

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Transfer Civil Miscellaneous Petition No.787 of 2016

ORDER:

This is a defendant's petition under Section 24 of the Code of Civil Procedure, 1908, requesting to withdraw OS.no.220 of 2015 on the file of the court of the learned XI Additional Chief Judge, City Civil Court, Hyderabad, and transfer the same to any other Court of competent and equivalent jurisdiction within the unit of the City Civil Court, Hyderabad, for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of Sri S. Sridhar, learned counsel for the petitioner-1st defendant; Sri S. Malla Rao, learned counsel for the respondents 1 and 2-plaintiffs; I have perused the material record. Ms. Suma L.N., learned counsel offered to enter appearance for the 3rd respondent-2nd defendant; however, this Court is of the opinion that the said defendant has no right of audience as it remained *ex parte* in the suit.

3. The parties shall hereinafter be referred to as they are arraigned in the suit.

4. The case of the 1st defendant in support of the request for transfer of the suit, in brief, is this: 'The plaintiffs through their GPA holder, brought the suit for perpetual injunction against the 1st defendant, petitioner herein, and the 2nd defendant, 3rd respondent herein. The 2nd defendant remained *ex parte* in the suit. The 1st defendant filed a written statement along with IA.no.293 of 2016 for rejection of the plaint. On merits, the said petition was dismissed. The revision preferred by the 1st defendant in CRP.No.3556 of 2016 was also dismissed by this Court on 18.08.2016. The Special Leave Petition filed by the 1st defendant is yet to come up for admission before the Supreme Court. After

the dismissal of the above said CRP by this Court, the plaintiffs filed an interlocutory application on 16.09.2016 requesting to advance the hearing of the suit from 16.11.2016. From that day onwards, the learned Presiding Officer of the Court below is proceeding with the matter, at jet speed on the ground that the GPA holder of the plaintiffs is a senior citizen and is suffering from ailments; and, the learned Judge is showing unusual interest in the matter and is taking up the matter on weekly basis though the suit is of the year 2015. The case of the plaintiffs is that they purchased the property under a registered sale deed of the year 1994 from its lawful owners. The suit schedule property cannot be identified within the boundaries given in the schedule of the plaint. Hence, on 04.11.2016, the 1st defendant filed an interlocutory application for appointment of an advocate commissioner to note down the physical features of the plaint schedule property. The learned Judge of the trial Court without considering the said application posted the suit to 08.11.2016 for cross-examination of PW1, who is the GPA holder of the plaintiffs. On that day the learned Judge insisted for cross-examination of PW1 though it was brought to the notice of the learned Judge that an application was filed for appointment of a Commissioner and the said application is pending. Yet, the learned Judge insisted upon the learned counsel for the 1st defendant to cross-examine PW1 and further closed the cross-examination recording the cross-examination as 'nil'. The matter was adjourned to 17.11.2016. Therefore, and considering the manner in which the proceedings are being conducted by the trial Court, the 1st defendant is apprehensive that it will not get justice before that Court. On the file of the said Court, there are many pending old suits, which were instituted right from the year 1998. However, the Presiding Officer of the trial Court is proceeding in this suit at jet speed only on the ground that the GPA holder of the plaintiffs is a senior citizen and is suffering from ailments. The said approach cannot be countenanced. The learned Judge insisted upon the learned counsel for the 1st defendant to cross

examine PW1 despite filing a memo stating the reason for not cross-examining the said witness and in-fact rejected the memo and closed the cross-examination. The said fact created doubts in the mind of the 1st defendant. The dismissal of the application for rejection of the plaint is no ground to fast track the suit of the year 2015 when many old suits are pending on the file of the same Court. The urgency with which the trial Court is proceeding in the matter is uncalled for. The fact that the Court is giving priority to this case over much older cases is giving scope for apprehensions. Hence, the present transfer petition is filed.'

5. The GPA holder of the plaintiffs-respondents 1 and 2 herein filed a counter affidavit stating the chronology of events and denying the material allegations in the affidavit of the petitioner filed in support of the petition. The relevant averments in the counter affidavit, in brief, are as follows:

