

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**

Tr.C.M.P.No.20 of 2019

**ORDER :**

This Transfer CMP is filed to transfer the suit in O.S.No.1646 of 1988 from the Court of I Senior Civil Judge, City Civil Court, Hyderabad to the Court of XIII Additional District Judge, Ranga Reddy District at L.B. Nagar to be tried along with O.S.No.36 of 2009, which is pending in the latter Court.

2. Admittedly, O.S.No.1646 of 1988 was filed by Respondents 1 and 2 herein for perpetual injunction against Respondents 4, 5, 6, 7, 8, 9, 10, 11, 12 and others. The said suit was dismissed for default on 16.7.1996 and attempts made by Respondents 1 and 2 herein to get the suit restored ended in a failure. It appears that during the pendency of the said suit, certain amounts were deposited by way of fixed deposits by the defendants in the said suit and cheque petitions were filed after dismissal of the suit in O.S.No.1646 of 1988 for withdrawal of the amounts deposited during the pendency of the suit. These applications had been filed in the year 2017.

3. In the meantime, in 2009, the petitioners herein along with 14<sup>th</sup> respondent herein filed a suit in O.S.No.36 of 2009 against Respondent Nos.13, 5 and 6 for partition of several properties including one of the properties which are the subject matter in O.S.No.1646 of 1988 and there arose a dispute among them as to who should get the amounts

already deposited during the pendency of O.S.No.1646 of 1988. The defendants in O.S.No.36 of 2009 had relied upon a will deed said to have been executed by 7<sup>th</sup> respondent, which is not yet marked in O.S.No.36 of 2009.

4. Petitioners contend that for the limited purpose of withdrawing share in the amounts deposited in O.S.No.1646 of 1988, the 5<sup>th</sup> respondent wants to call for the will deed, whose genuineness is actually to be established in O.S.No.36 of 2009; and any opinion is expressed by the I Senior Civil Judge, City Civil Court, Hyderabad in cheque petitions in O.S.No.1646 of 1988 relating to the genuineness of the will, will have a bearing on the merits of the suit in O.S.No.36 of 2009, and there is likelihood of conflicting decisions on the genuineness of the will. They, therefore, want transfer of O.S.No.1646 of 1988 to Court of XIII Additional District Judge, Ranga Reddy for joint trial with O.S.No.1646 of 1988.

5. The learned counsel for the petitioners reiterated the said contention.

6. Admittedly, O.S.No.1646 of 1988 had been dismissed for default on 27.3.1990. So, there cannot be a transfer of the said suit to the XIII Additional District Judge, Ranga Reddy District to be tried along with O.S.No.36 of 2009, filed much later, for partition by petitioners and 14<sup>th</sup> respondent against Respondents 5, 6 and 13. Assuming that there is any dispute among the parties in O.S.No.36 of 2009 as to who should get the

amounts which were deposited during the pendency of O.S.No.1646 of 1988, they may as well request the I Senior Civil Judge, City Civil Court, Hyderabad to await the decision in O.S.No.36 of 2009. In any event, any opinion expressed regarding the above will deed in the cheque petitions pending before the I Senior Civil Judge, City Civil Court, Hyderabad in O.S.No.1646 of 1988 for withdrawal of amounts deposited therein, would not have any bearing on the substantive suit O.S.No.36 of 2009 and cannot be said to be operate as *res judicata* in O.S.No.36 of 2009, which is a comprehensive suit for partition as contrasted to the limited scope of the cheque petitions being decided in O.S.No.1646 of 1988.

7. Therefore, I do not find any merit in the Transfer CMP. Accordingly, the same is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

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JUSTICE M.S.RAMACHANDRA RAO

Date: 21.2.2019  
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