

HON' BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P.No.875 of 2016

ORDER:

This petition is filed under Section 24 C.P.C., seeking to withdraw O.S.No.291 of 2011 pending on the file of the Additional Senior Civil Judge, Eluru, West Godavari District, and transfer the same to the court of Principal Senior Civil Judge, Eluru, West Godavari District, for disposal in accordance with law.

2. Heard both the counsel.

3. A perusal of the record reveals that the petitioner herein is the defendant in O.S.No.291 of 2011 on the file of the court of Additional Senior Civil Judge, Eluru, in O.S.No.184 of 2011, O.S.No.262 of 2011 and O.S.No.284 of 2011 on the file of the Principal Senior Civil Judge Court, Eluru. It is the case of the petitioner that two suits O.S.No.184 of 2011 and O.S.No.284 of 2011 are filed by the family members of the respondent. While things stood thus, the petitioner herein filed transfer O.P.No.384 of 2016 on the file of the District Court, Eluru, West Godavari District, seeking to withdraw O.S.No.291 of 2011 on the file of the Additional Senior Civil Judge Court and transfer the same to the Court of Principal Senior Civil Judge, Eluru, and the same was dismissed on 11.04.2016. Hence, the present petition.

4. It is not in dispute that the respondent herein filed O.S.No.291 of 2011. It is the case of the petitioner that the plaintiff in O.S.No.262 of 2011 is the close relative of the plaintiff

in other suits. Whether the plaintiff in O.S.No.262 of 2011 is a close relative of the plaintiffs in other suits or not has to be decided at the time of full fledged trial only. The same is opposed by the respondent's counsel.

5. While deciding the transfer petitions, it is not fair on the part of this Court to express any opinion with regard to the relationship of the parties. Even as per the finding of the trial Court, all the suits were instituted within a period of one month. It is not in dispute that the respondent herein filed a petition under Section 45 of the Indian Evidence Act in O.S.No.184 of 2011 and the same was allowed by the trial Court. The plea taken by the defendant in all suits is that the suits were filed by forging his signature. The evidence to be adduced by the petitioner herein is one and the same in all the four suits. In order to avoid multiplicity of litigation and duplication of evidence, it is just and proper to withdraw O.S.No.291 of 2011 from the file of the Additional Senior Civil Judge Court and transfer to Principal Senior Civil Judge Court, Eluru, West Godavari District. Even if the petition is allowed, the same may not cause any prejudice to the respondent.

6. To substantiate his argument, learned counsel for the petitioner has drawn the attention of this Court in *YELETI PEDAVEERRAJU AND ANOTHER v. VANKA JAYALAKSHMI AND OTHERS*¹ wherein this Court held at para 19 as follows:

¹ 2006(1) ALT 472

19. In view of the foregoing facts and circumstances of the case, since the main issues in both the suits are similar and are based on the Will dated 19.06.2000, on which, the court has to invariably record a finding and most of the parties are similar and further the suit schedule property in O.S.No.161 of 2000 is included in the suit schedule properties in O.S.No.7 of 2002, and in order to avoid conflicting judgments and multiplicity of proceedings and for convenience of the parties and also since the later suit being comprehensive in nature and ultimately in the interest of justice, I feel it appropriate to allow this transfer petition. Accordingly, the issue framed in this regard is answered in affirmative and I pass the order as under:

“Tr.C.M.P. is allowed. O.S.No.161 of 2000 on the file of Principal Junior Civil Judge, Peddapuram is hereby withdrawn and transferred to the court of II Additional District Judge, Rajahmundry for being tried along with O.S.No.7 of 2002, in accordance with law.”

The trial Court has not considered all these aspects and dismissed the petition.

7. Having regard to the facts and circumstances of the case and also the principal enunciated in the case cited supra, the transfer C.M.P. is allowed setting aside the orders dated 11.04.2016 in transfer O.P.No.384 of 2015. Consequently, transfer original petition No.384 of 2015 is allowed withdrawing O.S.No.291 of 2011 on the file of Additional Senior Civil Judge's Court, Eluru, and transferred to the Court of Principal Senior Civil Judge, Eluru, for disposal in accordance with law. As a sequel, miscellaneous petitions, pending if any shall stand closed.

T.SUNIL CHOWDARY, J

27th February 2017
Rns

