

HON'BLE SRI JUSTICE S.V.BHATT

Civil Revision Petition Nos. 4800 of 2012 & 1787 of 2013

Common Order:

Heard Mr.C. Panini Somayaji holding for Mr. P.R. Prasad and Mr. V. Ramu for respondents.

2. C.R.P. No. 4800 of 2012 is at the instance of respondents in Transfer O.P. No. 475 of 2011 in the Court of the District Judge, Krishna, Machilipatnam. The respondents herein filed Transfer O.P. No. 475 of 2011 under Section 24 of C.P.C. praying for withdrawing O.S. No. 115 of 2011 on the file of the II Additional Junior Civil Judge's Court, Vijayawada and transfer O.S.No. 115 of 2011, to the II Additional District Judge's Court, Vijayawada, where O.P. No. 904 of 2011 filed by the respondents herein is pending. The revision petitioners filed O.S. No. 115 of 2011 for the relief of declaration and injunction arraying the respondents herein as defendants in O.S. No. 115 of 2011. The respondents filed O.P. No. 904 of 2011 under Section 23 of the Societies Registration Act. The respondents prayed for permanent injunction restraining the revision petitioners 2 and 3 from interfering with the administration and management of the institution called 'Sri Sai Seva Sangham'. The learned District Judge after hearing both sides and while answering the point, viz., whether the Suit O.S. No. 115 of 2011 on the file of II Additional Junior Civil Judge's Court, Vijayawada is to be transferred to the Court of II Additional District Judge, Vijayawada to try along with O.P. No. 904 of 2011, in paragraph-8 of the order under revision, held as follows.

"Admittedly, the dispute is relating to the Society which is a registered one. There is a dispute between both the parties to

the petition relating to the affairs of the said Society. The petitioners contend that they are the President and Secretary of the Society and the respondents contend that the petitioners were removed as members of the Society by passing a resolution as per the by-laws of the said Society and as such they are no more members of the said Society. So as dispute arose between both of them in relation to the administrative affairs of the said Society, both the parties have filed two different suits in two different Courts. The petitioners have initially filed O.S.No.339/2010 on the file of IV Additional Junior Civil Judge's Court, Vijayawada for permanent injunction restraining the respondents from interfering with the management affairs of the said Society and its properties which include the two temples. The said suit was subsequently withdrawn and it was presented in the Court of II Additional District Judge, Vijayawada and the same is numbered as O.P.No.904/11 on the file of the said Court and it is now pending on the file of the said Court. The respondents herein have filed another suit in O.S.No.115/11 against the petitioners to declare them as President and Secretary of the said Society and it is now pending on the file of II Additional Junior Civil Judge's Court, Vijayawada. Therefore, it is now evident that both the suits are filed in respect of a dispute relating to the said Society and its administrative affairs. Even though it is pleaded by the respondents herein that the petitioners were removed as members of the said Society by passing a resolution to that effect, the same is disputed by the petitioners herein. So it is undoubtedly a disputed question of fact which is to be adjudicated by the Court in the final adjudication of the lis. Whether the petitioners are removed as members of the said Society validly and the said resolution if any passed to that effect is valid or not is to be decided in the final adjudication of the said suit after the trial is concluded. Therefore at this stage it is very much clear that the dispute involved in both the matters pending in the aforesaid two Courts is relating to the said Society and its affairs and its temples and properties and also between the same parties. Therefore, I am of the considered view that both the said matters are to be tried in one Court to avoid passing of any conflicting judgments and also for the purpose of convenience of both the parties to adduce evidence in support of their respective contentions in both the matters. Hence, the point is answered accordingly."

3. Thus, O.S. No. 115 of 2011 is transferred to the Court of the II Additional District Judge, Vijayawada. Hence, C.R.P. No. 4800 of 2012.

4. The petitioners in O.P. No. 904 of 2011 filed memo dated 17.9.2012 for clubbing O.P. No. 904 of 2011 and O.S. No. 115 of 2011 for joint trial which is re-numbered on transfer as O.S. No. 296 of 2011. The revision petitioners objected to the prayer for clubbing these two matters by filing objections dated 18.10.2012. The learned II Additional District Judge vide order dated 8.3.2013 accepted the Memo and clubbed O.P. No. 904 of 2011 and O.S. No. 296 of 2011. Hence, C.R.P. No. 1787 of 2013.

5. The petitioners contend that the order in Tr. OP No. 475 of 2011 is unsustainable. According to the petitioners, the subject matter in O.S. No.115 of 2011, re-numbered as O.S. No. 296 of 2011, even assuming to be the same, the relief in the Suit filed by revision petitioners is one for declaration and perpetual injunction, whereas O.P. No. 904 of 2011 is filed under Section 23 of the Societies Registration Act. Therefore, the respondents herein have invoked the jurisdiction of a Special Court, driving the plaintiffs in O.S. No. 115 of 2011 to a Special Court and to tag the Original Suit with an O.P. is untenable and it causes prejudice to the revision petitioners herein. Petitioners further contend that the issues in these two cases though relate to one subject matter, having regard to the words employed in Section 23 of the Andhra Pradesh Societies Registration Act, the scope of enquiry is different in O.P. and the cause of action on seeking the declaratory relief by invoking the jurisdiction of the Civil Court under Section 9 of the Civil Procedure Code, is entirely different. Therefore, the transfer of suit is illegal and the parties should be allowed to work out their reliefs in the Courts in which these cases

have been instituted by the respective parties. The petitioners assailing the legality of this order clubbing both the matters, contend that by ordering joint trial, there is prejudice to the revision petitioners herein and adducing evidence in cases where the burden is fastened on different parties on different issues, would lead to confusion to all and extra time is consumed in the trial. Even if O.S. No. 115 of 2011 is transferred, separate trial ought to be conducted.

