

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 337 OF 2017

ORDER:

This petition under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') is filed for withdrawal and transfer of O.S.No. 87 of 2016 on the file of the Court of I Junior Civil Judge, City Civil Courts, Secunderabad, to try along with O.S.No. 132 of 2015 on the file of the Court of V Additional District Judge, Ranga Reddy District at L.B. Nagar.

The main ground urged in this petition is that Secunderabad is a part of Balanagar Mandal and Balanagar Mandal is a part of Ranga Reddy District within the jurisdiction of Ranga Reddy District Courts and thereby I Junior Civil Judge's Court, Secunderabad, lacks territorial jurisdiction and prayed to withdraw and transfer O.S.No. 87 of 2016 to try along with O.S.No. 132 of 2015.

The respondents filed counter denying material allegations while contending that as per notification issued under Section 6 (2) of the Andhra Pradesh Civil Courts Act, 1972 (for short, 'the Act'), Ward Nos. 1 to 12 of erstwhile Secunderabad Municipal Corporation are included in the jurisdiction of Courts at Secunderabad. Therefore, the Courts at Secunderabad alone are competent having territorial jurisdiction over the area where the property is situated *i.e.* at Begumpet, part of Balanagar Mandal. It is also contended that the petitioners filed I.A.No. 119 of 2016 in O.S.No. 87 of 2016 under Order VII Rule 10 of C.P.C. for rejection of plaint on the ground that the Court has no territorial jurisdiction and the same was dismissed which was also confirmed by this Court in C.R.P.No. 4782 of 2016. Therefore, when the finding attained finality with regard to jurisdiction, this Court cannot withdraw and transfer the matter from one Court to other on the ground of lack of territorial jurisdiction and prayed for dismissal of the petition.

During hearing, learned counsel for the petitioners drawn the attention of this Court to G.O.Ms.No. 82 Law (L.A. & J.), Home (Courts. C), dated 16-05-2008 and on the strength of the notification, it is contended that the Courts at Secunderabad have no jurisdiction and prayed to allow the petition.

Whereas learned counsel for the respondents would contend that in view of attainment of finality to finding in C.R.P.No. 4782 of 2016, this Court cannot withdraw and transfer the suit on the ground of lack of territorial jurisdiction and prayed for dismissal of the petition.

Undisputedly when Courts at Secunderabad are constituted and jurisdiction is reorganized, subsequently a notification in exercise of powers under Section 6 (2) of the Act is issued by the Additional Chief Judge, City Civil Courts, Secunderabad. As per the notification, Begumpet is a part of Block No. 11 of Ward No. 1 of Secunderabad Division, Municipal Corporation of Hyderabad, and it is included within the territorial jurisdictional limits of City Civil Courts, Secunderabad, besides other areas mentioned in the notification. By that time, no Court was established at Miyapur but subsequently Court is established at Miyapur and thereafter a notification in G.O.Ms.No. 82 referred to above is issued. As per the said notification, the entire Balanagar Mandal is included in the jurisdictional limits of L.B. Nagar Courts. Thus, there is any amount of conflict between the two notifications. This Court however while deciding C.R.P.No. 4782 of 2016 specifically held that when the revenue mandals are reorganized by the then State Government, Begumpet Village is included within Secunderabad Revenue Mandal of Hyderabad District. Thus, as on today, Begumpet Village falls within Secunderabad Revenue Mandal and not within Balanagar Mandal and therefore, the order passed by this Court attained finality and such finding cannot be disturbed by exercising power under Section 24 of C.P.C.

Normally suits shall be filed within the jurisdictional limits of Courts having territorial jurisdiction but Section 24 of C.P.C. permits the Courts to deviate from the principle of jurisdiction to avoid conflicting judgments.

In ***Dr.Reddy's Laboratories Ltd., Hyderabad, Vs. Pulletikurhti Varaha Chandra Bose and others***¹, it was held that

"Necessity for transfer of suits from one Court to another, would arise if only there exists any similarity of causes of action or commonality of parties. When such situation does not exist, the relief claimed for transfer of the suit, cannot be granted."

In ***Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others***², the Apex Court laid down certain guidelines for withdrawal and transfer of suits though they are not exhaustive. The court can exercise its power under Section 24 of C.P.C. for withdrawal if there exists any ground for withdrawing and held as follows:

"Section 24 of Code of Civil Procedure confers comprehensive power on the court to transfer suits, appeals or other proceedings "at any stage" either on an application by any party or suo motu. Although the discretionary power of transfer of cases cannot be imprisoned within a straitjacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection.

It is true that normally while making an order of transfer, the court may not enter into merits of the matter as it may affect the final outcome of the proceedings or cause prejudice to one or the other side. At the same time, however, an order of transfer must reflect application of mind by the court and the circumstances which weighed in taking the action. Powers under Section 24 of Code of Civil Procedure cannot be exercised ipse dixit in the manner in which it has been done in the present case."

It is further held that the following factors have to be taken into consideration in a situation in which it is duty of court to transfer the case:

¹ 2004 (4) ALD 719

² 2008(3) SCC 659

- (i) *balance of convenience or inconvenience to the plaintiff or the defendant or witnesses;*
- (ii) *convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit;*
- (iii) *issues raised by the parties;*
- (iv) *reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending;*
- (v) *important questions of law involved or a considerable section of public interested in the litigation;*
- (vi) *"interest of justice" demanding for transfer of case, etc.*

In the present facts of the case, the petitioners admittedly filed O.S.No. 132 of 2015 on the file of the Court of V Additional District Judge, R.R. District at L.B. Nagar, for injunction simplicitor and the respondents filed O.S.No. 87 of 2016 on the file of the Court of I Junior Civil Judge, Secunderabad, for the same relief. If, for any reason, both the suits are tried by two different Courts, there is every chance of conflicting judgments. Therefore, it is appropriate to exercise power under Section 24 of C.P.C. since both the suits are in respect of the same property and the parties are also one and the same. The petitioner also sought for a direction to try all the suits jointly but such direction cannot be issued in view of the limited powers of this court under Section 24 of C.P.C. as held by a Division Bench of this Court in ***Dronavajjula Vidyamba Vs Vallabhajosyula Lakshmi Venkayamma***³, wherein it was held as follows:

"Under Section 24(2) of the Code of Civil Procedure, special direction may be issued by the Court ordering the transfer either to order the trial denovo or to proceed with the suit from the point at which it was transferred or withdrawn. For whatever reasons convenience or otherwise the order of transfer made under Section 24(2) of the Code of Civil Procedure, it does not empower the court or contemplate any directions being given for the joint trial of the transferred suit. So, any violation or contravention of that order of transfer and the separate trial of the transferred suit, do not render the proceedings invalid."

³ AIR 1958 AP 218

In view of the controversy with regard to jurisdiction though jurisdictional aspect is raised, I am not inclined to withdraw and transfer the suit O.S.No. 87 of 2016 on the ground of lack of jurisdiction but withdraw the suit O.S.No. 87 of 2016 to avoid conflicting judgments.

The petition is accordingly allowed withdrawing O.S.No. 87 of 2016 on the file of the Court of I Junior Civil Judge, City Civil Courts, Secunderabad, and transferred to the Court of V Additional District Judge, Ranga Reddy District at L.B. Nagar, to decide in accordance with law. Pending miscellaneous petitions, if any, shall stand closed in consequence. No costs.

Date: 28-06-2017.
JSK



M.SATYANARAYANA MURTHY, J.