

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P. NO.474 OF 2014

ORDER:

This petition is filed under Section 24 of C.P.C to withdraw E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 pending on the file of Principal Junior Civil Judge at Anakapalle and transfer the same to the Court of Principal District Judge, Visakhapatnam, to try along with O.S.No.182 of 2008 pending on the file of X Additional District & Sessions Judge, Anakapalle.

The first petitioner along with his five brothers filed E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 before the Principal Junior Civil Judge at Anakapalle, praying for a decree and order not to record delivery of schedule property declaring that there is no physical delivery of schedule property. The schedule property is in an extent of Ac.4.26 cents covered by patta no.729 in Sy.No.18/3 situated at Anakapalli Town, Visakhapatnam District, was their ancestral property developed by their father late Rama Murthy Setty and after his death, the first petitioner and his five brothers succeeded to the property and they got divided the land into residential plots vide lay out L.P.No.1/1987 issued by Visakhapatnam Urban Development Authority (VUDA) and the land was ceased to be an agricultural land and also situated in Anakapalli Town, the original respondents no.1 & 3 have set up Kotni Rama Swamy, original respondent no.2 as their tenant filed a collusive tenancy application A.T.C.No.3 of 1998 on the file of Principal Junior Civil Judge Court, Anakapali and obtained a

collusive eviction order on the basis of a consent memo filed by the alleged tenant and tried to execute the same through E.P.No.7 of 1999 on the premise of taking a paper delivery of the property and tried to interfere with the peaceful possession and enjoyment of the subject property. Hence, the petitioners filed E.A.No.32 of 1999 requesting the Court not to record delivery, since, no physical delivery of property was effected. Pending the said application, original petitioner No.3 Sri Grandhi Dhandayadapani died and petitioners Nos.7 & 8 were brought on record vide order dated 20.09.2012 in E.A.No.145 of 2012. Thus, the petitioners are entitled to protect their possession, being the owners having succeeded the property from their father late Rama Murthy Setty.

The petitioners also filed O.S.No.182 of 2008 on the file of X Additional District & Sessions Judge, Anakapalli, praying for a decree for declaration of title over the suit schedule property and for consequential permanent injunction and also to declare the proceedings in A.T.C.No.3 of 1998 and also the consequential execution proceedings in E.P.No.7 of 1999 as null and void and inherent lack of jurisdiction. Further, as the subject matter and parties and their defenses are common and the evidence to be let in is common, the petitioners filed T.O.P.No.350 of 2013 on the file of Principal District Judge's Court, Visakhapatnam for withdrawal of E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 pending on the file of Principal Junior Civil Judge at Anakapalle and to transfer the same to the Principal District Judge to try along with O.S.No.182 of 2008 on the file of IX Additional District &

Sessions Judge, Anakapalle. It is stated in the affidavit that, T.O.P.No.350 of 2013 was dismissed by the Principal District Judge, Visakhapatnam without considering the scope and object of Section 24 C.P.C. Notwithstanding the dismissal of T.O.P.No.350 of 2013, the petitioners are entitled to claim relief for withdrawal E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 pending on the file of Principal Junior Civil Judge at Anakapalle and transfer the same to the Court of Principal District Judge, Visakhapatnam, to try along with O.S.No.182 of 2008 pending on the file of X Additional District & Sessions Judge, Anakapalle, in view of commonality of parties and property involved in both the suit and execution proceedings. It is also contended that, in case, both the matters are disposed of by two different Courts, there is every likelihood of conflicting judgments or orders and to avoid conflicting orders, requested this Court to withdraw E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 pending on the file of Principal Junior Civil Judge at Anakapalle and transfer the same to the Court of Principal District Judge, Visakhapatnam, to try along with O.S.No.182 of 2008 pending on the file of X Additional District & Sessions Judge, Anakapalle.

