

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P NO.424 OF 2017

ORDER:

This petition under Section 24 of C.P.C is filed to withdraw O.S.No.71 of 2014 pending on the file of VIII Additional District Judge, Chittoor and transfer the same to IX Additional District Judge, Chittoor and club with pending A.S.No.69 of 2013, on the ground that in O.S.No.71 of 2014, this petitioner is arrayed as sole defendant and the relief claimed in the said suit is declaration of title and consequential injunction.

Whereas, the second respondent herein filed O.S.No.51 of 2004 for partition of plaint schedule property against the petitioner herein, which ended in dismissal. Aggrieved by the decree and judgment in O.S.No.51 of 2004, the second respondent herein preferred A.S.No.69 of 2013 pending on the file of IX Additional District Judge, Chittoor for adjudication. Further, during pendency of the appeal, the first respondent herein died and the petitioner herein allegedly filed I.A.No.90 of 2014 in A.S.No.69 of 2013 under Order I Rule 10 C.P.C to implead the petitioner who is the proposed legal representative of the second respondent herein. The said I.A.No.90 of 2014 was dismissed by the Court below on 17.02.2017. However, C.R.P.No.2842 of 2017 was preferred against the order in I.A.No.90 of 2017 before this Court, which was disposed of by this Court on 19.09.2017, directing the IX Additional District Judge, Chittoor to conduct an enquiry trial in the said appeal with regard to validity or otherwise of the registered

Will dated 15.07.2002 and thereafter to proceed in accordance with law.

Since, the property involved in both the suits is one and the same, though the petitioner is not a party to the appeal, as on today, to avoid conflicting judgments, the petitioner sought for withdrawal of O.S.No.71 of 2014 pending on the file of VIII Additional District Judge, Chittoor and transfer the same to IX Additional District Judge, Chittoor and club with pending A.S.No.69 of 2013, for adjudication.

During hearing, learned counsel for the petitioner Sri S.S. Bhatt reiterated the contentions raised in the affidavit, whereas, the learned counsel for the second respondent Sri P. Venkata Rama Sarma opposed the petition on the ground that, until a decision is given on the interlocutory application, in pursuance of the direction issued by this Court in C.R.P.No.2842 of 2017, both the matters cannot be disposed of simultaneously by one Court. Further, the question of conflicting decisions would not arise even if both the cases were disposed of by two independent Courts separately and prayed for dismissal of this petition.

It is an undisputed fact that, O.S.No.71 of 2014 and A.S.No.69 of 2013 are pending on the file of two different Courts i.e. VIII Additional District Judge, Chittoor IX Additional District Judge, Chittoor, respectively. But, the property involved in both the suits is one and the same.

In A.S.No.69 of 2013 which is filed for partition, the petitioner is not yet impleaded as party. However, the direction issued by this Court in C.R.P.No.2842 of 2017 is not yet complied

with by the IX Additional District Judge, Chittoor and the appeal suit is still pending for adjudication about the validity of the Will, as directed in the revision petition.

But, in O.S.No.71 of 2014 which is filed for declaration of title and consequential injunction, this petitioner set up the Registered Will, claiming property by way of testamentary dispossession and therefore, adjudication, if any, as directed by this Court in C.R.P.No.2842 of 2017 will have its own impact on the judgment in O.S.No.71 of 2014. If, for any reason, in the appeal A.S.No.69 of 2013, the validity of the Will is decided and the defence set up in the suit O.S.No.71 of 2014 is decided on the same Will, the defendant would lose its opportunity to adduce substantive evidence to prove the said will and if, for any reason, two suits are tried by two different Courts, there is every likelihood of conflicting judgments on the Registered Will set up by the petitioner herein.

When the property is common in both the suits, the Court can exercise its discretionary power under Section 24 of C.P.C to withdraw and transfer the pending suit from one Court to another.

In **Dr.Reddy's Laboratories Ltd., Hyderabad Vs. Pulletikurhti Varaha Chandra Bose and others**¹, this Court held as follows:

“Necessity for transfer of suits from one Court to another, would arise if only there exists any similarity of causes of action or commonality of parties. When such situation does not exist, the relief claimed for transfer of the suit, cannot be granted.”

¹ 2004 (4) ALD page 719

In **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others**², the Supreme Court held as follows:

“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 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.”

It is further held by the Supreme Court 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;

² 2008 (3) Supreme Court Cases Page 659

- (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 Apex Court observed that, the above guidelines are illustrative, but not substantive guidelines.”

The Apex Court in **Kulwinder Kaur**² case, specified that when the property is one and the same, the Court may exercise its inherent discretion to avoid conflicting judgments and convenience of parties is one of the considerations to exercise power under Section 24 C.P.C. Hence, I deem it appropriate to withdraw O.S.No.71 of 2014 pending on the file of VIII Additional District Judge, Chittoor and transfer the same to IX Additional District Judge, Chittoor, where A.S.No.69 of 2013 is also pending, so as to enable the Court to decide the validity of the Will in both the cases simultaneously.

In so far as the relief of joint trial is concerned, the same is rejected, as both the parties have to adduce evidence in O.S.No.71 of 2014 and A.S.No.69 of 2013 is pending for adjudication.

However, in **Dronavajjula Vidyamba Vs Vallabhajosyula Lakshmi Venkayamma**³, Division Bench of this Court that, under

³ AIR 1958 (A.P.) Page 218

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 the result, the transfer civil miscellaneous petition is partly allowed, O.S.No.71 of 2014 pending on the file of VIII Additional District Judge, Chittoor is withdrawn and transferred the same to IX Additional District Judge, Chittoor, where A.S.No.69 of 2013 is pending and the Court concerned is directed to decide both the matters simultaneously without clubbing both the matters.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:30.01.2018

Note: copy by 06.02.2018
b/o
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