

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P. Nos.81, 498 and 499 of 2016

COMMON ORDER:

1 Transfer CMP No.81 of 2016 is filed under Section 24 of CPC seeking to withdraw O.S.No.101 of 2015 from the file of the Additional District Judge, Krishna at Gudivada and transfer the same to the file of XVI Additional District Court, Ranga Reddy District at Malkajgiri to be tried along with O.S. No.1162 of 2014.

2 Transfer CMP No.498 of 2016 is filed under Section 24 of CPC seeking to withdraw O.S.No.1299 of 2015 from the file of the VII Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar and transfer the same to the file of Additional District Judge, Krishna at Gudivada to be tried along with O.S. No.101 of 2015.

3 Transfer CMP No.499 of 2016 is filed under Section 24 of CPC seeking to withdraw O.S.No.1162 of 2014 from the file of the XVI Additional District Judge, Ranga Reddy District at Malkajgiri and transfer the same to the file of Additional District Judge, Krishna at Gudivada to be tried along with O.S. No.101 of 2015.

4 The parties to the above three transfer petitions are one and the same; therefore, this court is inclined to dispose of all the petitions by this common order.

5 The parties will hereinafter be referred as they are arrayed in Transfer CMP No.81 of 2016, for the sake of convenience.

6 The contention of learned counsel for the petitioners is that most of the parties to the proceedings have been residing in Hyderabad; therefore, it is just and necessary to allow the petition. He further submitted that no prejudice would be caused to the

respondents even if the Transfer CMP No.81 of 2016 is allowed as the subject matter involved in all the suits is one and the same.

7 *Per contra*, the learned counsel for the respondents submitted that out of 16 schedule properties, 14 properties are situated within the territorial jurisdiction of Additional District Court, Gudivada; therefore, it is just and necessary to dismiss Transfer CMP No.81 of 2016 and allow Transfer CMP Nos.498 and 499 of 2016. He further submitted that in view of bifurcation of the State and in order to avoid future complications O.S. Nos.1162 of 2014 and 1299 of 2015 may be transferred to Additional District Court, Gudivada to be tried along with O.S. No.101 of 2015.

8 The facts leading to filing of these transfer petitions are as follows: The petitioner Nos.1 to 5 filed O.S.No.1162 of 2014 on the file of the Court of XVI Additional District Judge, Ranga Reddy District at Malkajgiri against respondent Nos.1 and 11 and two others for declaration and perpetual injunction. Respondent Nos.1 to 11 have filed O.S. No.1299 of 2015 on the file of the Court of VII Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar, against the petitioners and two others, for declaration and recovery of possession. Respondent Nos.1 to 11 filed O.S. No.101 of 2015 on the file of the Court of Additional District Judge, Krishna at Gudivada against the petitioners and respondent Nos.12 to 21, for declaration and recovery of possession.

9 The point for consideration is 'whether there are any justifiable grounds to allow the transfer petitions?'

10 To substantiate the arguments, the learned counsel for the petitioners has drawn attention of this Court to the ratio laid down in **Gupte Cardiac Care Centre and Hospital vs. Olympic Pharma Care (P) Ltd**¹ wherein the Hon'ble apex Court at para Nos.4 and 5 held as follows:

4. It has not been disputed at the Bar that the two suits arise out of the same transaction. Cause of action of one party arrayed as plaintiff would be its defence in the suit where it is arrayed as defendant. Though there are two plaintiffs and two defendants in the suit at Nashik while there is only one plaintiff and one defendant in the suit at Delhi but there is substantial identity of the parties in the two suits. The issues arising for decision would necessarily be the same. Only one of the two suit can be decreed. The decree in one suit in favour of the plaintiff in that suit would entail the dismissal of the other suit. It cannot, therefore, be denied that the two suits deserve to be heard and tried in one Court. That would avoid the possibility of any conflicting decrees coming into existence. And certainly the duplication of evidence, oral and documentary both, would be avoided. The parties and the Courts would save their time and energy which would needlessly be wasted twice over.

5. The suit at Nashik has been instituted first in point of time. By reference to Section 10 of the CPC, the trial of the suit at Delhi, being the latter suit, shall be liable to be stayed. For the exercise of its discretionary jurisdiction under Section 25 of the Code of Civil Procedure, 1908 the only consideration which is relevant is 'expediency for ends of justice'. The court will have regard to and respect for the rule enacted in Section 10 of the Code. Of course, the considerations such as which is the place where most of the evidence is available, convenience of the parties and witnesses, which one of the two places is more convenient to access and attend and so on are also the factors to be kept in view and may in an appropriate case persuade this Court to direct a transfer of case in departure from the rule underlying Section 10 of the Code. All would depend on the facts and circumstances of a given case. So far as the present cases are concerned, we deem it proper to transfer the suit at Delhi to the Court at Nashik for the purpose of hearing and decision thereat. In doing so we are following the ordinary rule as we do not find any factor or consideration relevant for making a departure therefrom.

