

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

Tr.C.M.P.No.462 of 2018

ORDER:

This petition is filed under Section 24 of C.P.C. seeking to withdraw O.S.No.762 of 2016 from the file of the III Additional Junior Civil Judge, Kadapa, and transfer the same to the file of the Principal District Judge, Kadapa, to try along with O.S.No.56 of 2013.

2. Heard the learned counsel for the petitioner.

3. A perusal of the record reveals that originally the father of the petitioner filed O.S.No.56 of 2013 on the file of the Principal District Judge, Kadapa, against respondent Nos.1 to 5 for partition of the suit schedule property. During pendency of the suit, the father of the petitioner died. The petitioner and her mother came on record as plaintiff Nos.2 and 3. Respondent Nos.1 to 5 have filed O.S.No.762 of 2016 on the file of III Additional Junior Civil Judge, Kadapa, against the petitioner and others seeking perpetual injunction in respect of the suit schedule property. While things stood thus, the petitioner alone filed T.O.P.No.397 of 2017 on the file of the Court of Principal District Judge, Kadapa, seeking to withdraw O.S.No.762 of 2016 from the file of the III Additional Junior Civil Judge, Kadapa, and transfer the same to the file of the Court of Principal District Judge, Kadapa. The learned Principal District Judge dismissed the transfer petition after affording a reasonable opportunity to both parties. Hence, the present petition.

4. O.S.No.56 of 2013 is filed for partition of the suit schedule property, whereas O.S.No.762 of 2016 is filed for perpetual

injunction in respect of item No.3 of the suit schedule property in O.S.No.56 of 2013. The relief sought in partition suit is entirely different to that of injunction suit. The suit schedule property in both the suits is not one and the same. The parties in both the suits are not common. In a suit for perpetual injunction, the Court has to decide whether the plaintiff was in possession of the property as on the date of filing of the suit. It is needless to say that in a suit for perpetual injunction, the Court ought not to have declared the rights of the parties to the proceedings. In a suit for partition, the Court has to decide the rights of the parties. The relief sought in both the suits is not one and the same. The cause of action in both the suits is not one and the same. Even if both the suits are tried by different Courts, it would not lead to conflicting of judgments. Another interesting aspect is that the second plaintiff in O.S.No.56 of 2013 is not a party in T.O.P.No.397 of 2017 or in the present petition. The learned Principal District Judge considered the material available on record in right perspective and dismissed the petition. I am fully endorsing with the findings recorded by the learned Principal District Judge. There are no grounds much less valid grounds to set aside the order of the learned Principal District Judge, Kadapa.

5. In the result, the Transfer Civil Miscellaneous Petition is dismissed. There shall be no order as to costs.

6. Consequently, Miscellaneous Petitions, if any, pending in this Transfer Civil Miscellaneous Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 24.07.2018
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