

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Transfer Civil Miscellaneous Petition No.655 of 2016

ORDER:

This application, under Section 24 of the Code of Civil Procedure, 1908, is filed by the petitioners/defendants in O.S.No.5 of 2014 on the file of the XV Additional District Judge, Nuzvid, Krishna District, requesting to withdraw the said suit and transfer the same from the said Court to any other Court in Krishna District for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of Sri *S.Subba Reddy*, learned counsel for the petitioners/defendants ('petitioners', for brevity) and Sri *Kowturu Pavan Kumar*, learned counsel for the respondent/plaintiff ('respondent' for brevity). I have perused the material record.

3. The case of the petitioners, in brief, is this: 'The respondent filed the instant suit originally (O.S.No.13 of 2011) on the file of the V Additional District Court, Vijayawada, against the petitioners for recovery of money. On transfer of the said suit to the Additional District Court at Nuzvid, the said suit was renumbered as O.S.No.5 of 2014. There is rivalry between the first petitioner and one Mukkera Venkata Krishna Reddy. He got filed number of cases against the petitioners. Out of the number of suits, three suits, viz., O.S.No.25 of 2013, O.S.No.12 of 2013 and O.S.No.5 of 2014 were transferred from the Court at Vijayawada to the Court at Nuzvid after establishment of the Court at Nuzvid. Out of the said suits, O.S.No.25 of 2013 was filed by said M.V.Krishna Reddy against the 2nd petitioner, who is the wife of the first petitioner, on the

basis of an agreement of sale dated 27.12.2009 engrossed on a stamp paper of the year 1994 for specific performance. That suit was instituted in December, 2009. The Presiding Officer of the Court at Nuzvid decreed the said suit on 13.06.2016. Aggrieved of the same, the 2nd petitioner filed A.S.No.674 of 2016 before this Court. In the said appeal, which is pending, stay orders are granted by this Court. O.S.No.12 of 2013 was filed by one K.Hari Krishna Reddy for recovery of money against both the petitioners on the foot of a promissory note. The petitioners contested the said suit. The said suit was decreed on 03.08.2016 by the same Presiding Officer of the said Court at Nuzvid even without considering the written arguments and the decisions cited on behalf of the petitioners who are defendants therein. Aggrieved of the judgment in the said suit, the petitioners filed A.S.No.1084 of 2016. The subject suit O.S.No.5 of 2014 is also filed for recovery of money by the respondent herein on the foot of a promissory note. In the said suit, the recording of evidence on the side of the plaintiff was completed. The suit is now coming up for evidence of the petitioners/defendants. In view of the disposal of the earlier suits by the same Presiding Officer without considering the written arguments and the legal aspects, the counsel for the petitioners filed a memo on 21.09.2016 before the Court below stating that the petitioners are about to move an application for transfer of the said suit. Despite filing of the said memo, the suit was adjourned by the Presiding Officer to 28.09.2016. In the circumstances, the petitioners lost confidence in the Presiding Officer who is presiding over the XV Additional District Court, Nuzvid. Therefore, seeking indulgence of this Court, the present

transfer petition is filed seeking the relief as mentioned in the introductory paragraph of this order.”

4. Though no counter is filed by the respondents, the petition is orally resisted.

5. At the hearing, the learned counsel for the petitioners, while reiterating the pleaded case of the petitioners, would submit as follows: “The Presiding Officer of the Court below earlier disposed of O.S.No.25 of 2013. Though that suit for specific performance was based on an agreement of sale dated 27.12.2009 engrossed on a stamp paper of the year 1994, the learned judge of the Court below decreed the said suit without considering the legal aspects and the contentions of one of the petitioners herein who is the defendant in the said suit. Further, the same learned Presiding Officer disposed of O.S.No.12 of 2013 and decreed the suit against the petitioners without advertent to the written arguments and also the precedents cited in support of the defence of the petitioners herein/defendants therein. Aggrieved thereof, the petitioners filed A.S.No.1084 of 2016 before this Court. A Division Bench of this Court, in A.S.M.P.No.2603 of 2016 filed in the said appeal, having noted that the suit transaction in the said suit is rendered doubtful even going by the findings recorded by the learned Presiding Officer of the trial Court and having deviated from the usual order of directing deposit 50% of the decretal amount due, granted interim stay order as prayed for subject to the petitioners/defendants depositing 1/4th of the suit amount along with suit costs. The said two instances made the petitioners to lose confidence in the Presiding Officer of the Court below and in the

circumstances stated, the petitioners apprehend that if the same Presiding Officer disposes of the subject suit O.S.No.5 of 2014, he will not render justice according to law.”

6. In support of the contentions of the petitioners, the learned counsel for the petitioners placed reliance on the decision of the Supreme Court in Kulwinder Kaur alias Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others¹.

7. Per contra, the learned counsel for the respondent/plaintiff, while resisting the application, submitted as follows: - “The present respondent is not a party to the two earlier suits referred to in the pleadings of the petitioners, though the petitioners may be parties to the said suits. On mere apprehensions, transfer of the suit cannot be sought. Mere apprehension is not a reasonable ground to order transfer of a suit. The respondent is unconnected with the two previous suits. There are no reasonable grounds urged in the transfer petition. Mere disposal of a suit against the petitioners by a Judicial Officer cannot legitimately be made a foundation for transfer of the suit. Under law, the proper remedy is only by way of an appeal or revision. The learned Presiding Officer of the Court at Nuzvid has taken a particular view in another case to which the respondent is not a party is not a ground to transfer the respondent’s case. The losing party in every case will certainly have a grievance against the Presiding Officer. Therefore, on the ground that the Presiding Officer earlier passed an order unfavourable to a party, transfer cannot be sought and ordered. In the present suit, the plaintiff’s/respondent’s

¹ (2008) 3 Supreme Court Cases 659

side evidence is already concluded. Even though the two earlier suits were disposed of against the present petitioners, they did not seek transfer of this suit at an earlier stage of the matter; but, after the evidence on the side of the plaintiff is concluded, they filed the present petition only to drag on the matter.”