11 Let me consider the facts of the case on hand in the back drop of the above legal principle.

12 In O.S.No.101 of 2015 the suit schedule property consists of 16 items. Out of 16 items, 14 items of property is situated in the territorial jurisdiction of Additional District Court, Gudivada whereas 2 items of property is situated within the territorial jurisdiction of District Court, Ranga Reddy District. In O.S.No.1162 of 2014 the suit

¹ (2004) 6 SCC 756

schedule property consists of 16 items. Out of 16 items, 14 items of property is situated within the territorial jurisdiction of Additional District Court, Gudivada whereas 2 items of property is situated within the territorial jurisdiction of XVI Additional District Court, Ranga Reddy District. In O.S.No.1299 of 2015, the suit schedule property consists of two items, which are situated within the territorial jurisdiction of District Court, Ranga Reddy District. It is not in dispute that most of the properties are situated within the territorial jurisdiction of the Additional District Court, Krishna District at Gudivada. It is the contention of the learned counsel for the respondents that if O.S.No.1299 of 2015 and O.S.No.101 of 2015 are transferred to the XVI Additional District Court, Ranga Reddy, in the event of passing a decree in favour of the respondents they may face some difficulty in execution of the decree. Result of one suit disentitles the opposite party to claim any relief in another suit. If the suit O.S.No.1162 of 2014 is decreed, O.S.No.1299 and O.S.No.101 of 2015 filed by the contesting respondents are liable to be dismissed or vice versa. Both parties are claiming the relief of declaration. In such circumstances, if the suits are decided by different courts, the possibility of conflicting judgments cannot be ruled out. The evidence to be adduced by both parties in all the suits is almost similar. In order to avoid duplication of evidence, conflicting judgments and also in the interests of justice, it is imperative to club all the three suits and try by same court.

13 The next question that falls for consideration is ‘which is the convenient court for the parties’?

14 Convenience of the parties is one of the grounds to be considered by the Court while allowing or dismissing the transfer petitions. Some of the respondents in O.S.No.101 of 2015 and O.S.No.1299 of 2015 are tenants of the petitioners and are residing within the territorial jurisdiction of Additional District Court, Krishna District at Gudivada. Tenants have nothing to do with the inter se dispute between the petitioners and the contesting respondents. Even as per the case of the respondent Nos.1 to 11, they are not in possession of the suit schedule property. Admittedly, the petitioners are in possession of the property. As per the cause title in Tr.CMP No.81 of 2016, respondent Nos.1 and 5 to 11 are residents of Hyderabad, respondent Nos.2 and 4 are residents of Krishna District and respondent No.3 is resident of Varanasi. Petitioner Nos.1, 2, 5 and 6 are residents of Hyderabad whereas petitioner Nos.3 and 4 are residents of Krishna District. As per the cause title in Tr.CMP.No.498 of 2016, Petitioner Nos.1, 4 to 10 are residents of Hyderabad, whereas petitioner No.3 is resident of Varanasi. Petitioner No.2 alone is resident of Ramavarappadu, Vijayawada. Whereas respondent Nos.1, 2, 5 to 8 are residents of Hyderabad. Respondent Nos.3 and 4 are residents of Kalidindi village in Krishna District. As per the cause title in Tr.CMP No.499 of 2016, petitioner Nos.1, 2 and 4 to 10 are residents of Hyderabad, whereas, petitioner No.2 is resident of Ramavarappadu, Vijayawada, Petitioner No.4 is resident of Varanasi. Respondent Nos.1, 2, 5 and 6 are residents of Hyderabad and respondent Nos.3 and 4 are residents of Kalidindi village in Krishna District.

15 A perusal of the record clearly reveals that except two parties, all others are residing in Hyderabad city. One of the parties to the proceedings is residing at Varanasi. To attend the Court at Hyderabad is more convenient for a person who is residing at Varanasi than to attend the Court at Gudivada. One of the contesting respondents is residing at Ramavarappadu in Vijayawada City. Most of the respondents in Tr.CMP No.81 of 2016 and petitioners in Tr.CMP No.498 and 499 of 2016 are residents of Hyderabad. In such circumstances, transferring of the suit O.S.No.1162 of 2014 on the file of the XVI Additional District Court, Ranga Reddy District at Malkajgiri to the Additional District Court, Krishna at Gudivada is not convenient to the parties. In the instant case transfer of O.S.No.101 of 2015 from the file of Additional District Court, Gudivada to the XVI Additional District Court, Ranga Reddy at Malkajgiri is more convenient.

16 Petitioners herein filed O.S.No.1162 in the year 2014, whereas the respondents filed O.S.No.101 and 1299 in the year 2015. The petitioners' suit is much earlier in point of time than the suits filed by the respondents. Petitioners filed Tr.CMP No.81 of 2016 seeking to withdraw O.S.No.101 of 2015 from the file of the Additional District Judge, Krishna at Gudivada and transfer the same to the file of XVI Additional District Court, Ranga Reddy District at Malkajgiri to be tried along with O.S. No.1162 of 2014. It appears that after receipt of notice in Tr.CMP No.81 of 2016, the respondents preferred Tr.CMP Nos.498 and 499 of 2016. This also clearly indicates that the petitioners approached this Court earlier in point of time. There is no doubt, mere filing of the transfer petition at the earliest point of time

itself is not a sole ground to transfer the case without looking into other factual and legal aspects. A perusal of the record clearly reveals that the respondents have filed Tr.CMP Nos.498 and 499 of 2016 simply because the petitioners filed Tr.CMP No.81 of 2016.

17 The principle enunciated in Gupte Cardiac Care Centre and Hospital case (supra) is squarely applicable to the facts of the case on hand. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that withdrawing of O.S.No.101 of 2015 from the file of the Additional District Judge, Krishna at Gudivada and transfer the same to the file of the XVI Additional District Court, Ranga Reddy District at Malkajgiri to be tried along with O.S. No.1162 of 2014 would meet the ends of justice.

18 In the result, Tr.CMP No.81 of 2016 is allowed, withdrawing O.S.No.101 of 2015 from the file of the Additional District Judge, Krishna at Gudivada and transferring the same to the file of XVI Additional District Court, Ranga Reddy District at Malkajgiri to be tried along with O.S. No.1162 of 2014. Resultantly, Tr.CMP Nos.498 and 499 of 2016 stand dismissed. As a sequel miscellaneous petitions if any pending in all the transfer petitions shall stand closed.

T. SUNIL CHOWDARY, J

Date: 16th March, 2017
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