

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3019 of 2017

ORDER:

- 1) Heard learned counsel for the petitioner and learned counsel for the respondents.
- 2) The present C.R.P. is filed under Article 227 of the Constitution of India questioning the order dated 20.03.2017 passed in Transfer O.P.No.208 of 2016 on the file of the Principal District and Sessions Judge, Chittoor, wherein an application filed under Section 24 of the Civil Procedure Code, seeking transfer of O.S.No.1 of 2013 from the Court of XI Additional District Judge, Piler to any other Additional District Judge's Court at Tirupati, was rejected.
- 3) The facts in issue are as under:-

The first respondent herein filed O.S.No.4 of 2006 before the II Addl. District Judge, Madanapalle, for division of plaint schedule property into four equal shares and for allotment of one such share to her. On an application in I.A.No.534/2007, the Tahasildar, Piler Mandal was added as a party and subsequently, respondents 7 to 9 were impleaded as parties. In view of the establishment of a Court at Piler, the suit was transferred to the court of XI Additional District Court, Piler on point of jurisdiction wherein it was re-

numbered as O.S.No. 1 of 2013. It is alleged that as the second respondent is a practicing Advocate at Piler and third respondent, who is the sister of the second respondent is also a practicing Advocate at Piler, while the husband of the 4th respondent is also a practicing Advocate at Chittoor and Piler, and as they being influential in both the revenue divisions, and as no Senior Advocate is coming forward to defend him at Piler, he seeks transfer of the case.

4) The averments in the affidavit further show that all the respondents therein colluded together and first respondent filed I.A.No.304 of 2011 seeking permission of the Court to withdraw the suit against respondents 5 and 6 therein with a view to defeat or defraud the legitimate share of the petitioner in the schedule property. The said petition was allowed to withdraw the suit against D-4 to D-6 except Items 11, 12, 14 and 15 of the plaint schedule property. Challenging the same, the C.R.P.No.5070 of 2011 came to be filed, which was dismissed on 29.01.2016. Thereafter, the present application came to be filed, for transfer of the case.

5) A counter came to be filed by R-2 disputing the averments made in the affidavit, contending that she is a practicing Advocate in Piler Bar for more than 25 years and 3rd respondent is her sister and who is also an Advocate having 25 years of practice. The suit originally was filed at Madanapalle and after establishment of XI Addl. District Court, Piler, it was transferred to the said Court on

Pecuniary jurisdiction point and he also stated that the case may be transferred to any other court if the Court thinks it reasonable.

6) The 6th respondent, who is Tahasildar of Piler Mandal, filed counter which has been adopted by 5th respondent, denying the contentions of the petitioner and contending that he is no way concerned with the Advocate profession, of some of the respondents. According to him some of the schedule properties are Government lands and the parties in the suit have right to enjoy the property but not entitled to alienate the same. It is stated that no allegations are made against him in the petition and the discretion is with the court to transfer the case or not.

7) The 7th respondent filed counter contending that the first respondent herein, who is plaintiff in O.S.No.1 of 2013, filed the suit against the respondents herein. She is not entitled to 1/4th share but has only 1/6th share in the joint family property. The petitioner and respondents 1 and 3 colluded with each other and filed the transfer petition, to defame the reputation of her family members.

8) After considering the submissions made, the trial court rejected the request of the petitioner.

9) The short question that arise for consideration is :

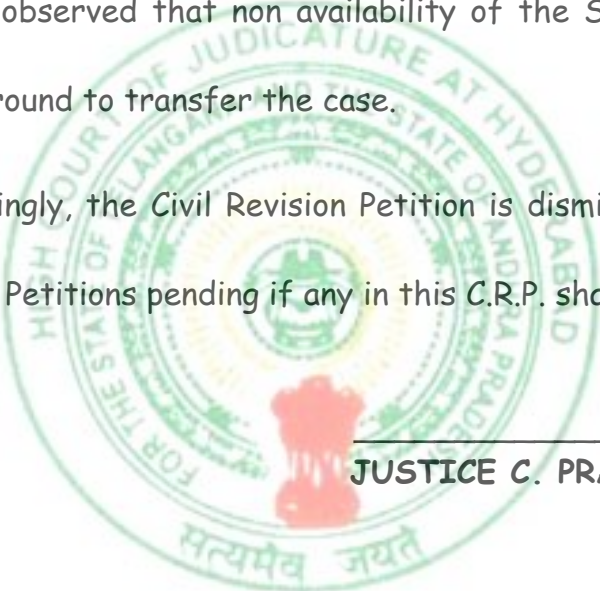
"Whether the petitioner is justified in seeking transfer of the case, on the ground that no Senior Counsel is willing to appear for him at Piler?"

10) It is to be noted here that respondents 2 and 3 were practicing at Piler, while the husband of second respondent was practicing at Chittoor even prior to the filing of the suit. Infact the suit was originally filed at Madanapalle and subsequently it was transferred to Piler after establishment of Court at Piler. It is not as if that the respondents started practicing now. Though the petitioner claims that no senior counsel is coming forward to appear for him at Piler on the ground that the respondents therein are Advocates and have influenced the Advocates, but situation would be the same, even if it is transferred to Tirupati or Chittoor, as pleaded by the petitioner, since the husband of the second respondent is also a practicing as Advocate at Chittoor. Though a plea is taken that no counsel is appearing, but the learned counsel for the respondent submitted that the case has reached the stage where the defendants have adduced evidence and except arguments there is nothing more for the defendants to do so in the case. Since the petitioner is seeking transfer of the case to Tirupati, he can as well get the counsel from Tirupati to complete the remaining portion of the trial and also the arguments, instead of transferring the case to Tirupati. Since no allegations are attributed against the Presiding

Officer, there is no justification in seeking transfer. On the other hand, the learned counsel for the respondent would submit that since the party was already engaged a counsel while the case was in Madanapalli, the same counsel can as well come over to Piler, to complete the case, if no Advocate at Piler is willing to do his case. It is also to be noted here that the request of the petitioner is for transfer on the ground that no Senior Advocate is coming over to do his case in Piler. The Apex Court in **Maneka Sanjay Gandhi v. Rani Jethmalani**¹ observed that non availability of the Senior Advocate cannot be a ground to transfer the case.

11) Accordingly, the Civil Revision Petition is dismissed. No costs. Miscellaneous Petitions pending if any in this C.R.P. shall stand closed.

Dt:11.09.2017
GM

A circular green seal of the High Court of Andhra Pradesh, Hyderabad Bench. The outer ring contains the text 'HIGH COURT OF JUDICATURE AT HYDRABAD' at the top and 'FOR THE STATE OF ANDHRA PRADESH' at the bottom. The inner ring contains 'JUDICIAL DEPARTMENT'. In the center is a red emblem of the State of Andhra Pradesh. Below the emblem is the motto 'सत्यमेव जयते' in Devanagari script.

JUSTICE C. PRAVEEN KUMAR

¹ 1978(0) SCJ online (SC) 207 (F.B)