The first respondent filed counter on behalf of 4 to 7 also, denying material allegations, while admitting about pendency of two different proceedings in E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 pending on the file of Principal Junior Civil Judge at Anakapalle and O.S.No.182 of 2008 pending on the file of X Additional District & Sessions Judge, Anakapalle. It is

specifically contended that the property originally belongs to one Grnadhi Hanumantha Rao and subsequent to the family partition, the said property fell to the share of Grandhi Krishna Murthy. The total extent of the schedule property is Ac.0-74 cents of land situated at Anakapally and on 09.07.1953 Mr. G. Krishna Murthy, who is the original owner, sold away the suit schedule property to the father of the third respondent late Narsinga Rao and delivered the same. Right from 1953, late Narsinga Rao was in exclusive possession of the suit schedule property. later, late Narsinga Rao leased out the property to one K. Ramaswami under the lease deed dated 29.03.1968, while so, K. Ramaswami committed default in payment of rent in collusion with the original owners. Then, the father of the third respondent filed A.T.C.No.3 of 1998 under Section 13 of the A.P. Tenancy Act and the said A.T.C.No.3 of 1998 was decreed. Thereafter, father of the third respondent filed E.P.No.7 of 1999 against the said Rama Swami and obtained the physical possession of the schedule property through Court on 06.02.1999.

It is submitted in the counter that the petitioners 1 to 6 with an intention to grab the land, filed O.S.No.30 of 1999 on the file of Principal Junior Civil Judge's Court, Anakapally for injunction and in the above suit, the petitioners sought for temporary injunction in I.A.No.146 of 1999. But, the Principal Junior Civil Judge, Anakapalli dismissed the interlocutory application, declining to grant temporary injunction. As the petitioners could not succeed in obtaining interim injunction during pendency of the suit, they

approached the Land Grabbing Court in L.G.C.No.22 of 1999 seeking temporary injunction in I.A.No.202 of 1999 and the same was dismissed on 09.04.1999 by the Land Grabbing Court. Further, against the dismissal of the interim injunction, the petitioners approached this Court by way writ petition in W.P.No.7996 of 1999. This Court also dismissed the writ petition on 07.06.1999. Thus, the petitioners have failed in all the Courts to obtain interim injunction. It is further contended that, when father of the third respondent raised an objection before the Land Grabbing Court about the parallel proceedings, the respondents 1 to 6 withdrew the suit i.e. O.S.No.30 of 1999 on the file of Junior Civil Judge, Anakapalli and the LGC No.22 of 1999 filed by the respondents 1 to 6 was allowed on 03.09.2002. As against that, W.P.No.21314 of 2002 was filed by the father of the third respondent along with one G. Mangatayaru, this Court vide order dated 23.04.2007 while setting aside the order passed by the Land Grabbing Court in LGC No.22 of 1999, allowed the writ petition. Against the order in W.P.No.21314 of 2002, a review application was filed by the respondents 1 to 6 and the same was dismissed on 19.04.2008. Thus, all the Courts refused to interfere with the proceedings.

It is further stated in the counter that, subsequent to disposal of A.T.C.No.3 of 1998, father of the third respondent preferred E.P.No.7 of 1999 under Order XXI Rule 35 C.P.C for delivery of the E.P. schedule property and physical possession of the said property was delivered to the father of the third

respondent on 09.02.1999 through process of the Court. As the petitioners failed in their attempt before all the forums, with a malafide intention, filed the present suit for declaration and also filed interlocutory application under Order XXXIX Rules 1 & 2 r/w Section 151 & 94(e) C.P.C to grant an injunction, restraining the respondents from proceeding with the execution proceedings in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 on the file of the Special Officer, A.P. Tenancy Act, Anakapalli. However, the same was renumbered as I.A.No.564 of 2008 and by order dated 03.11.2009, the I.A.No.564 of 2008 was allowed. Against the order in I.A.No.564 of 2008, C.M.A. No.47 of 2011 is preferred and this Court vide order dated 18.07.2012 allowed C.M.A.No.47 of 2011 by setting aside the order of the Court below and remanded the I.A.no.564 of 2008 to lower court for fresh consideration and to dispose of within four months. In the meanwhile, this Court directed the parties to maintain status quo and further mentioned that the order passed in C.M.A.No.47 of 2011 will not preclude the Court to decide the proceedings in E.A.No.32 of 1999, pending before the Tenancy Tribunal.

