

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P. NO. 491 OF 2017

ORDER:

This transfer civil miscellaneous petition is filed to withdraw O.S.No.113 of 2013 pending on the file of V Additional District Judge, Ranga Reddy District at L.B. Nagar and transfer the same to the VIII Additional District Judge, Ranga Reddy District Court to try along with O.S.Nos.664 of 2011, on the following grounds.

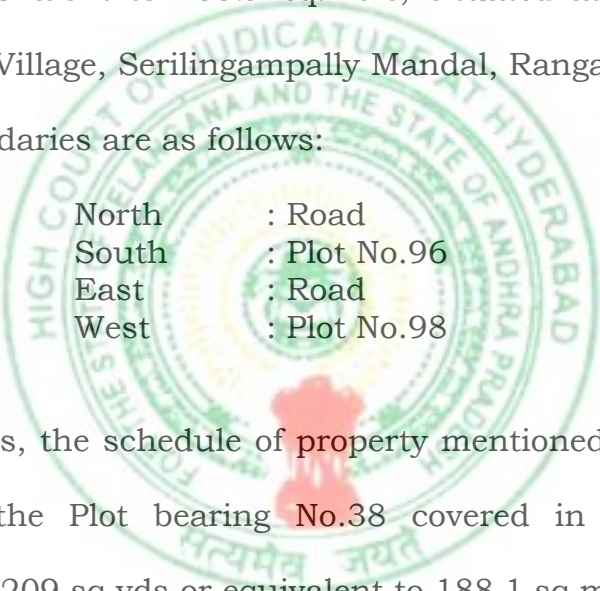
The parties to both the suits are one and the same and the reliefs claimed by both the parties is also same in respect of property and the reliefs are identical. But, O.S.No.113 of 2013 was filed by one Safia Yasmeen, who is the first respondent and whereas, O.S.No.664 of 2011 was filed by one Fahmida Sultana. The petitioner herein is the fourth respondent in both the suits and the defendants are the District Collector, Mandal Revenue Officer and the Chairman-cum-Managing Director of A.P. Industrial Infrastructure Corporation Limited.

The allegation made in both the complaints is also one and the same, but, the schedule is different. The nature of the claim and the nature of the defence set-up evidence to be adduced is also one and the same. Therefore, to avoid conflicting judgments, the petitioner herein sought to withdraw O.S.No.113 of 2013 pending on the file of V Additional District Judge, Ranga Reddy District at L.B. Nagar and transfer the same to the VIII Additional District Judge, Ranga Reddy District Court to try along with O.S.No.664 of 2011.

Sri Javed Razack, learned counsel for the petitioner reiterated the contentions urged in the grounds, while Sri L. Prabhakar Reddy, learned Standing Counsel for TSIIC opposed the petition.

As seen from the allegations, the claim in O.S.No.113 of 2013 and O.S.No.664 of 2011, both the suits are for declaration of title and recovery of possession.

The schedule of property mentioned in O.S.No.113 of 2013 is the Plot bearing No.97 covered in Sy.No.124/Da, admeasuring 220 sq.yds or equivalent to 183.9 sq.mtrs, situated at Metro Colony, Gopanapally Village, Serilingampally Mandal, Ranga Reddy District and the boundaries are as follows:



North	: Road
South	: Plot No.96
East	: Road
West	: Plot No.98

Whereas, the schedule of property mentioned in O.S.No.664 of 2011 is the Plot bearing No.38 covered in Sy.No.124/B,a admeasuring 209 sq.yds or equivalent to 188.1 sq.mtrs, situated at Gopanapally Village, Serilingampally Mandal, Ranga Reddy District and the boundaries are as follows

North	: Road
South	: Plot No.39
East	: Plot No.37
West	: Road

The basis for claim of the plaintiffs in both the suits is one and the same and the claim of the defendant/petitioner herein is also one and the same in the written statement. In case, both the suits are tried by two different Courts, there is every likelihood of

conflicting judgments and to avoid such conflicting judgments, the petitioner sought to withdraw O.S.No.113 of 2013 pending on the file of V Additional District Judge, Ranga Reddy District at L.B. Nagar and transfer the same to the VIII Additional District Judge, Ranga Reddy District Court to try along with O.S.Nos.664 of 2011.

No doubt, two claims are pending before two different Courts, based on the same facts and the defence was also the same. When some of the items involved in the property in both the suits are one and the same and the parties are also same, the court can exercise its jurisdiction under Section 24 C.P.C. 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 to be caused to any party as held in “K.Meenambigai v. Poovanandan (unreported judgment of Madras High Court in Tr.C.M.P.No.24 of 2008 and M.P.No.1 of 2008 dated 14.11.2008)”

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 (vide **Dr.Reddy’s Laboratories Ltd., Hyderabad Vs. Pulletikurhti Varaha Chandra Bose and others¹**)

¹ 2004 (4) ALD page 719

In **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others**², 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 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;

² 2008 (3) Supreme Court Cases Page 659

- (vi) “interest of justice” demanding for transfer of case, etc.

The Apex Court observed that, the above guidelines are illustrative, but not substantive guidelines.”

In view of the guideline nos. 1 & 2 of **Kulwinder Kaur²** case, the balance of convenience or inconvenience to the plaintiff or the defendant or witnesses of a particular place of trial with regard to nature of evidence on the points involved in the suit, the Court can withdraw and transfer any pending suit to other places are also grounds to withdraw and transfer.

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.

Thus, by applying the principle laid down by this Court in **Dr.Reddy's Laboratories Ltd., Hyderabad** (referred supra), when items of property and the parties are one and the same and the suits are pending in two different Courts, for comprehensive relief of declaration and consequential permanent injunction, if both suits are tried and decided by two different Courts, certainly, there is a likelihood of conflicting judgements.

Further, by applying the principal in **Kulwinder Kaur²** case, in the interest of justice, to avoid inconvenience to both the parties I deem it appropriate to withdraw O.S.No.113 of 2013 pending on the file of V Additional District Judge, Ranga Reddy District at L.B. Nagar and transfer the same to the VIII Additional District Judge, Ranga Reddy District Court, with a direction to dispose of the suits in accordance with law.

The petitioner also claimed relief to club both the suits. But, this Court cannot club these two suits at this stage.

However, in **Dronavajjula Vidyamba Vs Vallabhajosyula Lakshmi Venkayamma**³, Division Bench of this Court held that, as per Section 24(2) of C.P.C., special direction may be issued by the Court ordering the transfer either to order the trial *denovo* 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 it 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 separate trial of the transferred suit do not render the proceedings invalid.

Thus, in view of the law declared by the Division Bench of this Court, I am not inclined to order joint trial of both the matters.

Hence, I am not inclined to issue any such directions to try both the suits jointly.

However, it is left open to the VIII Additional District Judge, Ranga Reddy District at L.B. Nagar to exercise discretion whether to decide these suits simultaneously or otherwise on transfer. The VIII Additional District Judge, Ranga Reddy District at L.B. Nagar is directed to complete the trial from where it was stopped in O.S.No.113 of 2013 on the file of V Additional District Judge, Ranga Reddy District at L.B. Nagar and dispose of both the suits in accordance with law, at an earliest date.

In the result transfer civil miscellaneous petition is allowed and O.S.No.113 of 2013 pending on the file of V Additional District

³ AIR 1958 (A.P.) Page 218

Judge, Ranga Reddy District at L.B. Nagar is withdrawn and transferred the same to the VIII Additional District Judge, Ranga Reddy District Court to be tried along with O.S.Nos.664 of 2011.

Consequently, miscellaneous applications pending if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 29.10.2018

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