

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Tr.C.M.P.No.615 of 2017

ORDER:

The petitioner is plaintiff in O.S.No.21 of 2008 on the file of learned IV Additional District Judge, Srikakulam, which is a suit for partition of plaint A to J schedule properties into 12 equal shares particularly one such share each of the plaintiffs including the petitioner as 2nd plaintiff with other incidental reliefs of division and separate possession and determination of profits. Undisputedly all plaint schedule properties are within Srikakulam Town and among about 10 defendants, but for defendant Nos.5 & 7 of Visakhapatnam town others are of Srikakulam town.

The prayer in the transfer petition is to set aside the order of the learned District Judge dated 05.09.2017 in transferring on administration side the said suit from Srikakulam to Sompeta and transfer back to IV Additional District Judge, Srikakulam. Pending suit since 2008, ripen for trial, 1st defendant filed I.A.No.281 of 2017 to reject the plaint on the grounds of lack of cause of action and barred by law and the same was on contest ended in dismissal on 16.08.2017 and said 1st defendant aggrieved by the dismissal order carried CRP.No.4247 of 2017, which is pending with no stay all through.

The counter affidavit of the respondents to the transfer petition, the contesting defendants particularly 1st defendant A.V. Narasimham is that if at all CRP.No.4247 of 2017 is allowed for rejecting the very plaint in OS.No.21 of 2008, the transfer order will become infructuous and unworkable, thereby the matter is to be tagged with CRP supra, leave about the other contentions that

once the learned District Judge on administrative side transferred the case, for this Court while sitting in revision there is nothing to interfere to transfer back. In fact once CRP.No.4247 of 2017 allowed, the suit must go whether it is pending at Srikakulam or Sompeta. Thereby that contention of the proceedings of the suit depends upon the result of the revision against dismissal of the plaint rejection application is not a ground at this stage of the pending transfer petition to withdraw or ask the Hon'ble the Acting Chief Justice to pass order to club with CRP pending from 2017 that too in the first round the 1st defendant went unsuccessful in seeking to reject the plaint by filing application in 2017 of the suit pending since 2008.

Even coming to the merits of the matter, it is not even a case that any of the defendants are residing or carrying on business or works for gain at Sompeta or any property even a single item lying there.

Having regard to the above and in the result, the Transfer Petition is allowed by transferring back the suit from Sompeta Additional District Court to the District Court, Srikakulam either to try by the learned Principal District Judge or made over to any of the Additional District Judges at Srikakulam.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 12.03.2018
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