

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Tr.C.M.P.No.798 of 2015

ORDER

This petition under Section 24 of C.P.C., is filed to withdraw O.S.No.19 of 2015 pending on the file of Principal Junior Civil Judge, Tuni, and transfer the same to the Court of XII Additional District and Sessions Judge, Pithapuram, East Godavari District, to try along with O.S.No.7 of 2015 on various grounds.

2. The suit in O.S.No.19 of 2015 is filed by Polisetti Chandrasekhar and Chintamneedi Naga Chakra Gangarao against Korukonda Rambabu @ Krishna and Chakka Lakshmi Satyanarayana @ Sattibabu, for grant of perpetual injunction, whereas O.S.No.7 of 2015 is filed by Korukonda Rambabu, the first defendant in O.S.No.19 of 2015, against Desetti Subba Lakshmi and 9 others. The plaintiffs in O.S.No.19 of 2015 are arrayed as defendants 7 and 8 in O.S.No.7 of 2015 pending on the file of XII Additional District and Sessions Judge, Pithapuram, for the relief of declaration that the plaintiff is the absolute owner of vacant site of an extent of 400 sq. yards or 334.44 sq. mtrs bearing D.No.5-13-1, Assessment No.4548, 5090, 1530, situated on the northern side of Killadivari Street, Kottapeta, Tuni, East Godavari District, and for consequential declaration that the registered sale deed dated 13.01.2015 bearing document No.169/2015 registered in favour of defendants 7 to 10, as null and void.

3. The property covered in O.S.No.7 of 2015 is 400 Sq. yards whereas the suit schedule property in O.S.No.19 of 2015 is only 320

sq. yards of same survey number. Thus, the suit schedule property in O.S.No.19 of 2015 is part of suit schedule property in O.S.No.7 of 2015. Therefore, when the parties of both the suits and the property are one and the same, there is possibility of conflicting judgments if both the suits are tried by two different Courts and requested this Court to withdraw O.S.No.19 of 2015 pending on the file of Principal Junior Civil Judge, Tuni, and transfer the same to the Court of XII Additional District and Sessions Judge, Pithapuram, to try along with O.S.No.7 of 2015.

4. During hearing, learned counsel for petitioners reiterated the contentions while pointing out an error in the order passed by the District Judge in T.O.P.No.278 of 2015 dated 24.11.2015 and that the finding recorded by the District Judge is erroneous.

5. The respondents' counsel opposed the petition on the ground that the property in O.S.No.19 of 2015 and the property in O.S.No.7 of 2015 is not one and the same and it is only a part of it. Though the plaintiffs in O.S.No.19 of 2015 are arrayed as defendants 7 and 8, the suit cannot be withdrawn and tried along with the suit in O.S.No.7 of 2015.

6. The Court can exercise its discretionary power under Section 24 of CPC to withdraw any pending suit on the file of any Court under the control of High Court and transfer the same on judicial side or the Court can also exercise its power to withdraw and transfer any pending suit or proceeding in any other Court. Such power has to be exercised with due circumspection taking into

consideration of various circumstances. In the present case, two suits are filed by two different parties, who are arrayed as defendants. The parties are arrayed as plaintiffs in one suit and in other suit as defendants and the property in O.S.No.19 of 2015 is part of the property in O.S.No.7 of 2015 and the relief claimed in O.S.No.7 of 2015 is a comprehensive relief i.e., declaration of title and to declare that the sale deed executed in favour of plaintiffs in O.S.No.19 of 2015 is null and void. If the sale deed executed in favour of the plaintiffs in O.S.No.19 of 2015 is declared as null and void, they are disentitled to claim any relief. Therefore, the relief claimed in O.S.No.19 of 2015 depends upon the result in O.S.No.7 of 2015 and if both the suits are tried by any competent Court, the conflicting judgments can be avoided. This Court in **Dr.Reddy's Laboratories Ltd., Hyderabad –Vs- Pulletikurhti Varaha Chandra Bose and others**¹, held as under:

“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.”

Therefore, taking into consideration the facts and circumstances of the case and commonality of the parties and properties in both the suits and by applying the principles laid down by this Court in the aforesaid judgment, the suit in O.S.No.19 of 2015 pending on the file of Principal Junior Civil Judge at Tuni, is withdrawn and transferred to the Court of XII Additional District and Sessions Judge, Pithapuram, to try along with O.S.No.7 of 2015 and dispose of the same in accordance with law.

¹ 2004(4) ALD page 719

7. One of the reliefs claimed by petitioners is that a direction be given to the XII Additional District and Sessions Judge, Pithapuram, to try both the suits together. But such relief cannot be granted in view of the judgment of the Division Bench of this Court in **Dronavajjula Vidyamba Vs Vallabhajosyula Lakshmi Venkayamma**², wherein it was held as under:

“Under Section 24(2) of the Code of Civil Procedure, 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 the Code of Civil Procedure, 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.”.....

By applying the principle laid down in the said judgment, I am not inclined to issue such direction. However, it is left open to the XII Additional District and Sessions Judge, Pithapuram, to try both the suits either independently or clubbing together exercising discretion.

8. In the result, the Transfer Civil Miscellaneous Petition is allowed. No order as to costs. Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY, J

25th January, 2018

sj

² AIR 1958 A.P. page 218