

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

TRANSFER CIVIL MISCELLANEOUS PETITION No.145 of 2018

ORDER:

This transfer petition is filed by defendant Nos.3 and 4, under Section 24 of CPC, seeking to withdraw A.S.No.130 of 2012 from the file of the VIII Additional District Court, West Godavari District at Eluru and transfer the same to the file of this Court, for disposal along with S.A.No.145 of 2014.

2. Heard the learned counsel for both the parties.

3. A perusal of the record reveals that the first respondent filed O.S.No.205 of 2001 on the file of the Additional Senior Civil Judge Court, Eluru against the second respondent and one Immadi Durga Rao, who is defendant No.1, for declaration that he is the owner of the suit schedule property and for consequential reliefs of recovery of possession and perpetual injunction. During the pendency of the suit, Durga Rao died and the petitioners herein were brought on record as defendant Nos.3 and 4. After full-fledged trial, the trial Court decreed the suit on 12.12.2005. Feeling aggrieved by the decree and judgment of the trial Court, second respondent-second defendant preferred A.S.No.40 of 2006 on the file of the District Court, Eluru. The appeal was allowed on 25.10.2010 and the suit was remanded to the trial Court for fresh disposal. Again the suit was decreed in favour of the plaintiff and against the defendants on 07.8.2012. Feeling aggrieved by the decree and judgment dated 07.8.2012 in O.S.No.205 of 2001, second respondent-second defendant preferred A.S. No.121 of 2012 on the file of VIII Additional District Court, Eluru. The

petitioners-defendant Nos.3 and 4 preferred A.S.No.130 of 2012 on the file of VIII Additional District Court, Eluru and the same is pending. The learned VIII Additional District Judge, Eluru disposed of A.S.No.121 of 2012 vide judgment dated 29.7.2013 allowing the appeal. Aggrieved by the judgment and decree in A.S.No.121 of 2012, the first respondent preferred S.A.No.145 of 2014 on the file of this Court.

4. S.A.No.145 of 2014 and A.S.No.130 of 2012 arises out of judgment and decree in O.S.No.205 of 2001. The point involved in S.A.No.145 of 2014 and A.S.No.130 of 2012 is one and the same. If both the Courts are allowed to pass separate orders that may lead to conflicting judgments.

5. Taking into consideration the facts and circumstances of the case, this Court is of considered view that it is a fit case to allow the transfer petition.

6. In the result, the Transfer C.M.P., is allowed, withdrawing A.S.No.130 of 2012 from the file of VIII Additional District Court, Eluru, and transfer to the same to the file of this Court to be heard and disposed of along with S.A.No.145 of 2014. The learned VIII Additional District Judge, Eluru, is hereby directed to send the entire case record in A.S.No.130 2012, along with Lower Court records, if any, to this Court, after duly indexing. Miscellaneous petitions, if any, pending in this transfer petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 14.12.2018
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