

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Transfer CMP No.223 of 2019

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of the Code of Civil Procedure, 1908, is filed by the petitioner, requesting to withdraw E.P.No.10 of 2018 in O.S.No.129 of 2018 from the file of the Court of the Additional Junior Civil Judge-cum-VIII Metropolitan Magistrate, Ranga Reddy District at Rajendranagar, and transfer the same to the Telangana State Waqf Tribunal, Hyderabad, for trial and disposal in accordance with law.

2. Heard the learned counsel for both the sides and perused the record.

3. The learned counsel for the petitioner would contend that the Telangana State Waqf Tribunal constituted under the Waqf Act, 1995, is subordinate to this Hon'ble Court. Therefore, the provisions of Section 24 of Code of Civil Procedure, 1908, would be applicable. The respondent No.3 herein/decree holder has filed the subject E.P.No.10 of 2018 in O.S.No.129 of 2018 against the respondent No.4 herein/judgment debtor. It was a collusive decree. The petitioner herein filed a claim petition (E.A.No.7 of 2019) in the subject E.P.No.10 of 2018 before the Court below under Order XXI Rules 58, 97, 98 & 99 read with Section 151 of CPC requesting to dismiss the subject E.P.No.10 of 2018. Since the suit schedule property is Waqf property, the Waqf Tribunal alone has jurisdiction to adjudicate the matter relating to Waqf or Waqf property, in view of the mandate given under Section 83 of

the Waqf Act, 1995. Therefore, the Telangana State Waqf Tribunal is competent to determine and dispose of the subject *lis* in E.P.No.10 of 2018 in O.S.No.129 of 2018 and ultimately prayed to withdraw E.P.No.10 of 2018 in O.S.No.129 of 2018 from the file of the Court of the Additional Junior Civil Judge-cum-VIII Metropolitan Magistrate, Ranga Reddy District at Rajendranagar, and transfer the same to the Telangana State Waqf Tribunal, Hyderabad, for trial and disposal in accordance with law. In support of his contentions, the learned counsel had relied on a decision of the erstwhile High Court of Andhra Pradesh in *Dr.V.Rajeshwar Rao Vs. M.Yadagiri Reddy and others*¹.

4. On the other hand, the learned counsel for the respondents would contend that Section 24 of the Code of Civil Procedure, 1908, has no application to the instant case. The Telangana State Waqf Tribunal is established under a special statute. Therefore, the subject E.P.No.10 of 2018 in O.S.No.129 of 2018 filed before a civil Court cannot be withdrawn and transferred to the Telangana State Waqf Tribunal and ultimately prayed to dismiss the Transfer Civil Miscellaneous Petition. In support of his contentions, the learned counsel had relied on a decision of the erstwhile High Court of Andhra Pradesh in *Gulam Ismail and another Vs. Mirza Ibrahim Ali Baig*².

5. In view of the above rival contentions, the point that arises for determination in this Transfer Civil Miscellaneous Petition is as follows:

¹ 2007 (2) ALD 17

² 2003 (5) ALD 552 (DB)

“Whether E.P.No.10 of 2018 in O.S.No.129 of 2018 pending on the file of the Court of the Additional Junior Civil Judge-cum-VIII Metropolitan Magistrate, Ranga Reddy District at Rajendranagar, can be withdrawn and transferred to the Telangana State Waqf Tribunal, for disposal in accordance with law?”

6. In Gulam Ismail’s case (2 supra) relied upon by the learned counsel for the respondents, the Hon’ble Division Bench of the erstwhile High Court of Andhra Pradesh held as follows:

“4. A reading of Section 24 of the Code itself makes it clear that the said provision can be invoked to transfer any suit or appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same.

5. In the light of the clear language employed in the aforesaid provision, we have no hesitation in holding that for transfer of suits to be tried along with the O.Ps., pending on the file of the Special Court or the Tribunal constituted under the provisions of the Act, Section 24 of the Code cannot be invoked. The remedy provided for under Section 24 of the Code is not available.”

7. The learned counsel for the petitioner had relied on Dr.V.Rajeshwar Rao’s case (1 supra). I had perused the said decision. The said decision is clearly distinguishable from the facts and circumstances of the case on hand and hence, the said decision is not applicable.

8. The facts and circumstances of the case on hand are similar to the facts and circumstances of Gulam Ismail's case (2 supra) relied by the learned counsel for the respondents. In the instant, case the petitioner is seeking transfer of subject E.P.No.10 of 2018 in O.S.No.129 of 2018 from a civil Court to the Telangana State Waqf Tribunal, which is constituted under a special enactment. Moreover, the Telangana State Waqf Tribunal is not subordinate to this Court, in view of the mandate given under Section 24(1)(b) of the Code of Civil Procedure, 1908. Under these circumstances, the relief sought by the petitioner in this Transfer Petition cannot be granted. The transfer Civil Miscellaneous Petition is devoid of merit and is liable to be dismissed.

9. In the result, the Transfer Civil Miscellaneous Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Transfer CMP, shall stand closed.

12th February, 2020
Bvv

Dr. SHAMEEM AKTHER, J