

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Tr. CIVIL MISCELLENEANEOUS PETITION No.437 of 2014

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of CPC, is filed to withdraw O.S.No.11 of 2012 pending on the file of XI Junior Civil Judge, City Civil Court, Secunderabad and transfer the same to I Additional Chief Judge, City Civil Court, Secunderabad, to club and try along with O.S.No.146 of 2012.

The petitioner filed O.S.No.146 of 2012 before I Additional Chief Judge, City Civil Court, Secunderabad, against the respondents herein, for declaration and consequential permanent injunction.

Respondent No.1 herein filed O.S.No.11 of 2012 before XI junior Civil Judge, City Civil Court, Secunderabad, against the petitioner and his son for simplicitor injunction and the suit is being contested by them.

It is the main contention of the petitioner that the property in both the suits is one and the same and if for any reason, both suits are tried by two different Courts, it may lead to complications and conflicting judgments may pass by two different courts. To avoid conflicting judgments, requested this Court to withdraw and transfer O.S.No.11 of 2012 to the I Additional Chief Judge, City Civil Court, Secunderabad.

During hearing, learned counsel for the petitioner reiterated the contentions and prayed to withdraw O.S.No.1 of 2012 pending on the file of XI Junior Civil Judge, City Civil Court, Secunderabad to I Additional Chief Judge, City Civil Court, Secunderabad while directing I Additional Chief Judge to club both the suits and try in accordance with law.

The respondents though appears did not file any counter and did not advance any argument.

The main contention of the petitioner before this Court is that the property in both suit; one for permanent injunction and the other for declaration and other consequential permanent injunction filed by the respondent and petitioner respectively on the file of different Courts. If for any reason, both the suit are tried and disposed of independently by two different Courts, certainly there is a possibility of conflicting judgments and to avoid such conflicting judgments, requested this Court to withdraw and transfer O.S.No.11 of 2012 to I Additional Chief Judge, City Civil Court, Secunderabad, since the property in both the suits are one and the same.

When the property and parties are one and the same, the Court can exercise such power under Section 24 of CPC, in view of the Judgment of this Court in view of the judgment of this Court in *Dr. Reddy's Laboratories Limited, Hyderabad v Pulletikurthi Varaha Chandra Bose and Others*¹ wherein learned single judge of this Court made it clear that 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.

In another decision reported in *Munnangi Ramakrishna Rao V Dr. Vanakuru Venkata Siva Ramakrishna Prasad and others*², the Division Bench of this Court held that the petition filed U/ Sec.24 of CPC cannot be allowed, since the questions to be decided in both suits are not one and the same.

¹ 2004 (4) ALD 719

² 2003(4) ALD page 56 (DB)

Similarly, in *Surapuneni Pani v Surapuneni Latha and another*³, learned single judge of this Court held that reliefs claimed in all four suits being separate and independent of each other, possibility of conflicting decisions is removed.

In latter decision reported in *Peddineni Ravindra Vs Choragudi Indiramma and others*⁴, the same judge held that ordinarily the plaintiff is master of suit and its course cannot be changed at the instance of defendant, that too, against whom no relief is claimed by plaintiff.

In view of the law declared by this Court on all three judgments, when the party and the property is not identical, the Court cannot exercise its discretion to withdraw and transfer any case filed under Section 24 of CPC.

In *Kulwinder Kaur @ Kulwinder Gurcharan Singh v Kandi Friends Education Trust and others*⁵, the Apex Court laid down the following guidelines for withdrawal and transfer of the cases filed under Section 24 of CPC, which are as follows:

(1) Balance of convenience or inconvenience to the plaintiff or the defendant or witnesses;

(2) convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit.

(3) Issues raised by the parties.

(4) reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending.

(5) important questions of law involved or a considerable section of public interested in the litigation.

(6) interest of justice demanding for transfer of case etc.,”

³ 2004(4) ALD page 631

⁴ 2004(3) ALD (NOC) page 318

⁵ 2008 (3) SCC page 659

The petitioner also sought for a direction to club both the suits and try by I Additional Chief Judge, City Civil Court, Hyderabad, but such relief cannot be issued by this Court while exercising power under Section 24 of CPC as Section 24 of CPC special directions may be permits issue of special direction by the Court while ordering transfer either to order trial *den ova* or to proceed with the suit from the point at which transferred or withdrawn. For whatever reason, convenience or otherwise, the order of transfer made under Section 24(2) of CPC, it does not empower the Court or contemplate any direction being given for joint trial of the transferred suits. So, any violation of contravention of that order of transfer and separate trial of the transferred suit do not render the proceedings invalid, in view of Division Bench judgment of this Court in *Dhronavajjula Vidyamba v. Vallabhajosyula*⁶.

Hence, the direction sought for clubbing both the suits and joint trial is impermissible and this Court cannot issue such direction leaving it open to the trial Court to exercise its discretion to try both the suits jointly or independently.

In view of the above discussion, I find that it is a fit case to withdraw O.S.No.11 of 2012 pending on the file of XI Junior Civil Judge, City Civil Court, Secunderabad and transfer the same to I Additional Chief Judge, City Civil Court, Secunderabad, to try and dispose of the matter along with O.S.No.146 of 2012 pending to its file, without any direction to club both the suit for joint trial.

Accordingly, this Tr. Civil Miscellaneous Petition is partly allowed withdrawing O.S.No.11 of 2012 pending on the file of XI Junior Civil Judge, City Civil Court, Secunderabad and transfer the same to I Additional Chief

⁶ AIR 1958 AP 218

Judge, City Civil Court, Secunderabad, to try and dispose of the matter along with O.S.No.146 of 2012 pending to its file while denying the relief of joint trial.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt: 23-02-2018

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