

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 673 OF 2017

ORDER:

This transfer civil miscellaneous petition under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') is filed to withdraw L.A.O.P.No.91 of 2007, pending on the file of Principal Senior Civil Judge, Karimnagar, and transfer the same to the file of Principal Senior Civil Judge, City Civil Court, Hyderabad for disposal in accordance with law on the sole ground that in the counter filed by the respondents in I.A.No.990 of 2017 in I.A.No.916 of 2017 in LA O.P.No.91 of 2007 at para 10 made serious allegations against the Government Pleader and Presiding Officer of the Court, which are extracted hereunder:

“It is submitted that the present Government Pleader is from the office of the counsel for the petitioner. Moreover, on 04.09.2017 at the time of further chief examination of PW.3 to mark the alleged created will deed as exhibit, the names of other witnesses and the material averments of the said document must come from the witness i.e. PW.3. But instead of that the counsel for the petitioner Sri Ramesh Sagar, Advocate put leading questions directly revealing names and material facts of the will deed to PW.3. But the Government Pleader has not taken any objection to mark the same but the counsel for this respondents only strongly opposed to mark the said will deed through PW.3, without examining the propounder of that document and also objected to mark the same as the material facts and names of witnesses are directly suggested by the counsel for the petitioner to the witnesses and finally the court marked the documents as EX.A1 subject to objections by this respondent.”

During hearing, Sri C.Ramesh Sagar, learned counsel for the petitioner reiterated the contentions raised in the affidavit filed in support of the petition while drawing attention of this Court to the

allegations made in para 10 of the counter filed in I.A.No.990 of 2017 and requested this Court at least transfer the LAOP No.91 of 2007 to the file of the Senior Civil Judge, Warangal.

Sri Alladi Ravinder, learned counsel for the respondents opposed the same on the ground that the petitioner is not a person aggrieved and thereby he is not entitled to file any application under Section 24 C.P.C. for withdrawal and transfer of LAOP No.91 of 2007 from the file of Principal Senior Civil Judge, Karimnagar to any other Court and requested to dismiss the petition.

Undisputedly, the respondents in I.A.No.990 of 2017 made certain allegations against the Government Pleader and the Presiding Officer of the Court for marking the document i.e. Will as Ex.A.1 subject to objection and the Court also allegedly permitted leading questions put to the witness during examination in chief. If for any reason, the Court marked the Will as Ex.A.1 either subject to objection or without objection and permitted to put leading questions to the witness during examination in chief by the counsel for the petitioner, the person aggrieved is respondent in this petition. Therefore, the petitioner is not entitled for withdrawal of LAOP and transfer the same to any other Court, including the Courts at City Civil Court or Warangal.

Section 24 C.P.C. confer general power of transfer and withdrawal, which is purely discretion in nature and such power can be exercised based on the facts of the case and such discretion cannot be exercised at his whim and fancy by the Court. Even Section 24 C.P.C., permits to file an application by any of the parties and after notice to the parties, the Court can pass appropriate orders withdrawing the matter pending

before any Court and transfer the same to any Court with certain directions. In the present case, the respondent made allegations against the Government Pleader, who is prosecuting the case on behalf of the Government and also against the Presiding Officer of the Court. But still, he did not move any application for withdrawal and transfer. In fact, there is no reasonable apprehension in the mind of the petitioner to get fair justice, and mere allegations made against the Government Pleader and the Presiding Officer of the Court by the petitioner in the counter filed in incidental proceedings would not form a ground to exercise power under Section 24 C.P.C. to withdraw and transfer the LAOP No.91 of 2007. Therefore, the petitioner did not express any apprehension about fair justice after trial and based on the allegations made against the Government Pleader and the Presiding Officer of the Court moved this petition under Section 24 C.P.C. for withdrawal and transfer. Therefore, I find that it is not a fit case to withdraw LAOP 91 of 2007, pending on the file of Principal Senior Civil Judge, Karimnagar and transfer the same to the Senior Civil Judge Court at Hyderabad or to the Principal Senior Civil Judge, Warangal as requested during hearing. Consequently, the petition fails as it devoid of merits.

In the result, the transfer civil miscellaneous petition is dismissed.
No costs.

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

M.SATYANARAYANA MURTHY, J.

Date: 22.01.2018
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