It is stated in the counter that, the petitioners created all sorts of troubles in one way or the other, and not allowing the lower courts to dispose of the matters, obviously for different reasons. The proceedings in A.T.C. No.3 of 1998 are totally different from the proceedings in O.S.No.182 of 2008 and the question of conflicting judgments would not arise, even if both the matters are decided by two different Courts and also that there are

no bonafides in the petition and prayed for dismissal of the present petition.

During hearing, learned counsel for the petitioners Sri P. Rajasekhar contended that, in case both E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 pending on the file of Principal Junior Civil Judge at Anakapalle and O.S.No.182 of 2008 pending on the file of X Additional District & Sessions Judge, Anakapalle are allowed to be tried and disposed of by two different courts, there is every likelihood of passing conflicting judgments, since the relief claimed in the suit is that the proceedings in A.T.C.No.3 of 1998 are null and void and the order was passed without exercising jurisdiction, and if, for any reason, delivery was recorded in execution proceedings in E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998, it will have its own impact on the disposal of O.S.No.182 of 2008 and therefore, to avoid such conflicting judgments and to put an end to the litigation, it is appropriate to withdraw E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 pending on the file of Principal Junior Civil Judge at Anakapalle and transfer the same to the Court of Principal District Judge, Visakhapatnam, to try along with O.S.No.182 of 2008 pending on the file of X Additional District & Sessions Judge, Anakapalle.

Whereas, learned counsel for the respondents Sri M. Radhakrishna highlighted the conduct of the petitioners at every stage of the proceedings and their honest attempts to grab the property by resorting to two types of litigation and the orders

passed by the Courts in various proceedings while contending that E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 pending on the file of Principal Junior Civil Judge at Anakapalle cannot be withdrawn and transferred to the Court of Principal District Judge, Visakhapatnam, to try along with O.S.No.182 of 2008 pending on the file of X Additional District & Sessions Judge, Anakapalle and it would not serve any purpose, as the suit is pending before the X Additional District & Sessions Judge, Anakapalle.

Considering rival contentions and perusing the material available on record, the point that arose for consideration is ***“whether E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 pending on the file of Principal Junior Civil Judge at Anakapalle be withdrawn and transferred to the Court of Principal District Judge, Visakhapatnam, to try along with O.S.No.182 of 2008 pending on the file of X Additional District & Sessions Judge, Anakapalle, and decide in accordance with law?”***

P O I N T:

Section 24 C.P.C conferred with a jurisdiction on the High Court or the District Court, as the case may be, to transfer any suit appeal or other proceeding pending in a Court Subordinate to it and transfer it to any other Court within limits or their jurisdiction with competency to avoid conflicting judgments or to avoid bias, if any played, when the parties and property is one and the same. But, the jurisdiction of Section 24 C.P.C is purely

discretionary in nature. In relation to transfer of suit from a Court which has no jurisdiction to try, this Court in **R. Jagadeswara Rao v. A. Subbaiah**¹ held that the language of Section 24 C.P.C is very wide and there are no restrictions or impediments in the way of the High Court exercising the power of transfer merely because there is a dispute regarding jurisdiction. Thus, the power under Section 24 C.P.C is wider and the Court can exercise such discretionary power only for the purpose of avoiding conflicting decisions.

The very purpose of enacting Section 24 C.P.C is to confer a jurisdiction on the High Court or the District court as the case may be, to transfer any suit appeal or other proceeding pending in a Court Subordinate to it and transfer it to any other Court within limits of their jurisdiction with competency to try the same. So far as the word “competent court” occurring in Section (1)(b)(ii) of C.P.C is concerned, it is well settled that the competency relates to the pecuniary jurisdiction and the subject matter of the suit and that it is not necessary that it should have territorial jurisdiction (vide **Md. Ibrahim v. P.V. Subba Rao**²).

The Court to which a suit is transferred must possess pecuniary jurisdiction but it is not necessary that it should have, territorial jurisdiction and the competency of the transferee court must be judged as on the date of transfer (vide **Ayeshabai v. Dali Sing**³).

