

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.CMP.Nos.488 & 489 of 2015

COMMON ORDER:

These two Transfer CMPs are filed under Section-24 CPC to withdraw O.S.No.434 of 2009 pending on the file of the Special Mobile Judicial Magistrate of First Class, Kurnool and O.S.No.772 of 2010 pending on the file of the II Additional Junior Civil Judge, Kurnool and to transfer these two suits to the Court of the IV Additional District Judge, Kurnool to try them along with O.S.No.34 of 2012.

As the grounds raised in both the petitions are common, they are heard together and being disposed of by common order.

The main contentions of the petitioners are that an extent of Ac.17.24 cents of dry land, Ac.0.42 cents of wet land, four houses and two kallams with cattle sheds are the joint family properties of their grandfather-Vale Mareppa. In the year, 1942, Vale Mareppa died leaving his son-Vale Busappa-the petitioners' father, his widow-Vale Nagamma and his daughter-Mandlem Veeramma. The father of the petitioners divided the property into 168 plots (house sites) and obtained approved lay out through LP.No.319 of 1980. Later, he died on 04.7.1985 executing a registered Will, dated 22.4.1979, bequeathing the properties in their favour. After the death of the petitioners' father, their grandmother-Vale Nagamma and their paternal aunt- Mandlem Veeramma have instituted a suit-O.S.No.33 of 1988 on the file of the Principal Sub-Ordinate Court, Kurnool. The said suit was decreed declaring that the original plaintiffs are entitled to 1/4th share and subsequently, this Court modified the said decree holding that the original plaintiffs in the suit are entitled to 1/3rd

share in the suit schedule properties and the petitioners herein are entitled to 2/3rd share in the properties, vide common judgment, dated 26.9.2013, in AS.Nos.2208 of 1989 and 118 of 1990. Thus, by virtue of the preliminary decree passed by this Court, the petitioners are entitled to 2/3rd share in all the family properties. Thereafter, the petitioners filed IA.No.959 of 2012 for passing final decree and the said final decree application is pending. During the pendency of the litigation-O.S.No.33 of 1988, Vale Nagamma (original plaintiff No.1) without any manner of right, title or possession had sold the suit schedule property in favour of P.Hussainamma under registered sale deeds, dated 10.9.1987 and 21.7.1987. The said Hussainamma in turn sold the said property to one D.Eswara Reddy and others under registered sale deed, dated 10.9.1987. The said D.Eswara Reddy and others in turn sold the said property to respondent Nos.7 and 8 herein under registered sale deed dated 02.3.2002. Thus, Vale Nagamma executed the sale deed transferring the property in favour of Hussainamma though she had no right, title or interest in the schedule property. Hence, the petitioners filed O.S.No.434 of 2009 against respondent Nos.7 and 8 for cancellation of sale deed and for delivery of possession of the property. The said Vale Nagamma, during her life time, sold some of the plots and also alleged to have executed a Will, dated 03.3.1998, in favour of Mandlem Veeramma @ Eeramma. The said Mandlem Veeramma again further alienated some of the plots and also executed two registered gift deeds, dated 09.01.2004 and 28.12.2004, in favour of her daughter and son-V.Kalavathamma and M.Veeranna @ Eeranna, respectively, who are respondent Nos.1 and 2 herein. Respondent Nos.1 and 2 herein have further alienated the properties in favour of several persons through registered

documents and all the said third parties are the defendants in O.S.Nos.434 of 2009, 772 of 2010, 34 to 39, 65, 66, 67, 397 and 337 of 2012, which were instituted by the petitioners challenging the alienations made by Vale Nagamma, V.Kalavathamma, Mandlem Veeranna @ Eeranna and respondent Nos.1 and 2 herein during the pendency of the litigation in O.S.No.33 of 1988 and also the final decree application-I.A.No.959 of 2012. The main contention of the petitioners is that the said transactions are vitiated by the principle of *lis pendency* and are not binding on them.

The two suits sought to be transferred are pending on the file of two different Courts and are with regard to the property which is the subject matter of O.S.No.33 of 1988 and in all, eleven other suits are pending before the IV Additional District Judge, Kurnool. The petitioners pleaded that in case, these suits are tried and decided by different Courts, there is possibility of conflicting judgments and as the questions involved in all the suits are one and the same, they sought for withdrawal of O.S.No.434 of 2009 pending on the file of the Special Mobile Judicial Magistrate of First Class, Kurnool and O.S.No.772 of 2010 pending on the file of the II Additional Junior Civil Judge, Kurnool and to transfer them to the Court of the IV Additional District Judge, Kurnool to try them along with O.S.No.34 of 2012.

Proof of service of notice on the respondents was filed. But, none appeared on behalf of the respondents.

