

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P. NO.626 OF 2017

ORDER:

This transfer civil miscellaneous petition is filed under Section 24 of C.P.C to withdraw M.C.No.7 of 2016 pending on the file of Family Court, Rajahmundry, East Godavari and transfer the same to Court of Principal Senior Civil Judge, Kovvur, West Godavari to try along with H.M.O.P.No.188 of 2016, on the ground that, HMOP No.188 of 2016 and M.C.No.7 of 2016 are filed through General Power of Attorney holder, the petitioner's father Nemi Chand Jain and evidence in both the cases is one and same and to avoid conflicting judgments, the petitioner sought to withdraw M.C.No.7 of 2016 pending on the file of Family Court, Rajahmundry, East Godavari and transfer the same to Court of Principal Senior Civil Judge, Kovvur, West Godavari to try along with H.M.O.P.No.188 of 2016.

Learned counsel for the respondent reported 'no objection' to withdraw H.M.O.P.No.188 of 2016 pending on the file of Principal Senior Civil Judge, Kovvur, West Godavari and transfer the same to the Court of Family Court, Rajahmundry, East Godavari to try along with M.C.No.7 of 2016.

In view of the concession made by the learned counsel for the respondent, taking into consideration of the pendency of M.C.No.7 of 2016 pending on the file of Family Court, Rajahmundry and H.M.O.P.No.188 of 2016 on the file of Principal

Senior Civil Judge, Kovvur, I deem it appropriate to withdraw H.M.O.P.No.188 of 2016 pending on the file of Principal Senior Civil Judge, Kovvur, West Godavari and transfer the same to Family Court, Rajahmundry, East Godavari where M.C.No.7 of 2016 is pending, leaving it open to try both the suits separately or by clubbing or consolidating, as this Court is not vested with power for clubbing or consolidating both the suits.

However, in **Dronavajjula Vidyamba Vs Vallabhajosyula Lakshmi Venkayamma**¹, Division Bench of this Court held that, as per Section 24(2) of C.P.C., 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transfer either to order the trial *denovo* or to proceed with the suit from the point at which it was transferred or withdrawn.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 CPC 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.

Thus, in view of the law declared by the Division Bench of this Court, I am not inclined to order joint trial of both the matters.

In view of the law declared by the Division Bench of this Court, at best this court can issue direction to conduct de novo trial or stage at which trial is to be conducted before it is transferred. Therefore this court cannot issue such direction to club both the suits and try jointly.

¹ AIR 1958 (A.P.) Page 218

Hence, I am not inclined to issue any such directions to try both the suits jointly. However, it is left open to the Judge, Family Judge, Rajahmundry to exercise discretion weather to decide the stage simultaneously or otherwise on transfer. However the Judge, Family Judge, Rajahmundry is directed to complete the trial from where it was stopped in H.M.O.P.No.188 of 2016 and dispose of both H.M.O.P.No.188 of 2016 and M.C.No.7 of 2016, in accordance with law, at an earliest date.

In the result transfer civil miscellaneous petition is allowed.

Consequently, miscellaneous petitions pending, if any, in this transfer civil miscellaneous petition shall also stand dismissed.

Date:12.11.2018

SP

JUSTICE M. SATYANARAYANA MURTHY

