

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

TRANSFER CMP.No.374 of 2015

ORDER:

The present transfer CMP is filed requesting to withdraw O.S.No.4 of 2009 from the file of the Senior Civil Judge's Court, Rajam, Srikakulam, and to transfer the same to the file of the Principal District Judge, Srikakulam, to try with O.S.No.6 of 2009.

Heard Sri Aravala Rama Rao, learned counsel for the petitioner.

Non-service of notice on respondent Nos.1 and 2 makes no difference, for the reason that, though, the very same address is mentioned in the present transfer CMP, somehow, notices were not effected.

Learned counsel for the petitioner would submit that the present transfer CMP is maintainable, though, it is independently filed without challenging the order in Transfer O.P.No.493 of 2012, which was disposed of on 22.04.2014 by the Principal District Judge, Srikakulam, rejecting the request and dismissing the application for transfer of O.S.No.4 of 2009 pending on the file of the Senior Civil Judge's Court, Rajam, to try the same with O.S.No.6 of 2009 pending on the file of the Principal District Judge's Court, Srikakulam.

Learned counsel, in support of his submission, placed reliance in **Munnangi Ramakrishna Rao v. Dr. Vanakuru Venkata Siva Ramakrishna Prasad¹**, wherein, a Division Bench of this Court, in a similar situation, held that, though, the order of dismissal of transfer

¹ 2003 (4) ALD 56 (DB)

application under Section 24 CPC by the District Judge is not challenged, but, still, transfer CMP is maintainable under the very same provision of law, if a party files an independent application. Learned counsel would also submit that the plaint schedule properties in O.S.No.4 of 2009 and item Nos.1 to 3 of the plaint schedule properties in O.S.No.6 of 2009 are one and the same, though, the other property i.e., item No.4 of plaint schedule in O.S.No.6 of 2009 is not part of the subject matter in O.S.No.4 of 2009, but, the learned Principal District Judge went wrong in holding that the plaint schedule properties in both the suits are not identical.

May be, the reliefs sought for by the plaintiff in both the suits are different, but the fact remains that the plaint schedule properties in O.S.No.4 of 2009 are also shown as item Nos.1 to 3 of the plaint schedule in O.S.No.6 of 2009. Therefore, to avoid conflict of findings that would be recorded by two different courts, it would be appropriate to accede to the relief sought for in the present petition.

Hence, the transfer CMP is allowed. O.S.No.4 of 2009 pending on the file of the Senior Civil Judge, Rajam, Srikakulam, is withdrawn and transferred to the file of the Principal District Judge, Srikakulam, to try with O.S.No.6 of 2009. The Principal District Judge, Srikakulam is directed to issue notices to the parties in O.S.No.4 of 2009 and take up joint trial and dispose of both the suits as expeditiously as possible, not later than six months from the date of receipt of a copy of the order.

Miscellaneous Petitions, if any, pending in the present petition,
stand closed.

A. SHANKAR NARAYANA, J

12.04.2018

v v

