

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Tr.C.M.P.Nos.171 and 390 of 2013

COMMON ORDER

Since these two petitions arise out of common point, the parties and the schedule of property are also common, they are being disposed of by this common order.

2. Tr.C.M.P.No.171 of 2013 is filed under Section 24 of C.P.C., for withdrawal of suit in O.S.No.155 of 2010 pending on the file of VII Additional District Judge, Vijayawada, which is now transferred to the Additional District Court, Nandigama, Krishna District and renumbered as O.S.No.32 of 2013, and transfer the same to the Court the Principal Senior Civil Judge, Narasaraopet, where O.S.No.195 of 2008 is pending. Similarly, Tr.C.M.P.No.390 of 2013 is filed under Section 24 of C.P.C., for withdrawal of suit in O.S.No.195 of 2008 pending on the file of Principal Senior Civil Judge, Narsaraopet, and transfer of the same to the Court of VII Additional District Judge, Vijayawada.

3. The petitioner in Tr.CMP.No.171 of 2013 is filed O.S.No.155 of 2010 on the file of VII Additional District Judge, Vijayawada, and same is now transferred and renumbered as O.S.No.32 of 2013 on the file of Additional District Court, Nandigama, Krishna District. She filed the said transfer petition on the ground that the subject matter of property in both the suits is one and the same and parties are also

identical and that if both the suits are tried by different Courts, there is possibility of conflicting judgments.

4. It is contended by the counsel for petitioners/defendants 1 and 2 in Tr.C.M.P.No.390 of 2013 that major part of the schedule property in O.S.No.195 of 2008 is within the jurisdictional limits of Additional District Court, Nandigama, and therefore, he requested this Court to withdraw the suit in O.S.No.195 of 2008 pending on the file of Principal Senior Civil Judge, Narasaraopet, and transfer the same to the Court of VII Additional District Judge, Vijayawada.

5. In view of the rival claims made by both the parties, it is necessary to advert to the schedule of property in both the suits. The schedule of property in O.S.No.195 of 2008 is consisting of various items. In A schedule of property, Item No.1 of property is situated at Yadava Bazaar, Nandigama Village and Mandal and item No.2 of property is situated at Narasaraopet, Guntur District, whereas B schedule property is the amounts lying in Andhra Bank, Ramireddypalle Branch, Nandigama Mandal, Krishna District and other Banks i.e., S.B.I., Nandigama Branch and that the amount lying in LIC Office, Vijayawada and gold ornaments weighing about 200 sovereigns etc. Thus, major part of the property is within the jurisdictional limits of Additional District Judge, Nandigama, except item No.2 of A schedule property, which is situated at Narasaraopet. The plaintiff, by name, Mohammad Vahida Begum in O.S.No.195 of 2008 is 17th defendant in O.S.No.155 of 2010 and the plaintiff, by name, Mohammad Naseema Begum, in O.S.No.155 of 2010 is 9th defendant in O.S.No.195 of 2008. The parties in both the suits are

one and the same, but the relief claimed in O.S.No.155 of 2010, which is now renumbered as O.S.No.32 of 2013, is for declaration of title of plaintiff and defendants therein and other suit O.S.No.195 of 2008 pending on the file of Principal Senior Civil Judge, Narasaraopet, is for partition of plaint schedule property. Therefore, the comprehensive suit is for declaration of title in O.S.No.155 of 2010, which is renumbered as O.S.No.32 of 2013 pending on the file of Additional District Judge, Nandigama, and if for any reason, the suit is decreed declaring the rights of the plaintiff in the suit, it has effect on the other suit filed for partition in O.S.No.195 of 2008 since major part of the property is within the territorial jurisdiction of the Additional District Judge, Nandigama and the properties are one and the same in both the suits. Therefore, I deem it appropriate to direct withdrawal of suit in O.S.No.195 of 2008 pending on the file of Principal Senior Civil Judge, Narasaraopet, to the Court of Additional District Judge, Nandigama, Krishna District.

6. Petitioner in Tr.C.M.P.No.390 of 2013 also claimed that there may be a direction to club both the suits. But the same is impermissible in view of the judgment of this Court in **Dronavajjula Vidyamba Vs Vallabhajosyula Lakshmi Venkayamma**¹, wherein this Court held as follows:

“Under 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

¹ AIR 1958 (A.P.) Page 218

contravention of that order of transfer and the separate trial of the transferred suit do not render the proceedings invalid.”

However, it is open to the trial Court to exercise discretion whether to club both the suits or try independently.

7. In the result, Tr.C.M.P.No.390 of 2013 is allowed while dismissing Tr.C.M.P.No.171 of 2013 and the suit in O.S.No.195 of 2008 pending on the file of Principal Senior Civil Judge, Narasaraopet, is withdrawn and transferred to the file of Additional District Judge, Nandigama, to dispose of the suit in accordance with law. No order as to costs. Miscellaneous petitions, if any, pending in both the petitions shall stand closed.

7th March, 2018

sj

M. SATYANARAYANA MURTHY, J

