

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Tr.C.M.P.No.363 of 2018

ORDER:

This Tr.C.M.P. is filed seeking transfer of O.S.No.218 of 2014 from the Court of XII Additional Chief Judge, City Civil Court, Secunderabad to any competent Court in the interest of justice.

2. Petitioners herein are defendant Nos.2 and 3 in the suit, which was filed by 1st respondent for partition and separate possession of 1/12th share in schedule No.1 and 1/6th share in schedule Nos.2 and 3 of the properties.

3. Petitioners contend that I.A.No.1133 of 2015 was filed by 1st respondent to deposit the monthly rents received by petitioners; that counter-affidavit was filed by petitioners opposing the said application; in a mechanical manner, I.A.No.1133 of 2015 was allowed on 03-07-2017 by the XII Additional Chief Judge, City Civil Court, Secunderabad.

4. Petitioners contend that they challenged the same in C.R.P.No.4017 of 2017, which was allowed and strictures were also passed against the said Court for deciding I.A.No.1133 of 2015 in a casual manner and matter was remanded to it to decide afresh in one month. It is also alleged that when petitioners sought to file additional counter along with application under Order VIII Rule 9 C.P.C. to file subsequent pleading, without hearing the interim application for

deposit of rent, the Court was insisting that petitioners lead evidence though remand order in C.R.P.No.4017 of 2017 on 05-09-2017 directed I.A.No.1133 of 2015 to be decided within a period of one month.

5. It is alleged that subsequently also on 14-12-2017, I.A.No.1133 of 2017 was disposed of by the Court below allowing it and petitioners filed C.R.P.No.1087 of 2018; while the said C.R.P. was pending, the said Court was insisting the petitioners for deposit rent pursuant to his orders in the I.A. and stated that it would initiate contempt proceedings against them and was suggesting the same to the counsel for 1st respondent also. It is contended that this indicates prejudice which the Court had against the petitioners.

6. It is also contended that petitioners had sought joint hearing of O.S.No.218 of 2014 and O.S.No.39 of 2015 as the parties are common to both these suits, but the said Court was refusing to consider the said memo and was independently proceeding with O.S.No.39 of 2015 and was not inclined to club both the matters.

7. It is also pointed out that though pre-2012 suits were given priority by the said Court, the Judge seems to be anxious to hear the present suit which is of the year 2014. Therefore, it is desirable to transfer O.S.No.218 of 2014 from the Court of the XII Additional Chief Judge, City Civil Court, Secunderabad to any other Court.

8. Though learned counsel for 1st respondent entered appearance on 20-06-2018, no counter-affidavit is filed refuting these contentions.

9. This Court had called for remarks from the XII Additional Chief Judge, City Civil Court, Secunderabad and in his remarks, he denied the allegations.

10. It is important to note that this Court had passed separate orders today in C.R.P.No.1087 of 2018 setting aside the order passed in I.A.No.1133 of 2015 in O.S.No.218 of 2014 and found fault with the said Court for ignoring an admission made by 1st respondent in his written statement in O.S.No.11 of 2005 that he had no share in the properties of his parents.

11. Learned counsel for 1st respondent has relied on the judgment in **Tadikonda Surya Venkata Satyanarayana Murthy Vs. Tammana Seethamahalakshmi**¹. In that case, it was held that while ordering transfer of a case from the file of one Additional Judge to that of another, the District Court (or the Principal District Judge) neither pronounces a judgment on the merits of the case nor exercises the power of judicial review over any decision rendered by the Additional District Judge. It also observed that an order of transfer is not a judgment, it must also be noted that in a petition for transfer of a case from one Court to another, no order or decision of the subordinate Court is called in question. It also recorded that the High Court has

¹ (2016) 5 A.L.D. 482

general power of withdrawal and transfer which jurisdiction is concurrent with that of the District Court.

12. In the instant case, having regard to the manner in which the XII Additional Chief Judge, City Civil Court, Secunderabad has dealt with I.A.No.1133 of 2015 in O.S.No.208 of 2014 in spite of a direction passed by this Court on 05-09-2017 in C.R.P.No.4017 of 2017, and the apprehensions expressed by the petitioners regarding the fate of the suit, if it continues to be heard by the said Court, I deem it appropriate to transfer the suit O.S.No.208 of 2014 from the Court of XII Additional Chief Judge, City Civil Court, Secunderabad to the Court of I Additional Chief Judge, City Civil Court, Secunderabad.

13. This Tr.C.M.P. is allowed as above. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-03-2019
Vsv