

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

Tr.CMP No.726 of 2017 & Tr.CMP No.733 of 2017

COMMON ORDER:

1 The above two Tr.CMPs are filed under Section 24 of CPC challenging the orders dated 04.10.2017 passed in Tr.O.P.No.847 of 2017 and Tr.O.P.No.846 of 2017 respectively on the file of the Court of the Chief Judge, City Civil Court, Hyderabad.

2 Since the point involved in both the Tr.CMPs is one and the same, this Court is inclined to dispose of both the matters by this common order.

3 The facts leading to filing of the present Tr.CMPs are briefly as follows:

4 Petitioners have filed Tr.O.P.No.846 of 2017 on the file of the Court of the Chief Judge, City Civil Court, Hyderabad seeking to withdraw O.S.No.1530 of 2016 pending on the file of the Court of the X Junior Civil Judge, City Civil Court, Hyderabad and transfer the same to the Court of the IX Chief Judge, City Civil Court, Hyderabad to try along with O.S.No.649 of 2016. The petitioners have also filed Tr.O.P.No.847 of 2017 on the file of the Court of the Chief Judge, City Civil Court, Hyderabad seeking to withdraw O.S.No.1527 of 2016 pending on the file of the Court of the X Junior Civil Judge, City Civil Court, Hyderabad and transfer the same to the Court of the IX Chief Judge, City Civil Court, Hyderabad to try along with O.S.No.649 of 2016. The Court below dismissed both the petitions. Hence the present Transfer CMPs.

5 Heard the learned counsel for both sides and perused the material available on record.

6 A perusal of the record reveals that O.S.No.1530 of 2016 was filed by the first respondent against the petitioners for declaration of title. O.S.No.1527 of 2016 was also filed by the first respondent against the petitioners seeking declaration of title. O.S.No.649 of 2016 was filed by the first respondent against the petitioners and the second respondent for partition of the suit schedule property.

7 Originally, the house bearing D.No.1-7-509/2 belongs to one Mankamma, who is the mother of the respondent Nos.1 and 2. The said Mankamma sold the entire property to the second petitioner herein. In turn, the second petitioner executed a gift deed in favour of his wife i.e. first petitioner herein in respect of some portion of the property.

7 The subject matter of the suit schedule property is not one and the same in all the three suits. The petitioners and the respondents herein are not parties to all the three suits. O.S.No.1530 of 2016 and O.S.No.1527 of 2016 were filed for declaration of title, whereas O.S.No.649 of 2016 is filed for partition. It is needless to say that in a suit for declaration the plaintiff may succeed or lose basing on the strength and weakness of his case. In a suit for declaration of title, the plaintiff is not entitled to the relief of declaration basing on the laches or lacunae on the part of the defendant. In a suit for partition, the parties have to establish that the suit schedule property is their ancestral property and each one of them is entitled to a specific share.

9 The relief sought for in O.S.No.1530 of 2016 and O.S.No.1527 of 2016 and O.S.No.649 of 2016 is not one and the same. The nature of evidence to be adduced by the parties is different in all the three suits. The cause of action for each suit is different. In such circumstances, if all the suits are clubbed together, it will lead to confusion. The court below has considered all these aspects in right perspective and dismissed the Tr.O.Ps. I am fully agreeing with the findings recorded by the court below. There are no grounds much less valid grounds to interfere with the well considered orders of the court below. The petitions lack merits and bonafides.

10 Accordingly both the Tr.CMPs are dismissed. As a sequel miscellaneous petitions pending in both the Tr.CMPs shall stand dismissed.

Date: June 12, 2018
Kvsn

T.SUNIL CHOWDARY, J