¹ (1968) 2 An. WR 390

² 1975 (1) APLJ 41 (SN)

³ A 1961 Raj 186)

In application for transfer of suit when grounds for transfer are neither sufficient nor cogent, suit cannot be transferred and the normal ground for withdrawal and transfer of suit is that, there must be an apprehension of conflicting judgments and if the suits are disposed of by two different Courts, where the parties to the suit and the property is identical, the Court can exercise its discretionary power under Section 24 C.P.C to withdraw and transfer the same from one Court to another.

Section 24 C.P.C did not confer any power of transfer to court not having jurisdiction. In **B.M. Thomas Mathews v. P.M. Athanasious**⁴, the Supreme Court held that in socially sensitive suits affecting a considerable section of the public, where there is a massive volume of oral evidence, the High Court should grant an application for withdrawal of the suit to the High Court. In such cases, expeditious termination of the litigation is of vital importance and the importance of demeanour of witnesses being observed by the trial judge should not be exaggerated.

Procedure under Section 24 C.P.C can be invoked where a party to the suit, appeal or proceeding pending in the High court presided over by a single Judge objects to its being heard by him, besides that, that section visualises a case of an objection being required to be taken before single judge. (vide **Koteswara Rao v. State**⁵). Therefore, the Court can withdraw pending suit and transfer the same to another Court, no principle of the judgments rendered by the Supreme Court and High Court would not have

⁴ 1979 SC 1909

⁵ 1975 An.W.R 326 (DB)

any presidential value and decision of any objection filed under Section 24 C.P.C varies from case to case. Therefore, the Courts can decide each and every case based on its facts of each case.

Here, in the present case, the Special officer, Andhra Tenancy Act, Anakapalli-cum-Principal Junior Civil Judge at Anakapalle, passed an order under Section 13 of Andhra Tenancy Act and thereafter, initiated proceedings for execution of the order in E.P.No.7 of 1999 and obtained delivery of possession of the property by R-3. At that stage of recording delivery by the Special officer under Tenancy Act, E.A.No.32 of 2009 was filed contending that property belongs to the petitioners and requested as to record delivery of possession and the petitioners resorted to various litigations, including filing of suit for injunction before the Principal Junior Civil Judge and thereafter, approached the Land Grabbing Court, which proceedings have ended in dismissal. Having failed in all their attempts, the petitioners now approached the Court below by filing O.S.No.182 of 2008. At this stage, this Court called for a report about the stage of the proceedings and it was informed through the Principal District & Sessions Judge, Visakhapatnam vide letter dated 28.12.2017 that O.S.No.182 of 2008 is pending on the X Additional District & Sessions Judge, Anakapalle, at the stage of framing issues. Therefore, the proceedings in the suit is at foetus stage and if, for any reason, E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 pending on the file of Principal Junior Civil Judge at Anakapalle is withdrawn and transferred to the Court of Principal District & Sessions Judge, Visakhapatnam,

disposal of the proceedings in E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 may take several years. Even otherwise, when O.S.No.182 of 2008 is pending on the file of X Additional District & Sessions Judge, Anakapalle, withdrawal and transfer of the same would not serve any purpose, though it is an Appellate Court, against the orders passed by the Special officer, Andhra Tenancy Act, Anakapalli-cum-Principal Junior Civil Judge at Anakapalle. Therefore, no purpose would be served even if E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 is withdrawn and transferred to the Court of Principal District Judge, Visakhapatnam, since O.S.No.182 of 2008 is pending on the file of X Additional District & Sessions Judge, Anakapalle.

Section 24 of C.P.C. conferred discretionary jurisdiction on the Court to withdraw and transfer the cases pending on the file of one Court subordinate to High Court and its control and such jurisdiction has to be exercised with care and caution keeping in view the inconvenience being caused to the parties.

Section 24 of CPC extends the option of getting the forum changed to either party to a suit and gives them the option to move an application for transfer of suit to another Court. This section also empowers the High Court to *suo moto* (on its own motion) withdraw any case from a subordinate Court and adjudicate on it or transfer it to another Court. The High Court exercises its powers under this section keeping in mind the interest of justice and convenience of the parties. It is to be ensured that unnecessary

inconvenience is not caused to any party as held in “K.Meenambigai v. Poovanandan (MANU/TN/1193/2008)”

Even otherwise, the judgments of Apex Court are consistent to the effect that the power under Section 24 of C.P.C. is purely discretionary and such power has to be exercised sparingly.