As seen from the material on record, in O.S.No.33 of 1988, a preliminary decree was passed and the same was modified by this Court by the common judgment dated 26.9.2013 in

A.S.Nos.2208 of 1989 and 118 of 1990 declaring that the original plaintiffs in O.S.No.33 of 1988 are entitled to 1/3rd share, whereas the petitioners are entitled to 2/3rd share in the suit schedule properties. Subsequently, several transactions took place alienating the suit schedule properties in O.S.No.33 of 1988 by the plaintiffs and others. Even the purchasers also alienated the property in favour of third parties and multiplied the litigation. In all, 13 suits were filed and 11 suits are pending on the file of the IV Additional District Judge, Kurnool, to which Court the aforementioned two suits are sought to be transferred. The issues involved in both the suits are identical and the property and the contest of the parties are also one and the same. When the parties and the properties are one and the same in all the suits, the Courts can exercise its power under Section-24 CPC to withdraw and transfer the suits, as held by this Court in *Dr. Reddy's Laboratories Ltd, Hyderabad Vs. Pulletikurhti Varaha Chandra Bose and others*¹, wherein a learned single Judge of 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 *Munnangi Ramakrishna Rao Vs. Dr. Vanakuru Venkata Siva Ramakrishna Prasad*², a Division Bench of this Court held that the petition filed under Section-24 CPC cannot be allowed since the questions to be decided in both the suits are not one and the same.

¹ 2004 (4) ALD 719

² 2003 (4) ALD p-56 (DB)

Similarly, in *Surapuneni Rani Vs. Surapuneni Latha and another*³, a single Judge of this Court held as under:

“The reliefs claimed in all four suits being separate and independent of each other, the possibility of conflicting decisions is remote and dismissed the revision, since there is no scope for conflicting decisions.”

Thus, it is clear from the law declared by this Court that when the parties and the properties are one and the same, the Court can exercise its power under Section-24 CPC and withdraw the suits pending on the file of the Courts sub-ordinate to it and transfer them to the other Courts where the other suits are pending on identical issues for avoiding conflicting judgments.

In *Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others*⁴, the Apex Court held as follows:

“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.

³ 2004 (4) ALD 631

⁴ 2008 (3) Supreme Court Cases Page 659

At the same time, however, an order of 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 in the present case.”

It is further held by the Apex Court that the following factors have to be taken into consideration in a situation in which it is duty of the 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.

The Apex Court in **Kulwinder Kaur’s** case (4 supra) specified that when the property is one and the same, the Court may exercise its inherent discretion to avoid conflicting

judgments and convenience of parties is one of the considerations to exercise the power under Section 24 C.P.C.

To avoid conflicting judgments and wastage of time of the Court and in the interests of both the parties, these two cases are fit cases to withdraw O.S.No.434 of 2009 pending on the file of the Special Mobile Judicial Magistrate of First Class, Kurnool and O.S.No.772 of 2010 pending on the file of the II Additional Junior Civil Judge, Kurnool and to transfer these two suits to the Court of the IV Additional District Judge, Kurnool for disposal in accordance with law.

The petitioners also claimed the relief of clubbing all the suits, but this Court is not empowered to issue such directions in view of the limited scope under Section-24(2) CPC.

In *Dronavajjula Vidyamba Vs Vallabhajosyula Lakshmi Venkayamma*⁵, Division Bench of this Court held that, under Section 24(2) of C.P.C., special direction may be issued by the Court while ordering the transfer either to order the trial *de novo* or to proceed with the suit from the point at which it was transferred or withdrawn. For whatever reasons, convenience or otherwise, the order of transfer made under section 24(2) of CPC does not empower the court or contemplate any directions being given for the joint trial of the transferred suit. So, any violation or contravention of that order of transfer and the

⁵ AIR 1958 (A.P.) Page 218

separate trial of the transferred suit do not render the proceedings invalid.

Thus, in view of the above law declared by the Division Bench of this Court, I am not inclined to order joint trial of both the matters, leaving it open to the learned IV Additional District Judge, Kurnool to exercise his discretion whether to try them along with O.S.No.34 of 2012 on his file or independently.

In the result, both the Transfer Petitions are allowed in part, withdrawing O.S.No.434 of 2009 pending on the file of the Special Mobile Judicial Magistrate of First Class, Kurnool and O.S.No.772 of 2010 pending on the file of the II Additional Junior Civil Judge, Kurnool and transferring them to the Court of the IV Additional District Judge, Kurnool for trial and disposal in accordance with law, by refusing to issue directions to club the said suits with the other suits, leaving it open to the trial Court to exercise its discretion whether to club them or not.

JUSTICE M.SATYANARAYANA MURTHY

06th March 2018

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