

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P NO.867 OF 2017

ORDER:

This petition under Section 24 of C.P.C is filed to withdraw O.S.No.224 of 2017 pending on the file Senior Civil Judge, Machilipatnam, Krishna District and transfer the same to the Court of Senior Civil Judge, Mancherial, Adilabad District.

The first respondent herein filed O.S.No.224 of 2017 pending on the file of Senior Civil Judge, Machilipatnam, for partition of 'A' & 'B' schedule property into two equal shares. 'A' schedule property consists of three items and it is situated within the local limits of Mancherial Village and Mandal of Adilabad District. But, 'B' schedule property, consisting of three items, situated within the limits of Kanukollu Village and Mandal of Krishna District under Mandavalli Sub-Registry. At the same time, respondent nos. 2,3 & 4 and the petitioner are not residents of Machilipatnam Town. Except the first respondent herein, no other party is residing within the jurisdictional limits of Senior Civil Judge, Machilipatnam. Therefore, the petitioner sought to withdraw O.S.No.224 of 2017 pending on the file Senior Civil Judge, Machilipatnam, Krishna District and transfer the same to the Court of Senior Civil Judge, Mancherial, Adilabad District.

Notice on the respondents was served, but none appeared and proof of service was filed.

The only ground to exercise power under Section 24 C.P.C, by this Court is that the defendants are the residents of Machilipatnam which is within the jurisdictional limits of Senior Civil Judge, Mancherial, Adilabad District. 'A' schedule property consisting of 3 items is situated within the jurisdictional limits of Mancherial. But, the plaintiff is residing within the jurisdictional limits of Senior Civil Judge at Machilipatnam and 'B' schedule property is situated at Kanukollu Village and Mandal in Krishna District, i.e. within the territorial limits of Senior Civil Judge, Machilipatnam. But, based on convenience of parties and location of 'A' schedule property, the petitioner sought for withdrawal of O.S.No.224 of 2017 pending on the file Senior Civil Judge, Machilipatnam, Krishna District and transfer the same to the Court of Senior Civil Judge, Mancherial, Adilabad District.

In **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others¹**, the Supreme Court held as follows:

“Section 24 CPC 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.

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

¹ 2008 (3) Supreme Court Cases Page 659

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. Powers under Section 24 CPC cannot be exercised ipse dixit in the manner in which it has been done in the present case.”

It is further held by the Supreme Court that the following factors have to be taken into consideration in a situation in which it is duty of court to transfer the case:

- (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.

The Apex Court observed that, the above guidelines are illustrative, but not substantive guidelines.”

In view of the guideline nos. 1 & 2 of **Kulwinder Kaur²** case, the Apex Court specified that balance of convenience or inconvenience to the plaintiff or the defendant or witnesses of a particular place of trial with regard to nature of evidence on the

points involved in the suit, the Court can withdraw and transfer any pending suit to other places.

In the present facts of the case, as discussed above, 'A' schedule property consists of three items and it is situated within the local limits of Mancherial Village and Mandal of Adilabad District i.e within the territorial limits of Senior Civil Judge, Mancherial, Adilabad District and most of the witnesses are also the residents of the same area. Therefore, In view of the guideline nos. 1 & 2 of **Kulwinder Kaur**² case, to strike balance of convenience between the rights of both the parties, I deem it appropriate to exercise power under Section 24 C.P.C to withdraw O.S.No.224 of 2017 pending on the file Senior Civil Judge, Machilipatnam, Krishna District and transfer the same to the Court of Senior Civil Judge, Mancherial, Adilabad District. Further, the Senior Civil Judge, Mancherial, Adilabad District, is directed to dispose of the suits in accordance with law.

In the result, the transfer civil miscellaneous petition is allowed.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:01.02.2018

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