

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

Tr.CMP NO.71 OF 2019

ORDER:

This Transfer CMP is filed seeking the transfer of O.S. No.1004 of 2014 on the file of XXV Additional Chief Judge, City Civil Court, Hyderabad, O.S. No.246 of 2013 on the file of X Junior Civil Judge, City Civil Court, Hyderabad, O.S. No.833 of 2012 on the file of III Additional Chief Judge, City Civil Court, Hyderabad and O.S. No.673 of 2016 on the file of II Additional Chief Judge, City Civil Court, Hyderabad to the court of the II Additional Chief Judge, City Civil Court, Hyderabad or any other competent court.

The petitioner and the 1st respondent were married in 1990, and lived as husband and wife till 2007. Respondent No.2 is the daughter and respondent No.3 is the daughter of the 2nd respondent.

Differences arose between petitioner and 1st respondent and it is alleged that they agreed to divide their properties as per Memorandum of Understanding-cum-Settlement entered into between them on 09.06.2006 before they were formally divorced.

As per the said Memorandum of Understanding-cum-Settlement, it is alleged that 'A' schedule properties mentioned therein were allotted and enjoyed by the 1st respondent while 'B' schedule properties were to be enjoyed by the petitioner; this understanding was to take effect from 01.07.2006; a Pre-Litigation Case No.156 of 2006 was filed before Lok Adalat on the basis of the Memorandum of Understanding-cum-Settlement; and their marriage was dissolved in the said Pre-Litigation Case on 16.05.2007.

The petitioner alleges that a joint memo was filed before the said Lok Adalat PLC No.156 of 2006 with regard to the sharing of the properties between petitioner and 1st respondent as per the terms of the Memorandum of Understanding-cum-Settlement dt.09.06.2006.

O.S. No.1004 of 2014

O.S. No.1004 of 2014 was filed by 3rd respondent against the petitioner before XXV Additional Chief Judge, City Civil Court, Hyderabad seeking recovery of possession of an apartment Flat No.102 in 1st floor admeasuring 1500 square feet plinth area in Star Homes Apartment complex together with 48 square yards proportionate undivided share of land in premises bearing No.1-2-376/1/A situated at Ward No.1, Block No.2, Gagan Mahal, Domalguda, Hyderabad.

It is alleged in the plaint by the 3rd respondent that she is the absolute owner of the said property which was purchased by the 1st respondent under the registered sale deed dt. 09.07.1999; that petitioner was allowed to reside therein as per permission of the 2nd respondent; after the divorce decree was passed between 1st respondent and petitioner on 16.05.2007 through Lok Adalat, Hyderabad, there were threats given to the 2nd respondent by the 1st respondent; and so he was asked to vacate the suit schedule property through a legal notice which amounted to termination of licence, but petitioner did not vacate the property.

O.S. No.246 of 2013

O.S. No.246 of 2013 was filed by the petitioner against respondents 1 and 2 for a perpetual injunction restraining them from interfering with petitioner's possession and enjoyment over Flat

No.102, 1st floor, Star Homes, H. No.2-1-356/1/A, Gagan Mahal, Domalguda, Hyderabad, which property is subject matter of O.S. No.1004 of 2014 filed by the 3rd respondent against the petitioner.

He alleged that the suit schedule property was acquired by him, but were kept in the name of the 3rd respondent and her twin sister and the 1st respondent was kept as the guardian in 1999; the suit schedule property was allotted to him as per the terms of Memorandum of Understanding-cum-Settlement dt. 09.06.2006 between himself and 1st respondent, but 1st respondent and 2nd respondents have been interfering with his possession and enjoyment over the suit schedule property; and so he had to file the suit for perpetual injunction.

O.S. No.833 of 2012

Petitioner also filed O.S. No.833 of 2012 before III Additional Chief Judge, City Civil Court, Hyderabad for declaration that the properties mentioned in the schedule to the plaint belong to him as per the joint memo filed by the parties in PLC No.156 of 2006; to direct the 1st respondent, who was the sole defendant therein, to deliver keys of the 'A' schedule properties attached to the plaint and in default to hold that he is entitled to take possession thereof through court; for a permanent injunction restraining the 1st respondent from making any structural alterations in the suit schedule properties and for other reliefs.

