

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr. CIVIL MISCELLANEOUS PETITION NO.130 OF 2016

ORDER:

This transfer civil miscellaneous petition is filed under Section 24 of CPC to withdrawn O.S.No.220 of 2015 pending on the file of III Additional District Judge, Guntur and transfer the same to Court to I Additional District Judge, Machilipatnam, to try along with O.S.No.31 of 2015.

The main ground is that the parties to both the suits are rival claimants of various items of the property covered by suit schedule in O.S.No.220 of 2015 pending on the file of III Additional District Judge, Guntur. Plaintiffs in O.S.No.31 of 2015 pending on the file of I Additional District Judge, Machilipatnam, are defendants 1 & 2 in O.S.No.220 of 2015 on the file of III Additional District Judge, Guntur, whereas, the plaintiffs in O.S.No.220 of 2015 on the file of III Additional District Judge, Guntur are the defendants in O.S.No.31 of 2015.

The schedule of property in O.S.No.31 of 2015 pending on the file of I Additional District Judge, Machilipatnam is Item No. 3 of suit schedule in O.S.No.220 of 2015 and in both the suits, both the parties claim declaration of title to the property is described in the schedule. In the event of trial of both the suits, in two different Courts, there is every likelihood of conflicting judgements and to avoid such conflicting judgements, prayed to withdraw O.S.No.220 of 2015 pending on the file of III Additional District Judge, Guntur and transfer the same to Court to I Additional District Judge, Machilipatnam, to try along with O.S.No.31 of 2015.

Learned counsel for the petitioners reiterated the grounds urged in the petition, while pointing out the date of filing of the suits by two different parties in two different courts. That too, the first petitioner before this Court is a widow aged 53 years and whereas the second petitioner is a minor daughter aged 14 years, and to appear before the Court at Guntur, she has to face inconvenience and requested to withdrawn O.S.No.220 of 2015 pending on the file of III Additional District Judge, Guntur and transfer the same to Court to I Additional District Judge, Machilipatnam, to try along with O.S.No.31 of 2015.

Learned counsel for the respondents opposed the petition on the ground that, trial has already commenced in O.S.No.220 of 2015 pending on the file of III Additional District Judge, Guntur and whereas, in O.S.No.31 of 2015 pending on the file of I Additional District Judge, Machilipatnam, trial is not yet commenced. The subject matter of the property in O.S.No.31 of 2015 is only one item, whereas, major part of the schedule property in O.S.No.220 of 2015 is situated within the jurisdictional limits of Guntur District and requested to dismiss the petition, as it was not filed at the initial stage before commencement of trial, in view of Section 22 C.P.C.

The undisputed facts are that, both the parties to the suit are rival claimants in two suits and the plaintiffs in O.S.No.31 of 2015 are the defendants in O.S.No.220 of 2015 and the plaintiffs therein are the defendants in O.S.No.31 of 2015. The schedule of property in O.S.No.31 of 2015 is Item No.3 of schedule of the property and the plaintiffs in O.S.No.31 of 2015 and the

defendants in O.S.No.220 of 2015 are claiming declaration that they are the owners of the schedule property in O.S.No.220 of 2015 and at the same time, the plaintiffs in O.S.No.220 of 2015 and the defendants in O.S.No.31 of 2015 and they are claiming same declaratory relief to declare that they are the owners of the property, described in the schedules annexed thereto. When property and parties are one and the same, and when the suits are filed in two different Courts, there is every possibility of two conflicting judgments in the event of trial by two different Courts.

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

¹ 2004 (4) ALD page 719

² 2008 (3) Supreme Court Cases Page 659

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;
- (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 the present case, major properties are situated within Guntur District which is the subject matter in O.S.No.220 of 2015 and subject matter in O.S.No.31 of 2015 is within the jurisdictional limits of Machilipatnam District Court. But, claim of the parties is one and the same in both the suits.

On the other hand, O.S.No.220 of 2015 is part-heard, whereas, the trial in O.S.No.31 of 2015 is not yet commenced. Coming to the question of inconvenience being caused, in a civil suit, the first petitioner is not required to appear on every date of adjournment, except for recording her cross-examination, if she finds that it is difficult for her to appear before the Court at Guntur or any other Court. she may apply for appointment of Advocate Commissioner to record her cross-examination. So, the inconvenience being caused to the first petitioner will not outweigh the inconvenience being caused to the respondents, as major part of the properties are situated within the jurisdictional limits of Guntur District. Therefore, I find that, it is not a fit case to withdraw O.S.No.220 of 2015 pending on the file of III Additional District judge, Guntur and transfer the same to the Court of I Additional District Judge, Machilipatnam. However, as observed by me in the earlier paragraphs, in the event of trial by two different Courts and to avoid such conflicting judgments, by exercising power under Section 24 of C.P.C, O.S.No.31 of 2015 is withdrawn and transferred to III Additional District Judge, Guntur, leaving it open to try both the suits separately or by clubbing or

consolidating, as this Court is not vested with power for clubbing or consolidating both the suits.

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.

Hence, I am not inclined to issue any such directions to try both the suits jointly. However, it is left open to the III Additional District Judge, Guntur to exercise discretion weather to decide these suits simultaneously or otherwise on transfer. However the III Additional District Judge, Guntur is directed to complete the trial from where it was stopped in O.S.No.31 of 2015 and dispose of both the suits in accordance with law, at an earliest date.

³ AIR 1958 (A.P.) Page 218

In the result transfer civil miscellaneous petition is disposed of.

Consequently, miscellaneous applications pending if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:02.11.2018

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