

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 751 OF 2017

ORDER:

This petition under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') is filed for withdrawal of O.S.No. 273 of 2006 pending on the file of the Court of Senior Civil Judge, Mahabubnagar, and transfer the same to the Court of I Additional District Judge, Mahabubnagar, to try along with O.S.No. 108 of 2016.

2. It is the case of the petitioners that they filed O.S.No. 108 of 2016 for declaration that they are owners, possessors and pattedars of land admeasuring Ac. 6.24 guntas in survey No. 611/2 of Kadthal Village & Mandal (erstwhile Amangal Mandal), Mahabubnagar District (presently Ranga Reddy District). The respondents also filed O.S.No. 273 of 2006 against the petitioners for partition and separate possession. The subject matter of property in both the suits is one and the same and if both the suits are tried by two different Courts, there is a likelihood of conflicting judgments and therefore filed the present petition.

3. The respondents filed counter affidavit admitting the pendency of two suits on the file of two different Courts. The only contention raised by the respondents before this Court is that when O.S.No. 273 of 2006 was posted for arguments after closure of evidence, defendant No. 8 died and thereafter the same is posted for bringing the legal-heirs of the deceased defendant No. 8 on record whereas O.S.No. 108 of 2016 is at the stage of cross-examination of P.W.1. and at this stage, the pending suit O.S.No. 273 of 2006 cannot be withdrawn and transferred and prayed for dismissal of the petition.

4. During hearing, learned counsel for both parties reiterated the grounds urged in their respective pleadings.

5. Admittedly, the respondents filed O.S.No. 273 of 2006 on the file of the Court of Senior Civil Judge, Mahabubnagar, for partition and separate possession whereas the petitioners filed O.S.No. 108 of 2016 on the file of the Court of I Additional District Judge, Mahabubnagar, for declaration of title. If both the suits are tried separately, it would lead to multiplicity of proceedings and when the subject matter of property and the parties to the dispute are one and the same, this Court can exercise power under Section 24 C.P.C. to withdraw and transfer any of the suits or proceedings pending on the file of the Courts under its control. In ***Dr. Reddy's Laboratories Limited, Hyderabad, Vs. Pulletikurthi Varaha Chandra Bose and others***¹, this Court held as follows:

"Necessity for transfer of suits from one Court to another would arise if only there exists any similarity of cause of action or commonality of parties. When such situation does not exist, the relief claimed for transfer of the suit cannot be granted."

In the case on hand, the parties to the dispute and the property involved are one and the same. The Apex Court in ***Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others***² held as under:

"Section 24 C.P.C. 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."

¹ 2004 (4) ALD 719

² 2008 (3) SCC 659

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 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."

The Apex Court in the above judgment laid down the following guidelines to exercise such power:

- (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.,."*

However, the above guidelines are illustrative but not substantive guidelines. If the abovementioned guidelines are applied to the present facts of the case, in case any one of the suits is disposed of independently, it may lead to conflicting judgments and to avoid such conflicting judgments, in the interests of justice, the Court can exercise its power under Section 24 C.P.C.

6. The petitioners also sought a direction to try O.S.No. 273 of 2006 after withdrawal from the file of the Court of Senior Civil Judge, Mahabubnagar, and transfer the same to the file of the Court of I Additional District Judge, Mahabubnagar, along with O.S.No. 108 of 2016. It is an admitted fact that the trial in both the suits has been commenced and in such case if both the suits are clubbed at this stage, it would lead to chaos. However, this Court while

exercising power under Section 24 (2) C.P.C. cannot direct such joint trial or clubbing of both the suits in view of the law declared by a Division Bench of this Court in ***Dronavajjula Vidyamba Vs. Vallabhajosyula Lakshmi Venkayamma***³, wherein it was held as follows:

"Under Section 24 (2) C.P.C., special direction may be issued by the Court ordering the transfer either to order the trial de novo 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 C.P.C., 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."

Thus, it is in the discretion of the Court below to decide whether or not to club or conduct joint trial in both the suits and this Court cannot issue such direction.

7. In view of my foregoing discussion, to avoid conflicting judgments and multiplicity of proceedings, I find that it is a fit case to withdraw O.S.No. 273 of 2006 pending on the file of the Court of Senior Civil Judge, Mahabubnagar, and transfer the same to the file of the Court of I Additional District Judge, Mahabubnagar, to try along with O.S.No. 108 of 2016 and dispose of the same in accordance with law.

8. The transfer civil miscellaneous petition is accordingly allowed. Pending miscellaneous petitions, if any, in this petition shall stand closed in consequence.

Date: 23-01-2018.
JSK

M.SATYANARAYANA MURTHY, J.

³ AIR 1958 (A.P.) 218