O.S. No.673 of 2016

The 1st respondent filed O.S. No.673 of 2016 against the petitioner and another private company for recovery of possession of 2nd floor premises of building admeasuring 2265 square feet bearing

premises No.1-1-287/17 and 1-1-256/8/1, 2 and 3, street No.3, Bapunagar, Chikkadpally, Hyderabad and for damages.

She contended that he purchased this property under three registered sale deeds in 1998 and constructed G+2 floors, after obtaining permission from GHMC; that petitioner was allowed to live and use the 2nd floor of the said building; in view of the divorce between the parties, she terminated the licence of the petitioner and called upon him to vacate the same, but he did not do so and he inducted 2nd respondent in the suit into the property.

The plea in the Tr.CMP

In the Transfer CMP, counsel for the petitioner contended that the intention of the 1st respondent is to deprive the petitioner's share, enjoyment and possession of the properties agreed to be shared in the MOU-cum-Settlement; that the suits were filed in different courts and there is a possibility of inconsistent and vague orders being passed therein; that the dispute between the parties is about sharing of the properties mentioned in the MOU-cum-Settlement; and it is better if a single court hears and decides all the cases.

It is contended that consolidation of the suits does not cause any prejudice, since each suit can be dealt with independently, though all of them would be heard by the same court.

It is contended that the Memorandum of Understanding-cum-Settlement was, in fact, acted upon and properties were allotted to petitioner to be treated as his own and the 1st respondent also acted on the Memorandum of Understanding and transferred properties to third parties. Therefore, the application be allowed and all the suits be heard by the Court of II Additional Chief Judge.

The events pending the Tr.CMP

On 07.06.2016, this court granted interim stay for eight weeks while issuing notice to the respondent, the respondent engaged a counsel who filed I.A. Nos. 2 and 3 to vacate the said order.

Contentions of respondents

It is the contention of respondents 1 to 3 that the petitioner is trying to place reliance on the Memorandum of Understanding-cum-Settlement dt. 09.06.2006 which is unstamped and unregistered and it is illegal and inadmissible in evidence for want of stamp duty and penalty and also on the ground that it is an unregistered document.

It is contended that the subject matter of O.S. No.1004 of 2014 on the file of XXV Additional Chief Judge, City Civil Court, Hyderabad is not covered by the PLC Award No.156 of 2006; and the said court had already given its finding rejecting the MOU-cum-Settlement dt. 09.06.2006 holding it to be inadmissible for want of stamp duty and registration.

It is also contended that in O.S. No.1004 of 2014, the 3rd respondent/plaintiff therein is not a party to the MOU-cum-Settlement as well as the Award in the PLC.

It is alleged that after the divorce between the petitioner and the 1st respondent developed an intention to illegally grab the properties belonging to the 1st respondent and that of the 3rd respondent and the very filing of the Transfer Petition is an abuse of process of court.

It is contended that petitioner had earlier filed O.S. No.827 of 2018 before the Chief Judge, City Civil Court, Hyderabad to transfer O.S. No.246 of 2013 on the file of the X Junior Civil Judge,

Hyderabad to be tried along with 1004 of 2014 on the file of XXV Additional Chief Judge, City Civil Court, Hyderabad; that the said O.P. was dismissed on 20.06.2018; that petitioner filed Transfer CMP No.589 of 2018 in this court, but this court dismissed the same.

It is contended that the instant Transfer Petition is filed with similar grounds and, therefore, this application also deserves to be dismissed and the principle of *resjudicata* would apply.

It is alleged that there is no similarity with regard to cause of action, nature of suits, parties to the suits as well as the issues involved; and consolidation of suits is therefore not to be done.

It is further contended that the four suits are in different stages.