6. Mr. V. Ramu on the other hand, contends that the Civil Revision Petitions are completely unsustainable. The objections now raised are firstly well considered by the orders under revision and secondly that the substance on which either the transfer is ordered or clubbing both the matters is, that the disputes under Section 23 of the Societies Registration Act or declaration Suit are in relation to an institution called 'Sri Sai Seva Sangham'. Instead of allowing independent consideration, which may result in contradictory findings, which would further enhance the life of litigation, the Courts have ordered transfer of Suit and also joint trial of Suit and O.P.

7. Mr. V. Ramu, by relying on the decision of the Apex Court in Terrapalli Dyvasahata Kumar vs. S.M. Kantha Raju and another¹ contends that the petitioners in O.P. No. 904 of 2011 cannot and could not invoke the jurisdiction of any other Court for any relief, except the Court specified in Section 23 of the Societies Registration Act. The Court of II Additional District Judge, is the Court for the purpose of Section 23 of the Societies Registration Act, the said Court has original jurisdiction to try civil matters as well. Therefore, the petitioners in O.P. No. 904 of 2011, if have sought for transfer of the O.P. to any other Court other than the

¹ 2017 (6) ALD 62 (SC)

District Judge's Court, then the transfer is unsustainable. On the other hand, if the Suit is transferred to a Court, the transferor Court can also hear and decide the Suit under Section 9 of the Civil Procedure Code as well as O.P. He further contends that all the issues either canvassed by the petitioners in O.P. No. 904 of 2011 and/or plaintiffs in O.S. No. 296 of 2011 relate to or touching upon the property, administration, management and right claimed by parties. Adverting to the order passed on memo dated 17.9.2012, he contends that the plaintiffs in O.S. No. 296 of 2011 are directed to lead evidence. The revision petitioners being plaintiffs in O.S. No. 296 of 2011 now have the advantage of opening the case and after the evidence of petitioners in O.P. No. 904 of 2011 is completed, on issues where onus is on the plaintiffs, they can certainly in accordance with the procedure prescribed, lead further evidence. Finally, he submits that therefore, both the orders are passed by duly exercising the discretion and jurisdiction conferred on the Court below and no ground is made out warranting interference of this Court under Article 227 of the Constitution of India. He prays for dismissing the C.R.Ps.

8. I have noted the rival submissions and perused the record.

9. The argument against transfer of O.S. No. 296 of 2011 to the Court of II Additional District Judge, Vijayawada is that the revision petitioners have invoked the jurisdiction of a Court which has jurisdiction to decide the dispute of declaration of title and perpetual injunction of subject institutions. Now transferring Suit to try with O.P. No.904 of 2011 is unavailable and also unsustainable. The contention in the considered view of this Court is not well founded. The revision petitioners in C.R.P. No. 4800 of 2012 do not dispute that the Court of II Additional District

Judge, Vijayawada is also the Court of original jurisdiction to try and decide disputes arising under Section 9 of the C.P.C.

10. The Apex Court in Terrapalli Dyvasahata Kumar¹ has held as follows:

17) This judgment would be relevant if the *pari materia* provision under Section 13 of the Societies Registration Act, 1860 had fallen for decision. As has been pointed out above, this provision gives only one Court jurisdiction - the principal Court of original civil jurisdiction of the District in which the chief building of the society is situate, somewhat like Section 10-F of the Companies Act. Inasmuch as this Section is completely distinct from Section 23 of the 2001 Act and 11 of the earlier Telangana Act, it is clear that the judgment in *James Chadwick's case* (supra), squarely applies to the present case, and not the aforesaid judgment.

18) In this view of the law, we set aside the judgment of the Andhra Pradesh High Court dated 19.09.2006. We must indicate that the impugned judgment is wrong on two counts. First, in applying the definition of "the Court" to "District Court" mentioned in Section 23, and then concluding that it would refer only to the principal Court of original jurisdiction of one particular place. It is also wrong in stating that as the 2001 Andhra Pradesh Act is a special enactment, general principles applicable under the Code of Civil Procedure would not apply, for the reasons given by us above."

11. As rightly pointed out by Sri V. Ramu the O.P. if is sought to be transferred to the Court of II Additional Junior Civil Judge, Vijayawada, then there is illegality in such request for, II Additional Junior Civil Judge does not have jurisdiction to decide a dispute under Section 23 of the Societies Registration Act. The reasoning excerpted in the beginning of the order, for transferring Suit to be tried with O.P. is well founded and I do not see any ground to interfere with those findings. The other

grounds for the reasons stated above are also untenable and are, accordingly, rejected.

12. The trial Court examined each one of the circumstances and finally found that the matters warrant a joint trial. Hence, ordered clubbing of O.P. No.904 of 2011 and O.S. No. 296 of 2011. In the considered view of this Court, the disputes pending adjudication or the reliefs sought for by both the parties relate to an institution called 'Sri Sai Seva Sangham'. The trial Court has given preference to the revision petitioners herein to lead evidence in O.S. No. 296 of 2011. The discretion is well founded and no ground is made out to interfere with the reasoning of the learned II Additional District Judge, Vijayawada.

13. Both the Civil Revision Petitions fail and are accordingly dismissed.

Consequently, pending miscellaneous applications shall also stand closed. No costs.

S.V.BHATT, J

Date: 27th November, 2018

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