8. In support of the said contentions, the learned counsel for the respondent placed reliance on the following two decisions:

1. Ratanlal Vs. Suresh Kumar²
2. Gorrela Veerraju @ Buli Raju Vs. Velugubantla Chandrakantham³

9. I have given detailed and earnest consideration to the facts and submissions. I have gone through the precedents cited.

10. In Kulwinder Kaur's case first *supra*, the Supreme Court, while reading Sections 24 and 25 of the Code together and keeping in view the various judicial pronouncements, laid down certain broad propositions as to what may constitute grounds for transfer of a suit and held as follows:-

They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; “interest of justice” demanding for transfer of suit, appeal or other proceeding, etc.

Having culled out the broad propositions, the Supreme Court sounded a word of caution as follows:-

Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive.

² AIR 1987 Madhya Pradesh 178

³ 1995 (3) ALD 896

In view of the precedential guidance in the decision of the Supreme Court there is no need to separately deal with the precedents cited by the learned counsel for the respondent.

11. Thus, from the above decision of the Supreme Court, it appears that there is no straight-jacket formula for consideration in the matters of this nature and each case has to be decided on the facts and circumstances peculiar to the facts of the case. In the said decision, the Supreme Court held that although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection.

12. Keeping in view the above settled legal position, this Court has to now decide the issue involved in the present transfer petition. No doubt, as rightly pointed out by the learned counsel for the respondent, the respondent is not a party to the two previous suits, viz., O.S.No.25 of 2013 and O.S.No.13 of 2011, to which, the 2nd petitioner herein and petitioners herein respectively are parties and which were disposed of by the same Presiding Officer of the Court at Nuzvid. Be that as it may. The petitioners' apprehension has nothing to do with the respondent, his pleaded case and his conduct. The apprehensions expressed are in regard to the approach of the Judicial Officer who disposed of the earlier two suits to which the 2nd petitioner and the petitioners herein respectively are parties. Coming to the contention that on mere apprehension, a transfer cannot be made, be it noted that at the hearing,

the petitioners placed before this Court, the order dated 20.12.2016 of a Division Bench of this Court passed in A.S.M.P.No.2603 of 2016 in A.S.No.1084 of 2016 filed by the petitioners herein assailing the decree passed and judgment rendered by the same Presiding Officer in O.S.No.12 of 2013 filed by one K.Hari Krishna Reddy for recovery of money against both the petitioners on the foot of a promissory note. The said order of the Division Bench reads as under:

The judgment and money decree under appeal require examination. However, we are inclined to deviate from the usual order of directing deposit of 50% of the decretal amount due, as we are of the opinion, *prima facie*, that the suit transaction is rendered doubtful even going by the findings recorded by the trial Court. There shall accordingly be interim stay as prayed for subject to the petitioners/ appellants depositing 1/4th of the suit amount along with costs within six(6) weeks from the date of receipt of a copy of this order to the Credit of O.S.No.12 of 2013 on the file of XV Additional District Judge, Nuzvid, Krishna District.

13. In Kulwinder Kaur's case (1st *supra*), the Supreme Court held as follows:-

...The question of expediency would depend on the facts and circumstances of each case but the paramount consideration for the exercise of power must be to meet the ends of justice.

...But the paramount consideration must be to see that justice according to law is done; if for achieving that objective the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner's plea for the transfer of the case must be tested on this touchstone."

14. Admittedly, the petitioners lost two suits; and the said two suits were decreed against them by the Presiding Officer before whom the subject suit in which the petitioners are defendants is pending. In view of the approach of the learned Judge in the two suits, which caused prejudice to the petitioners according to them, the petitioners submit that they lost confidence and therefore, they seek indulgence of this Court.

15. Having regard to the facts and submissions and without making any observations, which may cast aspersions on the character and conduct of the Judicial Officer, this Court is of the considered view that if the relief sought for is granted, the ends of justice would be met and the petitioners ultimately, whether they lose or succeed in the suit, would come out of the Court hall with the satisfaction that they have been fairly dealt with in the system. Moreover, once apprehensions are expressed and aspersions are cast against a Judicial Officer that Judicial Officer will always be willing to say that the case may be transferred from the file of his Court and he may be relieved of the obligation of disposing the suit so that the parties would get the satisfaction of fair trial as they desire. Viewed thus, this Court finds that the ends of justice would be sub-served if the suit is transferred from the file of the present Court to any other Court.

16. In the result, this transfer petition is allowed and O.S.No.5 of 2014 is withdrawn from the file of the learned XV Additional District Judge, Nuzvid, Krishna District, and is transferred to the Court of the learned IV Additional District Judge, Vijayawada, Krishna District, for trial and disposal in accordance with the procedure established by law. It is made clear that the transferee Court shall take up the case from the point at which it is transferred without any necessity of re-trial *de novo*.

There shall be no order as to costs. Miscellaneous petitions, if any, pending in this Transfer CMP, shall stand closed.

M. Seetharama Murthi, J

29th December, 2016

Note:- Issue CC today

(B/o) Bvv