Respondent No.3 also filed vacate stay petition I.A. No. 2 of 2019 contending that the Transfer Petition was filed with malafide intention. It was also reiterated and there is no connection with regard to facts and law with the other three suits referred by the petitioner in O.S. No.246 of 2013.

The Consideration by the Court

I have heard the contentions of counsel for the parties reiterated the respective stands on their clients.

In **Mahalaxmi Co-operative Housing Society Ltd. v. A. Shabhai Atmaram Patel (D) through L.Rs¹**, the Supreme Court held that there is no specific provision in the CPC for consolidation of suits and such a power is to be exercised only under Section 151 of the CPC. It observed that the purpose of consolidation of the suits is to

¹ AIR 2013 SC 961

save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. It declared that consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses and the parties are relieved of the need of adducing of the same or similar or oral evidence twice over in different suits at different trials.

Keeping in mind, this principle, I shall now consider this application for consolidation of the four suits and transfer to one of the courts where one of the suits is pending.

A reading of the plaint in all the suits indicates that the litigation between the parties is related to the Memorandum of Understanding-cum-Settlement dt. 09.06.2006 and the Award passed by the Lok Adalat in PLC No.156 of 2006 on 16.05.2007 and the properties which are subject matter of the suits are mentioned in either of these two documents.

In O.S. No.1004 of 2014 filed by the 3rd respondent against the petitioner, the suit schedule property is item No.1 of 'B' schedule of MOU-cum-Settlement dt. 09.06.2006; in O.S. No.246 of 2013, the plaint schedule property is the same property which is subject matter of O.S. No.1004 of 2014; in O.S. No.833 of 2012, the plaint schedule property is item No.7 of 'B' schedule in the MOU-cum-Settlement dt.09.06.2006 / item No.1 of 'A' schedule in the joint memo filed by the parties in PLC No.156 of 2006; and the same property is subject matter of O.S. No.673 of 2016 as well.

In all these cases, the validity and admissibility of the MOU-cum-Settlement dt.09.06.2006 as well as Lok Adalat Award No.1615 of 2006 in Pre-Litigation Case No.156 of 2006 is thus in issue.

However, in Transfer CMP No. No.589 of 2018, this court on 17.09.2018 refused to transfer O.S. No.246 of 2013 on the file of the IX Junior Civil Judge, City Civil Court, Hyderabad and O.S. No.1004 of 2014 on the file of XXV Additional Chief Judge, City Civil Court, Hyderabad to either of the said courts on the ground that there was a delay in filing the Transfer CMP.

In my considered opinion, in view of the said order, O.S. No.246 of 2013 and O.S. No.1004 of 2014 cannot be clubbed together and consolidated and they cannot be heard by a single court.

However, the said order will not operate as resjudicata to consider consolidation of O.S. No. 833 of 2012 and O.S. No.673 of 2016 with O.S. No.1004 of 2014 or with O.S. No.246 of 2013.

Primarily, the purpose of consolidation is to ensure that there are no inconsistent findings relating to the common issues which arise for consideration in all the suits and in particular in relation to the MOU-cum-Settlement dt.09.06.2006 in PLC No.156 of 2006.

Merely because the suits are at different stages, this primary object of consolidation, cannot be lost sight of.

Therefore, I deem it appropriate to allow this Transfer CMP partly by consolidating O.S. No.246 of 2013 on the file of X Junior Civil Judge, City Civil Court, Hyderabad, O.S. No.833 of 2012 on the file of III Additional Chief Judge, City Civil Court, Hyderabad and O.S. No.673 of 2016 on the file of II Additional Chief Judge, City Civil Court, Hyderabad and I, therefore, direct that O.S. No.246 of 2013 and O.S. No.833 of 2012 be transferred from the courts they are pending to the court of II Additional Chief Judge, City Civil Court,

Hyderabad and be decided by the said court along with O.S. No.673 of 2016 pending on the file of the said court.

Transfer CMP is partly allowed accordingly and I.A. Nos.2 and 3 of 2019 are dismissed. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

Dt: 01.08.2019

MRKR

