016 and that the CMA filed by the 1st respondent herein is pending before this Court. The 2nd respondent herein is stated to be a co-defendant of the 1st defendant in the suit of the petitioner herein.

9. In this transfer miscellaneous petition, though a conclusive finding cannot and need be recorded on the aspect of the identity of the properties mentioned in the schedules of the two suits, it is trite to note that for the limited purpose of examining the merits of the contentions of the petitioner herein, this Court is obligated to incidentally examine the question as to whether the properties covered by the schedules in the two suits are one and the same as the request of the petitioner in the present transfer petition is based only on the principal contention that the properties, which are subject matters of the two suits, are one and the same.

10. I have given detailed and thoughtful consideration to the facts and submissions. I have carefully perused the schedules of the two complaints. The numbers and extents of the properties covered by the two suits are already stated supra, while extracting the pleadings and submissions. Now it is necessary to advert to the boundaries of the properties covered by the two suit schedules. The property being claimed by the petitioner herein in his suit of the year 2016 is within the following boundaries: NORTH: Plot No.1; SOUTH: Plot No.3; EAST: Neighbors land; WEST: 40' wide road. It is the specific case of the petitioner that there is no house property in the said schedule of property. Whereas the property covered by the schedule of the suit filed by the 1st respondent herein is within the following boundaries: NORTH: 80 feet road; SOUTH: 30' Road; EAST: 20' Road + existing Asphalt Road; WEST: Existing 20' road + 20' Road. It is specific case of the 1st respondent herein that there is a

house with the number/ s mentioned therein. A plain perusal of the schedules and a casual examination of the same in juxtaposition would *ex facie* reflect that the properties covered by the schedules of the two suits are not one and the same as being contended by the petitioner herein.

11. On such a cursory and superficial analysis of the schedules annexed to the complaints in the two suits, this Court finds that the petitioner herein could not satisfy *prima facie* that the properties in the two suits *ex facie* are one and the same. Further, the suit, OS no.2326 of 2010 filed by the 1st respondent, which is of the year 2010 is part-heard and is coming up for the evidence on the side of the defendant, that is, the petitioner herein, whereas the suit filed by the petitioner herein, which is of the year 2016, is at a nascent stage and even issues are not yet settled. Thus, no grounds much less valid grounds are made out by the petitioner for granting the request made in the petition.

12. Viewed thus, this Court finds that there is no merit in the request of the petitioner and the petition is liable to be dismissed.

13. In the result, the petition is dismissed.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

15th December, 2016
Vjl