THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P NO.660 OF 2017

ORDER:

This transfer civil miscellaneous petition is filed under Section 24 of C.P.C to withdraw O.S.No.807 of 2012 on the file of III Additional Junior Civil Judge, Guntur and transfer the same to be tried along with O.S.No.11 of 2015 on the file of Principal District Judge, Guntur.

O.S.No. 11 of 2015 is filed by the petitioners for declaration of title and consequential relief of permanent injunction restraining the defendants and her man from interfering with the peaceful possession and enjoyment of the plaintiffs therein of the respective schedule property which is pending on the file of Principal District Judge, Guntur. Whereas, O.S.No.807 of 2012 is pending on the file of III Additional Junior Civil Judge, Guntur. The schedules in both the suits are one and the same and that the parties to both the suits are also one and the same, in the event both the suits are tried by two different courts, there is likelihood of conflicting judgements. Hence, in order to avoid conflicting judgements, the petitioners herein sought to withdraw O.S.No.807 of 2012 pending on the file of III Additional Junior Civil Judge, Guntur and transfer the same to try along with O.No.11 of 2015 pending on the file of Principal District Judge, Guntur.

The respondents opposed the petition on the ground that the petitioners filed T.O.P.No.662 of 2015 on the file of Principal District Judge, Guntur which ended his dismissal on 12.07.2017, on the ground that these petitioners were not parties to O.S.No.807 of 2012, which was filed for perpetual injunction by one K Subba Reddy and others and during pendency of the suit, the property was sold to these petitioners.

Whereas, the respondents filed counter claim for grant of perpetual injunction in the said suit and this is being contested, pending for disposal. When T.O.P.No.662 of 2015 was dismissed by the Principal District Judge, Guntur on the ground that they were not parties to suit, in view of dismissal of I.A.No.111 of 2015 in O.S.No.807 of 2012 the petitioners cannot seek leave in the present petition, as they were impleaded as plaintiffs in view of the order in I.A.No.373 of 2015 in O.S.No.807 of 2012 dated 28.09.2015 passed by the III Additional Junior Civil Judge, Guntur and prayed for dismissal of the suit.

Admittedly, two suits are pending and these petitioners came on record as plaintiffs in O.S.No.807 of 2012 by order dated 28.09.2015 in I.A.No.373 of 2015 in O.S.No.807 of 2012 and dismissal of earlier application in I.A.No.111 of 2015 by the III Additional Junior Civil Judge, Guntur, filed under Order I Rule 10(2)(A) CPC as defendants in the said suit would not come in the way of this Court. But the petitioners were already impleaded as plaintiffs in the said suit, in view of the orders in I.A.No.373 of 2015 which is passed subsequent to dismissal of T.O.P.No.662 of 2015.

The present transfer civil miscellaneous petition is filed under Section 24 of CPC which is an independent petition and not a revision against the order passed by the Principal District Judge, Guntur in T.O.P.No.662 of 2015. Therefore, passing any order by the Principal District Judge, Guntur in T.O.P.No.662 of 2015 dated 12.07.2017 is not a ground to reject the relief in the present petition.

The suit schedule property in O.S.No.11 of 2015 consists of 'A' and 'B' schedules, whereas the suit schedule in O.S.No.807 of 2012 consists 'A' to 'L' schedules and the plaintiffs in O.S.No.807 of 2012 sought for perpetual injunction and the defendants therein also filed the counter claim claiming perpetual injunction.

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 inherent 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 (MANU/TN/1193/2008)"

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 others**[1])

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.*

[1] 2004 (4) ALD page 719
[2] 2008 (3) Supreme Court Cases Page 659

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.

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

In view of the guideline nos. 1 & 2 of **Kulwinder Kaur[2]** 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, one for perpetual injunction with counter claim and the other for comprehensive relief of declaration and consequential permanent injunction, if the two suits are tried and decided by two different Courts, certainly, there is a likelihood of conflicting judgements.

Further, by applying the principal in **Kulwinder Kaur[2]** case, in the interest of justice, to avoid inconvenience to both the parties I deem it appropriate to withdraw O.S.No.807 of 2012 on the file of III Additional Junior Civil Judge, Guntur and transferred the same to the file of Principal District Judge, Guntur, with a direction to dispose of the matter in accordance with law.

The petitioners also claimed relief to club both the suits. In fact in O.S.No.807 of 2012 part of the trial is completed and the suit is coming on for evidence of defendants. In such case, the 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

[3] AIR 1958 (A.P.) Page 218

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 trail of both the matters.

In view of the law declared by the Division Bench of this Court, at best this court can issue direction to conduct de novo trial or stage at which trial is to be conducted before it is transferred. Therefore this court cannot issue such direction to club both the suits and try jointly.

Hence, I am not inclined to issue any such directions to try both the suits jointly. However, it is left open to the Principal District Judge, Guntur to exercise discretion weather to decide these suits simultaneously or otherwise on transfer. However the Principal District Judge, Guntur is directed to complete the trial from where it was stopped in O.S.No.807 of 2012 on the file of III Additional Junior Civil Judge, Guntur and dispose of both the suits in accordance with law, at an earliest date.

In the result transfer civil miscellaneous petition is allowed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:07.02.2018

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