

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER C.M.P.Nos.87, 88, 89 and 228 of 2017

COMMON ORDER :

All these transfer petitions are filed under Section 24 of Code of Civil Procedure, 1908, to withdraw suits i.e., O.S.Nos.88 & 86 of 2016 and 91 & 249 of 2015 and transfer the same to the Court of Senior Civil Judge, Ranga Reddy District at L.B.Nagar, for deciding the matters in accordance with law.

2. The details of the suits pending on the files of various Courts and parties name including the relief claimed are mentioned hereunder in the tabular form:

Sl. No.	Tr.C.M.P. No.	O.S.No.	Court	Plaintiff's name	Defendant's name	Relief sought for
1.	87/2017	88/2016	Prl.Junior Civil Judge, Eluru, West Godavari District	1.K.Ramanjaneyulu 2. K.Sridhar	1.K.Sarojini 2.K.Venkata Parameswari	To vacate the shop No.1
2.	88/2017	86/2016	Prl.Junior Civil Judge, Eluru, West Godavari District	1.K.Ramanjaneyulu 2. K.Sridhar	1.K.Sarojini 2.K.Venkata Parameswari	To vacate the shop No.1
3.	89/2017	91/2015	I-Addl. Junior Civil Judge, Eluru, West Godavari District	K.Phani Raja Sekhar	1.K.Venkata Subbamma 2.K.Venkata Parameswari	To grant a decree of permanent injunction
4.	228/2017	249/2015	Additional Senior Civil Judge, Eluru, West Godavari District	K. Venkata Subbamma rep. by her GPA K.Sridhar	K.Venkata Parameswari	For partition of plaint schedule properties.

3. In all petitions, the petitioner i.e., Smt. K.Venkata Parameswari-defendant No.2 in the above referred suits contended that the property pertaining to the suits originally belongs to her husband and after his death she became entitled to claim exclusive

rights over the property. But, Smt.K.Venkata Subbamma, who is mother-in-law of the petitioner, represented by her General Power of Attorney Holder-K.Sridhar filed suits referred in the table for different reliefs.

4. The husband of the petitioner owned and possessed two immovable properties, which are described as plaint 'A' and 'B' schedule properties in O.S.No.249 of 2015 situated at Sanivarapupeta, Eluru Mandal, West Godavari District (Andhra Pradesh) and Pragathi Nagar, Lahari Estates, Bachipally Revenue Village, Quthbullapur Mandal, Medchal Taluq, Ranga Reddy District (Telangana) respectively. The plaintiff therein sought for partition of plaint 'A' and 'B' schedule properties into two equal shares by metes and bounds and for other consequential reliefs.

5. According to Section 16 of C.P.C., suits shall be instituted where subject matter is situated subject to the pecuniary or other limitations prescribed by any law. As per Clause (b) of Section 16 C.P.C., for the partition of immoveable property, the suit shall be filed where the subject matter is situated. But, here schedules of property is subject matter, one is situated at Eluru, Andhra Pradesh State and the other is situated at Bachipally, Ranga Reddy District, Telangana State. In such case, Section 17 of C.P.C. will apply.

6. According to Section 17 C.P.C., where a suit is to obtain relief respecting, or compensation for wrong to, immoveable property situate within the jurisdiction of different Courts, the suit may be

instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate. Therefore, in the present case, plaint 'A' and 'B' schedule properties are situated in two different places and in two different States. But, filing of suit for partition at Eluru, West Godavari District, where 'A' schedule property is situated, is according to Section 17 of C.P.C. Therefore, on the ground that the Court at Eluru lacks territorial jurisdiction, the suit cannot be withdrawn and transferred.

7. The suit in O.S.No.88 of 2016, the relief claimed of vacating Shop No.1, which is the part of subject matter of plaint 'A' schedule property in O.S.No.249 of 2015 and for recovery of 11,000/- towards arrears of rent as the property is situated within the territorial jurisdiction limits of Eluru Court i.e., Junior Civil Judge, Eluru, West Godavari District and thus filed the suit within Eluru against K. Sarojini and K.Venkata Parameswari-petitioner herein. But, on the ground of lack of territorial jurisdiction the suit cannot be withdrawn and transferred to any Court.

8. Similarly, the other two suits i.e., O.S.No.86 of 2016 (subject matter of Tr.C.M.P.No.88 of 2017) and O.S.No.91 of 2015 (subject matter of Tr.C.M.P.No.89 of 2017) were filed claiming relief mentioned in the table referred above. All these suits pertaining to the property situated at Eluru since the property is situated within the territorial limits of Eluru Court. The suits are filed in the Court having territorial jurisdiction, where property and part of schedule

property is situated. Hence, the contention that the courts at Eluru lacks jurisdiction is without any merit to withdraw and transfer any of the suits.

