

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

TRANSFER C.M.P.No.589 of 2018

ORDER:

This petition is filed under Section 24 C.P.C., to withdraw O.S.No.246 of 2013 from the file of the Court of X Junior Civil Judge, City Civil Court, Hyderabad, and transfer the same to the Court of XXV Additional Chief Judge, City Civil Court, at Hyderabad to try along with O.S.No.1004 of 2014.

2. Heard the learned counsel for the petitioner and perused the material on record.

3. A perusal of the record reveals that the petitioner filed O.S.No.246 of 2013 on the file of the Court of X Junior Civil Judge, City Civil Court, Hyderabad, against the respondents seeking perpetual injunction in respect of house bearing Dr.No.1-2-376/1/A, Mega City No.286, Ward 1 Block 2, Flat No.102, admeasuring 1500 sq. ft. The second respondent filed O.S.No.1004 of 2014, on the file of the Court of XXV Additional Chief Judge, City Civil Court, Hyderabad, on behalf of her daughter against the petitioner for recovery of possession of house bearing No.1-2-376/1/A of Mega City No.286, Ward No.1, Block No.2, Gangal Mahal, Domalguda, Hyderabad. Pending suit, the petitioner filed transfer C.M.P.No.827 of 2018 on the file of the Chief Judge, City Civil Court, Hyderabad, under Section 24 CPC to withdraw O.S.No.246 of 2013 on the file of the Court of X Junior Civil Judge, City Civil Court, Hyderabad, and transfer the same to the Court of XXV Additional Chief

Judge, City Civil Court, Hyderabad. The learned Chief Judge, City Civil Court, Hyderabad after considering the material available on record, dismissed the petition. Hence, the present petition.

4. The point that arises for consideration is:

Whether there are any grounds to interfere with the impugned order?

5. The subject matter of the property in both the suits is one and the same. The first defendant in O.S.No.246 of 2013 is not a party in O.S.No.1004 of 2014. The plaintiff in O.S.No.1004 of 2014 is not a defendant in O.S.No.246 of 2013. The parties to the proceedings in both the suits are not one and the same. The petitioner filed the suit for perpetual injunction. The respondents filed the suit for recovery of possession. In a suit for perpetual injunction, the plaintiff has to establish that he has been in possession and enjoyment of the suit schedule property much less as on the date of filing of the suit. In a suit for recovery of possession, the plaintiffs have to establish their right or title over the suit schedule property. The nature of the evidence to be adduced in both the suits is not one and the same. Since the reliefs sought in both the suits are not one and the same, even if both the Courts pass decrees separately, the question of conflicting judgments does not arise. The petitioner filed the suit in the year 2013. The respondents have filed the suit in the year 2014. The petitioner is very much aware of the filing of the suit way back in the year 2014. For the reasons

best known to him, the petitioner kept quiet for a period of four years and filed the present petition. The learned Chief Judge, City Civil Court, Hyderabad, after taking into consideration all these aspects dismissed the petition. The Court below has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the Court below. There is no illegality or irregularity to interfere with the orders passed by the Court below. The transfer petition lacks merits and *bonafides* and the same is liable to be dismissed.

5. In the result, the transfer Civil Miscellaneous Petition is dismissed. As a sequel, miscellaneous petitions, pending if any shall stand closed.

Dt:17.09.2018
Rns

T.SUNIL CHOWDARY, J

