

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

TRANSFER C.M.P. No.586 of 2017

ORDER :

Heard learned counsel for the petitioner and taken as heard respondent Nos.1 to 3 of whom respondent No.2 is the wife of respondent No.1 and the same advocate appearing for all the three respondents served and respondent No.3's notice returned as insufficient address that is the address as can be seen from the pleadings in both the suits. Thus, service is sufficient, thereby taken as heard.

2. Perused the transfer petition averments.
3. The suit O.S.No.140 of 2016 filed by the 3rd respondent herein against respondent Nos.1 and 2 and the petitioner for the relief of declaration of title over the plaint schedule property corresponds to CDEF portion of the plaint plan with consequential permanent prohibitory injunction in claiming he is in possession of the same, which is for 81 sq. yards vacant site, western side, out of total 138 1/3 sq. yards, with Door No.4-38 in R.S.No.226/1 of Alamuru Panchayat of Penugonda Sub-Registry of West Godavari District. The petitioner as sole plaintiff filed O.S.No.425 of 2009 against respondent Nos.1 and 2 herein only for the relief of bare injunction for the self same property.
4. The petitioner is seeking to transfer O.S.No.140 of 2016 pending on the file of the I Additional Junior Civil Judge, Tanuku, to

try along with old suit filed by him as O.S.No.425 of 2009 pending on the file of the Principal Junior Civil Judge, Tanuku. He went unsuccessful before the learned District Judge, West Godavari, in the transfer petition. The order of the learned District Judge, dated 10.08.2017, in T.O.P.No.531 of 2017 shows that as per the description of the plaint schedule in O.S.No.425 of 2009, it is for 143.3 sq. yards of said Sy.No.226/1, vacant site, whereas, the schedule property in O.S.No.140 of 2016 is in the self same survey number for an extent of 138 1/3 sq. yards and schedule property in both the suits is not one and the same, the boundaries also different though in one survey number and the claim of the plaintiff in O.S.No.425 of 2009 is that he purchased from one V.Yashoda under registered sale deed, dated 28.07.2008, and because that old injunction suit O.S.No.425 of 2009 is long pending and the reliefs also different, no grounds to transfer.

5. The law is fairly settled that even some of the parties common with reference to the subject matter in issue, it is in the convenience and to avoid conflict of judgments, the matter of consideration for joint trial. No doubt, the suit O.S.No.140 of 2016 pending on the file of the I Additional Junior Civil Judge, Tanuku, for declaration with consequential injunction is for the efficacious relief, and the suit O.S.No.425 of 2009 though old in point of time is only for bare injunction pending on the file of the Principal Junior Civil Judge, Tanuku. Thereby, there are no grounds to transfer O.S.No.140 of 2016 to try with O.S.No.425 of 2009, but for vice versa to lead

evidence in O.S.No.140 of 2016 that too when the property is in same survey number and the plaint schedule in O.S.No.140 of 2016 is for part of the 138 1/3 sq. yards, whereas the plaint schedule in O.S.No.425 of 2009 is for 143.3 sq. yards.

6. Having regard to the above, the transfer petition is allowed in part to the extent of withdrawing the suit O.S.No.425 of 2009 pending on the file of the Principal Junior Civil Judge, Tanuku and transferred to I Additional Junior Civil Judge, Tanuku, to try along with O.S.No.140 of 2016 to record common evidence in the declaratory suit in O.S.No.140 of 2016, any chief affidavit so far filed in any of the suit by any of the parties, the trial Court shall take respectively for further continuation to it, if already taken on oath. If not taken on oath, it is not the evidence by virtue of Section 1 of the Indian Evidence Act read with order XVIII Rule 4 C.P.C., so that it will be treated with no value to permit filing of fresh affidavit to take on oath.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

20th November 2017.

Note:

Issue C.C. by 21.11.2017.

(b/o)
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