

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Tr.C.M.P.No.386 of 2018

ORDER:

This Tr.C.M.P. is filed seeking transfer of O.S.No.39 of 2015 from the file of XII Additional Chief Judge, City Civil Court, Secunderabad to any other competent Court.

2. Petitioners herein are defendant Nos.2 and 3 in the said suit, which was filed by 1st respondent against them and other respondents for partition of schedule 'A' to 'D' properties into 6 equal shares and for allotment of 1/6th share and in O.S.No.39 of 2015, the 1st respondent is seeking partition of the properties of the mother of petitioners and 1st respondent;

3. Petitioners contended that there is another suit O.S.No.218 of 2014 on the file of the same Court filed by 1st respondent for partition and separate possession of the properties of the father of petitioners and 1st respondent; that 1st respondent filed I.A.No.1133 of 2015 in O.S.No.218 of 2014 for deposit of monthly rents allegedly received by petitioners from the properties, which are subject matter in O.S.No.218 of 2014 and in spite of counter being filed opposing the same, the said I.A. was allowed on 03-07-2017 in a very casual manner; that petitioners challenged the same in C.R.P.No.4017 of 2017 and the said C.R.P. was allowed on 05-09-2017 and the matter was remitted back to the said Court by passing strictures against the

Officer; thereafter again the said I.A. was allowed on 14-12-2017 and it was questioned in C.R.P.No.1087 of 2018. They also contended that in O.S.No.39 of 2015, similar application for deposit of rents i.e. I.A.No.1253 of 2015 was filed by 1st respondent, which was erroneously allowed on 30-04-2018, but the same was challenged in C.R.P.No.5541 of 2018; that in spite of the High Court order in C.R.P.No.4017 of 2017 to decide the I.A.No.1133 of 2015 within one month, the Court below was insisting on petitioners to lead evidence; and though C.R.P.No.1087 of 2018 was pending before this Court, the Court below is threatening to initiate contempt proceedings if the amounts directed by it were not deposited; and though a memo was filed to hear both O.S.Nos.218 of 2014 and 39 of 2015 together, the Court below was not passing any order in it and this indicates the prejudiced the manner in which the Court below was acting against the petitioners.

4. No counter-affidavit was filed by 1st respondent refuting the said allegations.

5. Remarks of the Officer were called for by this Court and in the remarks, the Officer denied the allegations leveled against him.

6. It is important to note that the orders passed by the Court below on 14-12-2017 in I.A.No.1133 of 2015 in O.S.No.218 of 2017 were set aside today by separate order passed in C.R.P.No.1087 of 2018; and the order passed by the said Court on 30-04-2018 in I.A.No.1253

of 2018 in O.S.No.39 of 2015 were also set aside in C.R.P.No.5541 of 2018 today by a separate order.

7. In both these orders it was noticed by this Court that the Court below had ignored a vital admission made by 1st respondent in the written statement filed by him in a prior suit O.S.No.11 of 2005 wherein he stated that he had no right in the properties of his parents or brothers.

8. Having regard to the said fact and having regard to the serious allegations leveled against the Officer by the petitioners, who apprehend that justice may not be done to them, I deem it appropriate to transfer O.S.No.39 of 2015 from the file of XII Additional Chief Judge, City Civil Court, Secunderabad to the Court of I Additional Chief Judge, City Civil Court, Secunderabad with a direction to decide O.S.No.218 of 2014 and O.S.No.39 of 2015 together by way of joint trial.

9. This Transfer C.M.P. is allowed as above. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-03-2019
Vsv