

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
TRANSFER CIVIL MISCELLANEOUS PETITION NO.756 OF 2017

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed to withdraw M.C.No.30 of 2017 pending on the file of Judge, Family Court, Nizamabad and transfer the same to the Judge, Family Court, Secunderabad to conduct trial along with O.P.Nos.497 and 509 of 2017 pending on the file of Judge, Family Court, Secunderabad, on the sole ground that the petitioner filed O.P.Nos.497 and 509 of 2017 which are pending on the file of Judge, Family Court, Secunderabad, but respondent No.2 filed Maintenance Case intentionally at Nizamabad on receipt of notices in the above two O.Ps, obviously for different reasons, though she is residing at the address given in the petition i.e. H.No.S.C.B, 7-06,011, Trimulgherry, Secunderabad.

During hearing, learned counsel for the petitioner, while reiterating the contentions, asserted that respondent No.2 is staying at Trimulgherry, Secunderabad and notice was served on her; it would be convenient for her to prosecute M.C.No.30 of 2017 at Secunderabad, along with other O.Ps, pending before the Judge, Family Court, Secunderabad; and, to avoid inconvenience to both parties and to avoid conflicting judgments in the event of deciding the matters by two Courts, he sought to withdraw M.C.No.30 of 2017 pending on the file

of Judge, Family Court, Nizamabad and transfer the same to the Judge, Family Court, Secunderabad.

Whereas, counsel for respondent No.2 refuted the contentions raised by the petitioner and contended that respondent No.2 is ready and willing to join the petitioner and will experience lot of inconvenience in case M.C.No.30 of 2017 is withdrawn and transferred to the Court of Judge, Family Court, Secunderabad; the petitioner subjected her to cruelty in different ways; and, therefore, petitioner is disentitled to claim relief under Section 24 CPC and requested to dismiss the petition.

Considering the material available, the sole point that arises for consideration is:

“Whether M.C.No.30 of 2017 pending on the file of Judge, Family Court, Nizamabad, be withdrawn and transferred to the Judge, Family Court, Secunderabad to try along with O.P.Nos.497 and 509 of 2017?”

Point:

Undisputedly, different cases are pending before different Courts, including two O.Ps, on the file of Judge, Family Court, Secunderabad and M.C.No.30 of 2017 under Section 125 CPC. The only reason for seeking transfer is that respondent Nos.1 and 2 are residing at Triumulgherry, Secunderabad, within the jurisdictional limits of Judge, Family Court, Secunderabad, and notice was also served at the same address. Proof of service was also filed which would

clearly establish that she is staying at Trimulgherry, Secunderabad within the jurisdiction of Judge, Family Court Secunderabad but, whereas, the contention, of respondent No.2 that when she came for treatment at Hyderabad, notice was served on her, and the alleged stay at Trimulgherry, Secunderabad, is not true. But this contention was not raised in the counter denying her residence at Triumulgherry, Secunderabad, along with her parents and, for the first time, it was raised during argument. In the first part of the counter, it is specifically stated that the petitioner got married respondent No.2 on 28.08.2005 as per Hindu rites and customs and, during their wedlock, they were blessed with children. The allegations are not required to be noted. However, the address shown in the cause-title was not even denied. Therefore, the contention that she is residing at Nizamabad, and not at Trimulgherry, Secunderabad, is without substance. Service of notice on respondent No.2, at the address, in Trimulgherry, Secunderabad, would suffice to conclude that she is staying at Trimulgherry, Secunderabad. Therefore, the contention that respondent No.2 is residing with her parents at Trimulgherry, Secunderabad is accepted. When respondents are residing within the jurisdictional limits of Judge, Family Court, Secunderabad, prosecution of Maintenance Case before the Judge, Family Court, Nizamabad would cause serious inconvenience to both petitioner and respondent No.2 and, if it is withdrawn and

transferred to the Court of Judge, Family Court, Secunderabad, it would be convenient to both the parties and can avoid waste of time and engaging different advocates at different places.

