

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

TRANSFER C.M.P.No.650 of 2017

ORDER :

Heard both sides.

2. The transfer petition petitioners 1 to 6 are the plaintiffs in O.S.No.719 of 2009 and defendants 1 to 6 in O.S.No.173 of 2015 respectively. The transfer petition respondents 1 and 2 are defendants in O.S.No.719 of 2009 and plaintiffs in O.S.No.173 of 2015 respectively and transfer petition respondent No.3 is defendant No.7 in O.S.No.173 of 2015. In both the matters the lis is in relation to part of Survey No.332 of Shaikpet Village undisputedly. No doubt, the learned Chief Judge, City Civil Court, Hyderabad, in the Transfer O.P.No.302 of 2017, by order, dated 26.04.2017, by reproducing the petition and counter in gist observed that the suit prior to 2011 to be given priority, therefore, cannot be clubbed with recent suit as it will cause delay of disposal in pre 2011 cases. But for that, there is no discussion in the impugned order of the lower Court, though that itself is not a cause when both are if at all required to be clubbed to avoid duplication of evidence and saving of valuable time of the Court and of the parties with lesser expense, which is the very object of any clubbing or simultaneous disposal, as the case may be, also to avoid conflict of expressions. Once such is the case, even no issues so far settled in O.S.No.173 of 2015, admittedly written statement filed the framing of issues from hearing of parties is at the hands of the Court

with no delay after exhausting the possible avenues of Section 89 read with Order 10 C.P.C., if any, even in O.S.No.719 of 2009 the evidence of plaintiff completed and defendants evidence is to commence, once it is required to be clubbed whatever the evidence of the plaintiffs witnesses can be recalled for further chief and cross-examination and also to permit common evidence on behalf of the defendants so that the suit in O.S.No.173 of 2015 can be clubbed with O.S.No.719 of 2009.

3. Having regard to the above and in view of the facts, even when parties are same and the extent covered by the survey number is same, though the prayers are different, to avoid multiplicity of proceedings and duplication of evidence, it is just to allow the transfer petition to transfer O.S.No.173 of 2015 to the file of the XIV Additional Chief Judge, City Civil Court, where O.S.No.719 of 2009 pending trial is of 2009 is in progress of trial, to club with O.S.No.719 of 2009 and with a direction to the trial Court to frame issues immediately after hearing in O.S.No.173 of 2015 and permit recall of the plaintiffs witness for further chief and cross-examination including to mark documents, if any, also in relation to the lis covered by O.S.No.173 of 2015 in O.S.No.719 of 2009 and then to commence the defendants evidence therein.

4. With the above observation, the transfer C.M.P. is allowed.

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

Dr. B. SIVA SANKARA RAO, J

12th December 2017.

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