In **Dr.Reddy’s Laboratories Ltd., Hyderabad Vs. Pulletikurhti Varaha Chandra Bose and others**⁶, 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.”

In **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others**⁷, the Supreme Court held that, 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

⁶ 2004 (4) ALD page 719

⁷ 2008 (3) Supreme Court Cases Page 659

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.

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;
- (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.”

If, the conduct of the petitioners is taken into consideration, it appears that their intention is not to record delivery of possession of the property for one reason or the other and filing suits and other proceedings one after the other, having lost their

cases before the other courts. Even this is one such attempt made by the petitioners somehow not to allow the Courts to record delivery of possession of the property. Therefore, if the petitioners are allowed to take advantage of two different proceedings, it would be difficult to put an end to the litigation pending before the Special officer, Andhra Tenancy Act, Anakapalli-cum-Principal Junior Civil Judge at Anakapalle. That too, these proceedings cannot be transferred to any other Court, except to the Principal District Judge's Court at Visakhapatnam, who is the Appellate Authority under the Andhra Tenancy Act, unless the X Additional District & Sessions Judge's Court at Anakapalle is notified as Appellate Court under the Andhra Tenancy Act. If, for any reason, the proceedings are withdrawn and transferred to Principal District Judge's Court at Visakhapatnam, both the proceedings i.e. suit and execution proceedings have to be tried and decided by two different Courts, even there is a possibility of conflicting judgments. Therefore, it is difficult to exercise such jurisdiction either in the interest of both the parties or to meet the ends of justice, in view of facts and circumstances of the case. Apart from that, in C.M.A.No.47 of 2011 which was filed by the respondents, this Court vide order dated 18.07.2012 allowed C.M.A.No.47 of 2011 by setting aside the order of the Court below and remanded the I.A.No.564 of 2008 to lower court for fresh consideration and to dispose of within four months. In the meanwhile, this Court in paragraph 8 of the order directed the parties to maintain status quo and further mentioned that the order passed in C.M.A.No.47 of

2011 will not preclude from passing order in the proceedings in E.A.No.32 of 1999, pending before the Tenancy Tribunal.

Thus, the petitioners are resorting to two different types of litigations in different forums and not allowing the Special officer, Andhra Tenancy Act, Anakapalli-cum-Principal Junior Civil Judge at Anakapalle to record delivery of possession of the property. even if, the petitioners succeeds in O.S.No.182 of 2008, the decree is binding and the petitioners are required to file an appropriate application for recovery in the suit itself. Therefore, it is difficult to exercise jurisdiction under Section 24 C.P.C to withdraw E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 pending on the file of Principal Junior Civil Judge at Anakapalle and transfer the same to the Court of Principal District Judge, Visakhapatnam, as A.T.C.No.3 of 1998 relates to the year 1998 i.e. almost 10 years old. Further, there is no possibility of disposal of the suit in the near future, pending on the file of X Additional District & Sessions Judge's Court at Anakapalle. Hence, following the guidelines laid down by the Supreme Court in the judgments referred supra, I am unable to exercise my jurisdiction to withdraw E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 pending on the file of Principal Junior Civil Judge at Anakapalle and transfer the same to the Court of Principal District Judge, Visakhapatnam, to try along with O.S.No.182 of 2008 pending on the file of X Additional District & Sessions Judge, Anakapalle. Consequently, the transfer civil miscellaneous petition is liable to be dismissed.

In the result, transfer civil miscellaneous petition is dismissed. However, the Special officer, Andhra Tenancy Act, Anakapalli-cum-Principal Junior Civil Judge at Anakapalle is directed to dispose of E.A.No.32 of 2009 in E.P.No.7 of 1999 in A.T.C.No.3 of 1998 in accordance with law, within one month from the date of receipt of copy of this order.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:

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