Convenience and inconvenience is one of the ground to consider the request under Section 24 CPC. Section 24 CPC extends the option of getting the forum changed to either party to a suit and gives them the option to move an application for transfer of suit to another Court. This section also empowers the High Court to suo motu withdraw any case from a subordinate Court and adjudicate on it or transfer it to another Court. The High Court exercises its power under this section keeping in mind the interest of justice and convenience of the parties. It has to be ensured that unnecessary inconvenience is not caused to any party (**K.Meenambigai v. Poovanandan**¹). Some other grounds for seeking transfer of suit are prejudicial approach of the Court from which transfer is sought. However, this apprehension of prejudice must be reasonable. In the present case, ground of prejudice is not raised. Therefore, it is unnecessary to deal with prejudice if no inconvenience is being caused to the respondent on account of such proceedings. Section 24 CPC is merely to confer on the Court a discretionary power. The Court under Section 24 CPC may or may not in its judicial discretion transfer a particular case. Section 24 CPC did not

¹ MANU/TN/1193/2008

prescribe any ground for ordering transfer of a case. In certain cases, it may be ordered suo motu and it may be done for administrative reasons. The court is required to issue notice to the other side and hear the party before directing transfer. Thus, differently, the Court must act judicially in ordering a transfer on the application of a party. This power conferred on the Court is purely discretionary.

Nature of convenience is one of the ground to be considered while exercising power under Section 24 CPC. Here, in this case, as observed by me, respondent Nos.1 and 2 are residing at Trimulgherry, Secunderabad in view of service of notice in the present transfer CMP. In case M.C.No.30 of 2017 pending on the file of Judge, Family Court, Nizamabad, is allowed to be continued, certainly it would cause inconvenience not only to the petitioner but also to the respondents. To avoid such inconvenience and to save money and time, I find it appropriate to withdraw and transfer M.C.No.30 of 2017 pending on the file of Judge, Family Court, Nizamabad to the Court of Judge, Family Court, Secunderabad.

A strange request is made by the petitioner to withdraw M.C.No.30 of 2017 pending on the file of Judge, Family Court, Nizamabad and transfer to the Judge, Family Court, Secunderabad to try along with O.P.Nos.497 and 509 of 2017 or club all the petitions. But, such power is not conferred on this Court by Section 24 CPC.

In **Dronavajjula Vidyamba Vs Vallabhajosyula**

Lakshmi Venkayamma², it was held as follows:

“Under 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.”

By applying the principle laid down in the above judgment and nature of jurisdiction, I find that it is not a fit case to issue such direction and it is beyond the scope of Section 24 of C.P.C. and if any such direction is issued for clubbing both the matters, it is nothing but exceeding or transgressing the powers conferred on this Court by Section 24 of C.P.C. Hence, I am unable to accede to the request of the petitioner for ordering joint trial or clubbing together and try M.C.No.30 of 2017 along with O.P.Nos.497 and 509 of 2017 pending on the file of Judge, Family Court, Secunderabad. Leaving it open to the Court to decide whether it is proper to try all the matters together or separately by exercising discretion. In view of my findings in the earlier paras, I find no force in the contention raised by the counsel for respondent No.2.

Hence, M.C.No.30 of 2017 pending on the file of Judge, Family Court, Nizamabad is withdrawn and transferred to the

² **AIR 1958 (A.P.) 218**

Court of Judge, Family Court, Secunderabad, and the same shall be disposed of in accordance with law.

In the result, the Transfer CMP is allowed. However, it is left open to the Trial Court to decide whether it is required to try all the petitions together or separately by exercising discretion.

Miscellaneous petitions, if any, pending in this petition shall stand closed. There shall be no order as to costs.

Date:19.01.2018
usd

M. SATYANARAYANA MURTHY, J

