

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CIVIL REVISION PETITION No.6064 of 2016****ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order dt. 22.09.2016 in TOP No.107 of 2016 passed by the Principal District Judge, Visakhapatnam, whereby the Principal District Judge, Visakhapatnam, withdrawn O.S.No.1252 of 2013 pending on the file of VI Additional Senior Civil Judge, Visakhapatnam and transferred to XI Additional District Judge-cum-Spl. Judge for SCs and STs (POA) Act, Visakhapatnam, to try along with O.S.No.153 of 2012 for disposal of the same according to law, while leaving it open to the trial Court to conduct joint trial or not.

The respondent herein filed O.S.No.153 of 2012 for specific performance of contract of sale and whereas the petitioner filed O.S.No.126 of 2013 for eviction of the respondent from the schedule premises. In both the suits, the parties are one and the same and the property is also same, but the reliefs claimed are different. These two suits are pending in two different courts. Therefore, the respondent herein sought for withdrawal of O.S.No.1252 of 2013 from the Court of VI Additional Senior Civil Judge, Visakhapatnam, and transfer the same to XI Additional District Judge, Visakhapatnam, for trial in accordance with law to avoid conflicting judgments in the event of trial of both suites by different courts.

The principal District Judge accepted the contention of the respondent herein exercising power under Section 24 of CPC to withdraw O.S.No.1252 of 2013 pending on the VI Additional Senior Civil Judge, Visakhapatnam and transferred to XI Additional District

Judge, where O.S.No.153 of 2012 filed for specific performance of an agreement of sale, is pending.

The main contention of the learned counsel for the petitioner is that the power under Section 24 of CPC cannot be exercised when the cause of action is different and in case, the transfer of O.S.No.1252 of 2013 as claimed by the respondent is accepted, the petitioner may lose an opportunity to file an appeal before the District Court and he will be put to inconvenience in prosecuting further proceedings. In such a case, the Principal District Judge ought not to have withdrawn the suit exercising power under Section 24 of CPC. She placed reliance on a judgment reported in *M. Ramakrishna Sastry v M. Seetharamaswamy and another*¹ in support of her contention.

Learned counsel for the respondent opposed the petition while supporting the order impugned in this revision.

Undisputedly, the suits filed by the respondent and the petitioner are pending in different courts. O.S.No.1252 of 2013 is pending before VI Additional Senior Civil Judge, Visakhapatnam filed by the petitioner against the respondent in respect of the schedule property, which is subject matter of O.S.No.153 of 2012 filed for specific performance of agreement of sale by the respondent herein. Thus, the parties to the suit and the property is one and the same, the Court can exercise such power under Section 24 of CPC in view of the law declared by this Court in *Dr.Reddy's Laboratories Ltd., Hyderabad Vs. Pulletikurhti Varaha Chandra Bose and others*²).

¹ 1996 (1) ALT 318

² 2004 (4) ALD page 719

Learned counsel relied on another judgment of single judge in *Adapa Goverdhana Rao v Deputy Registrar of Cooperative Societies, Machilipatnam and others*³, wherein the Court held that when the suits are filed for different reliefs and cause of action, nature and character of both suits are distinct and different, the Court cannot exercise power under Section 24 of CPC to withdraw and transfer the suit from one court to another where other suit is pending. In the facts of the above judgment, a suit is filed for recovery pursuant to settlement of account and another suit for partition. Therefore, the Court concluded that cause of action and nature and character of the suits are different and in such a case, the Court cannot exercise such power under Section 24 of CPC. But, in the present case, the petitioner is landlord of the shop and whereas the tenant is claiming that he purchased the property under agreement of sale, but both the parties filed suits for eviction of the plaintiff in O.S.No.153 of 2012 and the respondent filed a suit for specific performance and therefore, they are claiming rights against one another and if O.S.No.153 of 2012 is decreed for specific performance, the other suit O.S.No.1262 of 2013 will become infructuous. If these two suits are decreed by different courts, it will lead to anomaly in view of the conflicting judgments.

In *Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others*⁴, the Supreme 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

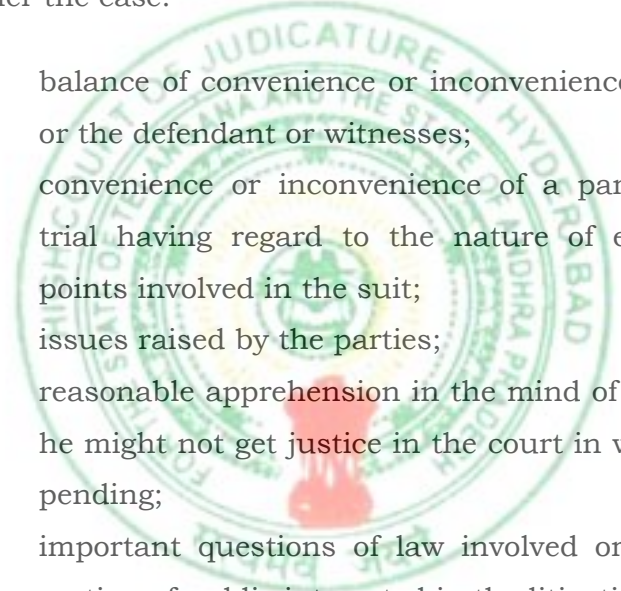
³ 1996 (1) ALT 319

⁴ 2008 (3) Supreme Court Cases Page 659

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 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 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.

By applying the principle laid down in the above judgment, the Order passed by the Principal District Judge is in accordance with law and it cannot be interfered, since, the Principal District Judge, did not issue any direction for clubbing while following the principle laid down by the division bench of this Court in *Dhronavajjula Vidyamba v. Vallabhajosyula Lakshmi Venkayamma*⁵. Therefore, I find no error in the order passed by the Principal District Judge, Visakhapatnam, warranting interference of this Court while exercising power under

⁵ AIR 1958 AP 218

Article 227 of the Constitution of India. Consequently, the present Civil Revision Petition is liable to be dismissed.

Accordingly, this Civil Revision Petition is dismissed leaving it open to the trial Court to decide whether to club the suit or not. As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 09-11-2018

eha









