

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 64 OF 2018

ORDER:

This transfer civil miscellaneous petition under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') is filed to withdraw E.P.No.65 of 2016 in O.S.No.133 of 1988, pending on the file of the Principal Senior Civil Judge, Eluru, West Godavari District and transfer the same to VIII Additional District Judge (SC/ST Court), Eluru, West Godavari District to try along with O.S.No.176 of 2016 on the ground that the property involved in the execution proceedings and the suit is one and the same.

2. The petitioners filed E.A.No.392 of 2016 under Order XXI Rule 97 and Section 47 read with Section 151 C.P.C. resisting or objecting for delivery of the property, because the petitioners are alleged original owners of the property and they are not impleaded in O.S.No.133 of 1988 and the same was decreed on 04.09.1997, which was filed by the decree holder for recovery of possession and mesne profits claiming that the respondents are in illegal possession and enjoyment of the property. When the respondents filed petition for execution to take delivery of the property, these petitioners filed petition under Order XXI Rule 97 C.P.C. to resist or obstruct the delivery of possession of the property and filed O.S.No.176 of 2016 for various reliefs i.e. to declare that the petitioners are owners of the property to an extent of 4040 sq. yards situated in Block No.15, T.S.No.1153 of Eluru Town, West Godavari District and direct respondents to deliver vacant possession of the suit schedule property and to set aside the judgment and decree in O.S.No.133 of 1988 passed by the Principal Subordinate Judge, (Senior Civil Judge), West Godavari at Eluru and for perpetual injunction restraining the

respondents, their men and followers, from in any manner creating any third party interest in respect of the schedule property situated in Block No.15, T.S.No.1153, to an extent of 4040 sq. yards within the following boundaries. East: Compound wall belonging to late Mothey Anja Ratna Raj Kumar abutting Chittivalasa Huts, South: site of late Mothey Anja Ratna Raj Kumar and godowns therein, West: Joint site of late Mothey Anja Ratna Raj Kumar and others and North: Land belonging to South Central Railway. The earlier suit was filed for recovery of possession of 4040 sq. yards situated in Block No.15, T.S.No.1153 within the following boundaries. East: Compound wall belonging to late Mothey Anja Ratna Raj Kumar abutting Chittivalasa Huts, South Site of late Mothey Anja Ratna Raj Kumar and godowns therein, West: Joint site of late Mothey Anja Ratna Raj Kumar and others and North: Land belonging to South Central Railway.

3. After decree was passed, the execution petition was filed by M/s East India Commercial Co. Pvt. Ltd., who is the 13th defendant. But in O.S.No.176 of 2016, the petitioners sought for relief of delivery of possession to defendants 1 to 6 by defendants 7 to 12 since defendant No.3 did not take delivery of possession as on date.

4. E.A. under Order XXI Rule 97 C.P.C. is pending before the Senior Civil Judge, Eluru; after framing issues, O.S.No.176 of 2016 is pending before Principal District Judge, West Godavari at Eluru. To avoid conflicting judgments, the petitioners sought for withdrawal and transfer of E.P. and E.A.

5. During hearing, learned counsel for the petitioners reiterated the same grounds.

6. Undisputedly, E.P and suit are pending in two different Courts and the petitioners did not obtain any stay of execution of the decree in O.S.No.133 of 1988 though the decree sought to be set aside as one of the reliefs in the plaint. Unless and until the decree is stayed, it is difficult to prevent the respondents from execution proceedings. Moreover, merely because, suit is filed after lapse of 17 years from the date of passing decree in O.S.No.133 of 1988, the same cannot be withdrawn and transferred on the ground that the property and parties are identical. Moreover, in O.S.No.133 of 1988 the petitioners are not parties to the suit when the execution petition is filed under Order XXI Rule 97 C.P.C., the Court is required to make necessary enquiry like a suit and pass appropriate orders. Filing of suit is nothing but multiplication of the proceedings when they are entitled to make proper relief under Order XXI Rule 97 C.P.C. till they obtain appropriate relief from the competent Court. But pendency of suit at pre-trial stage, when EP and EA are pending at the midst of enquiry, they cannot be withdrawn and transferred.

7. This Court cannot exercise its discretionary jurisdiction under Section 24 C.P.C on mere asking unless the Court satisfies that there is a possibility of conflicting decisions. However, the Apex Court in **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Educational Trust and others**¹ held that:

“Section 24 CPC 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

¹ 2008(3) SCC 659

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 CPC cannot be exercised ipse dixit in the manner in which it has been done in the present case.”

8. 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:

- (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.

The above guidelines are illustrative, but not substantive guidelines.”

9. In view of the above guidelines, the Court finds that there is possibility of conflicting judgments in the event of disposal of two matters by two different Courts, the Court can exercise its discretionary jurisdiction to withdraw and transfer the case. But in the present case, the order to be passed in a petition filed under Order XXI Rule 97 C.P.C.

for limited purpose to recognize the claim of the petitioner to obstruct the delivery of possession till obtaining decree in a regular Court. Therefore, the relief to be granted in a petition under Order XXI Rule 97 C.P.C. is for limited purpose and if for any reason O.S.No.176 of 2016 is decreed, the petitioners can recover possession of the property from the respondents while obtaining consequential relief. Hence, the apprehension of the petitioners is totally misplaced and the ground raised in the petition stated herein above, this Court cannot exercise its discretionary jurisdiction to withdraw and transfer EP and EA, pending on the file of Principal Senior Civil Judge, Eluru, West Godavari District. However, the observations made hereinabove are for the limited purpose of deciding the petition and will have no bearing in issue involved in EP and EA and that both the Courts are directed to dispose of the matters in accordance with law uninfluenced by the observations made hereinabove. I find no grounds to withdraw EA and EP from the file of Senior Civil Judge's and transfer to the Principal District Judge's Court.

10. Accordingly, the civil revision petition is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

M.SATYANARAYANA MURTHY, J.

Date 08.02.2018
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