

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr. CIVIL MISCELLANEOUS PETITION NO.268 OF 2013

ORDER:

This transfer civil miscellaneous petition is filed under Section 24 of CPC to withdraw O.S.No.123 of 2010 pending on the file of II Additional District Judge, Warangal and transfer the same to Court to VIII Additional District Judge, (FTC), Warangal to club and try the said suit along with O.S.No.3 of 2010.

The main ground urged in this petition is that, the petitioners are the plaintiffs in O.S.No.123 of 2010 filed for partition, separate possession, whereas, respondents 1 to 4 filed O.S.No.3 of 2010 pending on the file of VIII Additional District Judge at Warangal for partition of suit schedule property and these petitioners were arrayed as defendant Nos. 8 & 9 in the said suit. If, for any reason, both O.S.No.123 of 2010 and O.S.No.3 of 2010 are tried by two different Courts, there is possibility of conflicting judgments and to avoid conflicting judgments, the petitioners sought relief under Section 24 of C.P.C to withdraw O.S.No.123 of 2010 pending on the file of II Additional District Judge, Warangal and transfer the same to Court to VIII Additional District Judge, (FTC), Warangal to club and try the said suit along with O.S.No.3 of 2010.

Notice was ordered and served, but none appeared on behalf of the respondent.

In view of the specific contention raised by the learned counsel for the petitioners, it is appropriate to advert to the plaints in both O.S.No.123 of 2010 and O.S.No.3 of 2010 pending on the

file of II Additional District Judge, Warangal and VIII Additional District Judge, Warangal, respectively.

O.S.No.123 of 2010 is filed by Kalakota Narsimha Chary & another against Kalakota Srinivas Chary & others to pass a preliminary decree for partition declaring that the plaintiff is entitled for $\frac{1}{2}$ share in the suit schedule property annexed to the plaint.

Whereas, O.S.No.3 of 2010 is filed before VIII Additional District Judge at Warangal by Kalakota Venkatramnarsimha Chary & others against Chinthakuntla Narender Reddy & others and these petitioners are arrayed as defendant nos. 8 & 9, who are added as defendants vide orders in I.A.No.78 of 2011 dated 24.04.2012. The said suit is filed only for relief of declaration that the plaintiffs are the absolute owners of the suit schedule property and for perpetual injunction, the schedule property is one and the same in both the suits. Thus, the plaintiffs in O.S.No.3 of 2010 have set-up an independent title, whereas, the plaintiffs in O.S.No.123 of 2010 are claiming that the property is a joint family property.

When the parties and the suit schedule property is one and the same, if these two suits are tried by two different Courts there is possibility of two conflicting judgments. Moreover, when the parties and schedule is common in both the suits, the Court can exercise power under Section 24 of C.P.C and withdraw one of the suit pending in the subordinate Court under the control of the High Court and transfer to another subordinate Court, in order to avoid conflicting judgments.

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.

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;

¹ 2004 (4) ALD page 719

² 2008 (3) Supreme Court Cases Page 659

- (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 Kaur²** case, it is the power of this Court to weigh 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.

In view of the law declared by the Apex Court in the judgments referred supra, I find that it is a fit case to withdraw O.S.No.123 of 2010 pending on the file of II Additional District Judge, Warangal and transfer the same to Court to VIII Additional District Judge, (FTC), Warangal, where, O.S.No.3 of 2010 is pending.

Learned counsel for the petitioners claimed a direction to club and try O.S.No.123 of 2010 with O.S.No.3 of 2010. But, Section 24 C.P.C does not permit the Courts to club the suits, since, Clause (2) of Section 24 C.P.C limits its jurisdiction to issue any such direction, except to commence the trial afresh or to proceed from the stage at which the trial was stopped before the other Court.

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.

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.

³ AIR 1958 (A.P.) Page 218

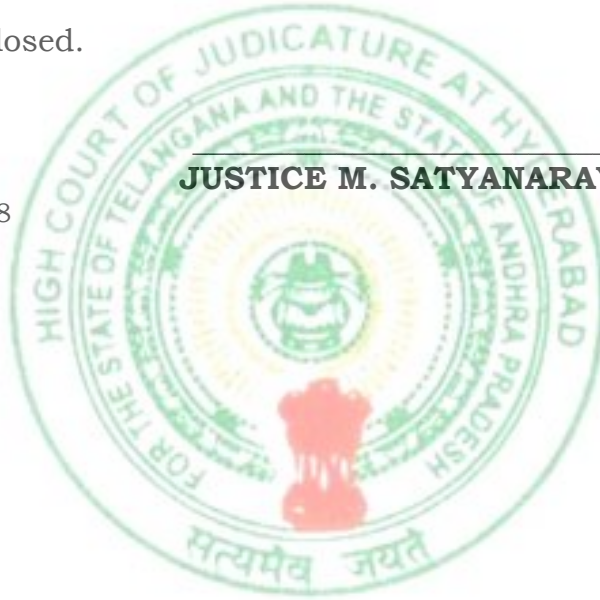
Hence, I am not inclined to issue any such directions to try both the suits jointly. However, it is left open to the VIII Additional District Judge (FTC), Warangal, to exercise discretion whether to decide these suits simultaneously or otherwise on transfer. However the VIII Additional District Judge (FTC), Warangal is directed to complete the trial from where it was stopped in O.S.No.123 of 2010 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.

Date:16.11.2018

SP



JUSTICE M. SATYANARAYANA MURTHY