The plaintiffs are the lawful owners and possessors of the plaint schedule property having purchased the same by virtue of a registered sale deed bearing document no.683/1994 from its lawful owner. They are in possession and enjoyment of the property from the date of the purchase and are entitled to continue in peaceful possession and enjoyment of the same. One Yaseen Begum filed OS.no.151 of 2006 on the file of the Court of the learned II Additional Chief Judge, City Civil Court, Hyderabad, against the petitioner herein and others. In the said suit the plaintiffs herein were also impleaded as defendant nos.75 and 76. In the said suit, the present GPA holder of the present plaintiffs deposed as DW2 and he was cross examined at length. All of a sudden that suit-OS.no.151 of 2006 was withdrawn by not pressing the suit without notice to the plaintiffs herein, who are one of the defendants therein. The said suit was dismissed accordingly on 29.04.2014. The plaintiffs understand and believes that the 1st defendant herein colluded with the said plaintiff in the said suit and got the said

suit dismissed. Apprehending danger to her peaceful possession and enjoyment over the plaint schedule property, the plaintiffs herein instituted the instant suit and she has also filed an application in IA.no.220 of 2015 seeking temporary injunction pending disposal of the suit and the injunction granted in their favour is in force till date. The 1st defendant is alone contesting the suit. The 2nd defendant remained *ex parte*. Issues were framed on 13.10.2015 and the suit was posted to 16.11.2016 for trial. The application filed by the 1st defendant for rejection of the plaint was dismissed by the trial Court. On merits and by order dated 18.08.2016, this Court dismissed the CRP preferred by the 1st defendant against the orders of the trial Court. The GPA holder of the plaintiff is aged about 80 years. He is not keeping good health due to his old age. He is personally acquainted with the facts of the case. As the suit was ready for trial, interlocutory application was filed for advancing the suit to a nearer date convenient to the Court. The suit was advanced and was taken up for trial. On filing of the affidavit of the GPA holder of the plaintiffs-PW1 in lieu of examination in chief, the said affidavit was taken on file and documents were marked on 18.10.2016 and the suit was adjourned to 04.11.2016 for marking further documents. On 04.11.2016, PW1 was further examined in chief and further documents were marked and the suit was adjourned to 08.11.2016 for cross examination. On that day the 1st defendant filed an application for appointment of a Commissioner. On 08.11.2016, the counsel for the 1st defendant instead of proceeding with the cross-examination of PW1, filed a memo stating that unless the IA filed for appointment of a Commissioner is decided, the 1st defendant cannot proceed with the cross examination of PW1 as the report of the advocate commissioner is crucial; and that unless the report of the advocate commissioner is on record the 1st defendant cannot go ahead with the cross-examination of PW1. The court below by docket order, dated 08.11.2016, rejected the memo and requested the counsel for the 1st defendant

to proceed with the cross examination of PW1. However, the counsel reported not ready and requested time. Time was refused by the Court below and cross-examination of PW1 was recorded as 'nil'. On reporting no further evidence on behalf of the plaintiff, the suit was adjourned to 17.11.2016 for the evidence of the 1st defendant. On 14.11.2016 the present transfer petition is filed. On 17.11.2016 at request of the 1st defendant the suit was adjourned to 09.12.2016. On 09.12.2016 a memo was filed informing the trial Court about grant of stay orders by this Court. Later, the suit was posted to 03.01.2017.

6. At the hearing, learned counsel for both the sides advanced arguments in line with the respective pleadings.

7. I have bestowed my attention to the facts and given earnest consideration to the submissions. The pleadings with the chronology of events are narrated supra and therefore there is no need to restate the same. The plaintiffs represented by their GPA holder filed the suit for perpetual injunction against the defendants 1 and 2. The 2nd defendant remained *ex parte*. The 1st defendant filed a written statement and also an application for rejection of the plaint. That application was dismissed by the trial Court. Revision preferred by the 1st defendant before this Court was also dismissed by this Court. SLP filed by the 1st defendant before the Supreme Court is coming up for admission, according to the submissions of the learned counsel for the 1st defendant. Along with the suit, the plaintiffs filed an interlocutory application for temporary injunction and a temporary injunction granted in favour of the plaintiffs is in force till today. This Court dismissed the CRP on 18.08.2016 and confirmed the order of the trial Court dismissing the application filed by the 1st defendant for rejection of the plaint. Thereafter on 16.09.2016 the plaintiff filed an application for advancing the suit from 16.11.2016 to a nearer date. The said application was posted to 20.09.2016 for counter of the 1st defendant. Again the said application was