9. The second ground raised before this Court in all the matters, which is common in all these petitions, is that the petitioner is working as a teacher at Hyderabad and she has to take care of school going children while attending to her employment and that it is difficult for her to undertake journey covering more than 300 km. from Hyderabad to Eluru on the dates of adjournment in all the four matters. Undoubtedly, the petitioner being a woman while attending to her employment may face difficulty to appear before the Court in all four matters to prosecute the proceedings. But, all four matters are civil suits and her presence on every date of adjournment is not imperative except recording her cross-examination by the Court in all the four suits. Therefore, her appearance before the Court on each and every date of adjournment and facing inconvenience by itself is not a ground to withdraw and transfer all the suits. However, in the recent judgment while dealing with withdrawal of matrimonial case, the Supreme Court laid down certain guidelines in **Krishna Veni Nagam v. Harish Nagam**¹ and held in para 18 of the judgment held as follows:

*“In matrimonial or custody matters or in proceedings
between parties to a marriage or arising out of disputes*

¹ AIR 2017 SC 1345

between parties to a marriage, wherever the defendants/respondents are located outside the jurisdiction of the court, the court where proceedings are instituted, may examine whether it is in the interest of justice to incorporate any safeguards for ensuring that summoning of defendant/respondent does not result in denial of justice. Order incorporating such safeguards may be sent along with the summons. The safeguards can be:-

- i) Availability of video conferencing facility.*
- ii) Availability of legal aid service.*
- iii) Deposit of cost for travel, lodging and boarding in terms of Order XXV Code of Civil Procedure.*
- iv) E-Mail address/phone number, if any, at which litigant from out station may communicate.”*

10. Though these four suits are not pertaining to matrimonial matters, but still those guidelines more particularly recording examination of the witness by video conferencing can be applied to the civil suits to avoid inconvenience to the parties and unnecessary travelling, lodging and boarding expenses. Therefore, by applying guideline No.i issued by the Apex Court to the present case, the trial Court is requested to record the cross-examination of the petitioner by video conferencing, if available. Apart from, the petitioner facing inconvenience to undertake journey covering the distance more than 300 km. and due to inability to get leave from the office while discharging her duties, in such case, she can apply for appointment of Advocate Commissioner to record her evidence under Order XXVI

Rule 4 C.P.C. and the Advocate Commissioner can record her evidence at Hyderabad at her residence on any convenient date of both the parties. Therefore, inability to undertake journey incurring expenditure is not a ground. Similarly, taking care of the minor children is also not a ground to withdraw and transfer the suits pending in various Courts at Eluru on the ground of inconvenience, which was discussed by the Apex Court in the **Modi Entertainment Network and another v. W.S.G. Cricket Pte.Ltd**². Hence, in view of my discussion, I find it difficult to withdraw and transfer all the four suits pending on the file of various Courts at Eluru on the ground of inconvenience.

11. The feeble attempt is made before this Court is that the suits shall be filed at the place where the defendant is residing. But, this contention is contrary to Section 17 C.P.C. When the suits are filed claiming relief relating to immovable property, they must be filed either as per Section 16 or Section 17 C.P.C. Section 20 C.P.C. will apply in a different situation i.e., for institution of other suits where defendants reside. As per Clause (a) of Section 20 C.P.C., the suit shall be filed within the local limits of whose jurisdiction, the defendant, or each of the defendants where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain: or (b)
(c)

² (2003) 4 SCC 341

12. But, this contention cannot be accepted as there is specific provision which deals with filing of suits partition of immoveable property under Section 16 of 17 C.P.C. Therefore, this contention holds no substance to withdraw and transfer the suits.

13. In view of Krishna Veni Nagam supra, the Presiding Officer of the Court, where four suits are pending, may record cross-examination of the petitioner herein by video conferencing, if available. Otherwise, consider appointment of an Advocate Commissioner to record the evidence of the petitioner in all four suits by exercising the power under Order XXVI Rule 1 C.P.C. subject to bearing expenditure by the petitioner herself to overcome the difficulties pointed out here in all the four petitions, after hearing both the counsel on such application if filed by petitioner and pass appropriate order in accordance with law.

14. With the above directions, the transfer C.M.Ps. are dismissed.

15. Miscellaneous petitions pending, if any, shall stand closed.
There shall be no order as to costs.

M. SATYANARAYANA MURTHY, J

15th June 2017.

mar