

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

Tr.C.M.P.No.622 of 2016

ORDER:

This petition is filed under Section 24 of C.P.C. seeking to withdraw O.S.No.100 of 2013 from the file of the II Additional District Court, Guntur, and transfer the same to the file of the IV Additional District Court, Guntur, to try along with O.S.No.177 of 2010.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the first respondent filed O.S.No.100 of 2013 on the file of the II Additional District Court, Guntur, against the petitioners claiming damages. The second respondent filed O.S.No.177 of 2010 on the file of the IV Additional District Court, Guntur, against the petitioners for specific performance. The petitioners have filed I.A.No.1003 of 2012 in O.S.No.177 of 2010, under Order I Rule 10 C.P.C., to implead the first respondent in O.S.No.177 of 2010. The trial Court dismissed the said petition. The petitioners made some allegations in I.A.No.1003 of 2012, which is the root cause for filing of O.S.No.100 of 2013.

4. Learned counsel for the petitioners submitted that if both the suits are disposed of by two different Courts, it may lead to conflicting judgments.

5. Learned counsel for the respondents submitted that there are no grounds much less valid grounds to transfer O.S.No.100 of

2013 from the file of the II Additional District Court, Guntur, to the file of IV Additional District Court, Guntur.

6. The point that arises for consideration is whether there are any grounds to allow the petition.

7. O.S.No.177 of 2010 is filed by the second respondent for specific performance. O.S.No.100 of 2013 is filed by the first respondent claiming damages. In both the suits, the petitioners are defendants. Suffice it to say, disposal of two suits by two different Courts leads to conflicting of judgments, certainly the Court has to allow the transfer petition. The plaintiffs in both the suits are not common. The cause of action for filing of both suits is different. In a suit for specific performance, the Court has to consider whether the agreement of sale in question is legally enforceable or not. In a suit for damages, the Court has to consider whether the alleged acts of the defendants would cause any damage to the reputation of the plaintiff. The relief sought in both the suits is not one and the same. The petitioners have filed I.A.No.1003 of 2012 in O.S.No.177 of 2010, under Order I Rule 10 C.P.C. The trial Court dismissed the petition. For one reason or other, the petitioners did not choose to challenge the order passed in I.A.No.1003 of 2012.

8. The nature of the evidence to be adduced in both the suits is not one and the same. No common question of law or fact is involved in both the suits. Even if two Courts disposed of two suits, it would not cause to conflicting of judgments. The petitioners failed to establish the basic ingredients for withdrawing of O.S.No.100 of 2013 from the file of the II Additional District

Court, Guntur, and transfer the same to the file of IV Additional District Court, Guntur. The petition lacks merits and *bona fides*.

9. Having regard to the facts and circumstances of the case, this Court is of the considered view that it is not a fit case to allow the transfer petition.

10. In the result, the Transfer Civil Miscellaneous Petition is dismissed. There shall be no order as to costs.

11. Consequently, Miscellaneous Petitions, if any, pending in this Transfer Civil Miscellaneous Petition shall stand closed.

Date: 04.10.2018
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T.SUNIL CHOWDARY, J

