

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P.No.180 of 2017

ORDER:

This petition is filed under Section 24 C.P.C., to withdraw O.S.No.83 of 2015 from the file of the VII Additional District Court, Medak District, at Sangareddy, and transfer the same to the file of I Additional District Court, Ranga Reddy District, at L.B.Nagar, to try along with O.S.No.358 of 2015.

2. Heard the learned counsel appearing for both the parties.

3. A perusal of the record reveals that respondents 1 and 2 have filed O.S.No.83 of 2015 on the file of the VII Additional District Court, Medak, at Sangareddy, against the first petitioner under Order 34 Rule 1 CPC i.e. mortgage suit. Respondents 1 and 2 have also filed O.S.No.358 of 2015 on the file of I Additional District Court, Ranga Reddy District, at L.B.Nagar, against the petitioners for specific performance of agreement of sale dated 04.01.2014. The second petitioner filed O.S.No.389 of 2015 on the file of VIII Additional District Court, Ranga Reddy District at L.B. Nagar against the respondents for cancellation of the agreement of sale dated 03.01.2014 and consequential perpetual injunction.

4. The second petitioner is not a party to O.S.No.389 of 2015. The second defendant in O.S.No.358 of 2015 i.e. the State Bank of Hyderabad is not a party to O.S.No.83 of 2015 and O.S.No.389 of 2015. The nature of evidence to be adduced by the parties to the proceedings in a suit for mortgage is entirely different to that of a suit for specific performance of agreement of sale as well as cancellation of agreement of sale. The cause of action for filing of O.S.No.83 of 2015 is entirely different to that of O.S.No.358 of 2015 and O.S.No.389 of

2015. It is an admitted fact that the suit schedule property in O.S.No.83 of 2015 is different to that of O.S.No.358 of 2015 and O.S.No.389 of 2015. The relief sought for in O.S.No.83 of 2015 is entirely different to that of the reliefs sought in O.S.No.358 of 2015 and 389 of 2015.

5. It is needless to say that the mortgage suit has to be filed in the Court within whose jurisdiction the suit schedule property is situated. The cause of action for filing of three suits is not one and the same. It is not the case of the petitioner that the question of fact and law involved for adjudication in all the three suits is one and the same. If ultimately O.S.No.83 of 2015 is allowed, the execution proceedings have to be initiated before the Additional District Court, Sangareddy. Even if different courts are allowed to dispose of O.S.No.83 of 2015, O.S.No.358 of 2015 and O.S.No.389 of 2015, it would not lead to conflicting of judgments. Merely because some of the parties to all the suits are common that itself is not a valid ground for transfer of O.S.No.83 of 2015. The Court has to consider whether transfer of the suit would cause any prejudice to the respondents or not. If O.S.No.83 of 2015 is transferred, it may cause untold hardship to the respondents. There are no grounds much less valid grounds to transfer O.S.No.83 of 2015. Hence, the transfer petition lacks merits and bona fides and the same is liable to be dismissed.

6. In the result, the transfer civil miscellaneous petition is dismissed. As a sequel, miscellaneous petitions, pending if any shall stand closed.

T.SUNIL CHOWDARY, J

Dt:12.10.2018

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