adjourned from 20.09.2016 to 21.09.2016. On 26.09.2016, as no counter was filed in that application, the said application was allowed and the suit was advanced to 18.10.2016. On 18.10.2016 the GPA holder of the plaintiffs filed his affidavit in lieu of examination in chief. His chief examination concluded on 04.11.2016 and the suit was adjourned to 08.11.2016 for cross examination of PW1. On that day, i.e., 04.11.2016, the 1st defendant filed an application for appointment of a Commissioner. On 08.11.2016 when the suit came up for cross-examination of PW1, the counsel for the 1st defendant instead of proceeding with the cross-examination of PW1, filed a memo stating that unless the IA filed for appointment of a Commissioner is decided, the 1st defendant cannot proceed with the cross examination of PW1 as the report of the advocate commissioner is crucial; and unless the report of the advocate commissioner is on record the 1st defendant cannot go ahead with the cross-examination of PW1. The court below by docket order, dated 08.11.2016, rejected the memo and requested the counsel for the 1st defendant to proceed with the cross examination of PW1. However, the counsel reported not ready and requested time. Time was refused by the Court below and cross-examination of PW1 was recorded as 'nil'. On reporting no further evidence on behalf of the plaintiffs, the suit was adjourned to 17.11.2016 for the evidence of the 1st defendant. Since the suit stood posted to 17.11.2016 for cross-examination of PW1, the 1st defendant filed this transfer petition before this Court on 14.11.2016 and obtained orders of stay of further proceedings in the suit.

8. In the above stated facts of the matter and chronology of events, the 1st defendant pleads that it apprehends that it will not get justice from the Court below as the Court below is proceeding with the trial of the suit at jet speed and on weekly basis by giving priority to this instant suit of the year 2015 over many old suits instituted right from the year 1998 and pending on the file of the same

Court. It is also the submission of the 1st defendant that the hasty approach of the Court below only on the ground that GPA holder of the plaintiffs is an aged person and he is suffering from ailments and its insistence upon the counsel for the 1st defendant to cross-examine PW1 is giving scope for apprehension.

9. As rightly pointed out by the learned counsel for the plaintiff the only ground on which the transfer petition is filed is that the trial Court is proceeding with the trial of the suit by adjourning the suit from week to week; and, no aspersions, much less serious aspersions, are cast/radiated on the conduct and character of the learned Presiding Officer of the Court below. The learned counsel for the 1st defendant while reiterating that only on the ground that PW1, the GPA holder of the plaintiffs, is a person of advanced age and he is having certain ailments, the trial Court is taking up this case at jet speed by giving it priority over much older cases pending on the file of the same Court, would submit that the fact that the trial Court is not taking up the application filed for appointment of a Commissioner also gives rise to an apprehension that the 1st defendant may not get justice before the said Court.

10. In the considered view of this court, a careful examination of the contentions of the petitioner makes it manifest that none of the contentions merit consideration and that the contentions urged cannot be considered as grounds for any apprehension much less reasonable apprehension that the 1st defendant may not get justice from the Court below.

10.1 In the decision in Voruganti Prabhakar v. M/ s.Vijaya Laxmi Auto Finance, Kodad¹, relied upon by the learned counsel for the plaintiff, this Court, while considering a petition wherein allegations against Presiding Officer were made observed as follows:

¹ 2009(6) ALT 434

“Normally, even where the contentions advanced by the parties, seeking transfer of the proceedings are found to be untenable, this Court would order transfer of the proceedings, lest any doubt is left in the mind of the parties, as to the dispassionate adjudication of the matter. Over a period of time, some parties are getting encouraged to make baseless allegations, being confident that even if they are not substantiated, the High Court would certainly transfer the suit to another Court. It is felt that the curtain must be withdrawn to such practice so that the Courts are not made vulnerable to unethical practices resorted to by the parties and in some cases, their Advocates.”

Further, a Division Bench of this Court in *Tadikonda Surya Venkata Satyanarayana Murthy v. Tammana Seethamahalakshmi and others*² while considering a request for transfer made on the ground that the learned Judge of the Fast Track Court has disposed of 45 appeals within a span of three days without taking up final hearing in a proper manner and that therefore there is a reasonable apprehension in the mind of the petitioners that they may not get justice from the Presiding Officer of the said Court, held as follows:

‘As stated in the first paragraph, the only ground on which the petitioners seek transfer is that the VI Additional Fast Track Court Judge had dismissed 45 appeals in a span of three days. As we have pointed out at the threshold, this cannot be a ground for an apprehension, much less a reasonable apprehension, that the petitioners may not get justice. When Courts, which move at snails pace, are ridiculed, we do not know how Courts that proceed on fast track could also be condemned.’

² 2016(5) ALD 482 (DB)

10.2 Having regard to the facts and the legal position, this Court is of the considered view that this transfer petition is devoid of merit and is liable to be dismissed.

11. The petition is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, also shall stand dismissed.

6th January, 2017
Vjl

M. SEETHARAMA MURTI, J

