

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 371 OF 2017

ORDER:

This petition under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') is filed by the petitioner to withdraw O.S.No. 797 of 2011 on the file of the Court of Special Court for SC/ST cases cum VII Additional District Judge, Ranga Reddy District at L.B. Nagar, filed by the respondent and transfer the same to the Court of II Additional District Judge, Ranga Reddy District at L.B. Nagar, where O.S.No. 1290 of 2014 and O.S.No. 803 of 2015 filed by the petitioner are pending and try all the suits jointly and dispose of them.

The grounds raised in the petition are as follows:

The petitioner filed O.S.No. 1290 of 2014 for dissolution of partnership firm and for rendition of true and correct account of M/s. Shanthi Pharma Marketers and O.S.No. 803 of 2015 for dissolution of partnership firm and rendition of true and correct accounts of M/s. Sri Shanthi Pharma Agencies. The respondent filed O.S.No. 797 of 2011 for specific performance of agreement of sale allegedly executed by the petitioner in his individual capacity. The agreement of sale was written on the stamp papers purchased in the name of the firms and the signatures of the petitioner were allegedly obtained on those papers by misrepresentation by the husband of the respondent who is a practicing Chartered Accountant. To avoid conflicting judgments, the petitioner sought withdrawal and transfer of O.S.No. 797 of 2011 on the file of the Court of VII Additional District Judge cum Special Court for SC/ST cases, R.R. District at L.B. Nagar, to the Court of II Additional District Judge, R.R. District at L.B. Nagar, to try along with the other two suits.

During hearing, learned counsel for the petitioner drawn the attention of this Court to the stamp papers, purchased in the name of M/s. Shanthi Pharma, on which the agreement of sale was written and also partnership deeds *etc.*, demonstrating that the agreement was obtained by misrepresentation by the husband of the respondent who is a practicing Chartered Accountant and got filed the suit by fabrication of the documents and prayed to withdraw O.S.No. 797 of 2011 and transfer the same to the Court of II Additional District Judge.

Whereas learned counsel for the respondent would contend that the trial in O.S.No. 797 of 2011 is almost completed, heard the argument of the plaintiff therein who also filed written arguments and the matter was posted for the argument of the petitioner herein and therefore at this stage, this suit cannot be withdrawn and transferred to club with the other two suits which are at the stage of commencement of trial and prayed for dismissal of the petition.

Undisputedly the reliefs claimed in all the suits are different. The nature of the dispute is also different. The **subject** matter of O.S.No. 797 of 2011 is agreement of sale allegedly executed by the petitioner in favour of the respondent on stamp papers purchased in the name of M/s. Shanthi Pharma while the other two suits are for dissolution of partnership firms and rendition of true and correct accounts. All the three suits are being contested by the parties. However, O.S.No. 797 of 2011 is filed in the year 2011 and the other two suits are filed in the years 2014 and 2015 respectively. The nature of evidence in a suit for specific performance is totally distinct from the evidence to be adduced in the other two suits filed for dissolution of the partnership firms and rendition of true and correct accounts. Therefore, it is difficult to exercise power under Section 24 of C.P.C. to withdraw and transfer O.S.No. 797 of 2011. That apart, the trial in O.S.No. 797 of 2011 is completed according to the respondent but the petitioner disputed the said fact contending that the petitioner is going to file an

application to reopen at the stage when the matter is posted for argument of the petitioner. However, major part of trial is completed. In such case, clubbing the matter with the other two suits and conducting trial in all the three matters does not arise since the trial in the other two suits is not yet commenced. Therefore, I find no ground to allow this petition.

The petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No costs.

M.SATYANARAYANA MURTHY, J.

Date: 28-06-2017.

JSK

