

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Tr.C.M.P.No.216 OF 2019

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of the Code of Civil Procedure, 1908, is filed by the petitioner/defendant No.2 seeking to withdraw O.S.No.69 of 2009 from the file of Senior Civil Judge, Mahabubabad, Mahabubabad District, and transfer the same to the file of Senior Civil Judge, Khammam, Khammam District, for trial and disposal along with O.S.No.262 of 2010 in accordance with law.

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

3. Learned counsel for the petitioner/defendant No.2 would submit that the subject matter of the Suit in O.S.No.69 of 2009 is covered in O.S.No.262 of 2010. The Suit in O.S.No.262 of 2010 is a comprehensive Suit filed for partition and separate possession of the suit schedule properties, consisting of seven items, out of which, item No.5 is the schedule property in O.S.No.69 of 2009. Respondent No.1 herein (plaintiff in O.S.No.69 of 2009) is shown as defendant No.3 in O.S.No.262 of 2010. Except item No.5 in O.S.No.262 of 2010, which is also the suit schedule property in O.S.No.69 of 2009, other suit schedule properties in O.S.No.262 of 2010 are situated within the territorial jurisdiction of the Senior Civil Judge, Khammam. The Senior Civil Judge's Court at Khammam is convenient for the witnesses to carry on the proceedings in O.S.No.262 of 2010 and the said Court can effectively adjudicate the subject matter of

both the Suits, by clubbing them and ultimately, prayed to allow the present petition.

4. On the other hand, learned counsel for respondent No.1 (plaintiff in O.S.No.69 of 2009 and defendant No.3 in O.S.No.262 of 2010) would submit that respondent No.1/plaintiff is suffering from glucoma and he is a resident of Maripeda Village and Mandal of Mahabubabad District. The Senior Civil Judge's Court at Mahabubabad is convenient for adjudication of both the Suits and it has jurisdiction to try both the Suits together and dispose of the same. The suit schedule property covered in O.S.No.69 of 2009 is situated within the territorial jurisdiction of the Senior Civil Judge's Court at Mahabubabad. So, the said Court has jurisdiction to try and dispose of the said Suit, whereas the Senior Civil Judge's Court at Khammam has no jurisdiction to determine the *lis* pending in O.S.No.69 of 2009 and ultimately, prayed to withdraw the Suit in O.S.No.262 of 2010 from the file of Senior Civil Judge, Khammam and transfer the same to the file of Senior Civil Judge, Mahabubabad, for trial and disposal along with O.S.No.69 of 2009, in accordance with law.

5. In view of the submissions made by both the sides, the point that arises for determination is as follows:

“Whether the Suit in O.S.No.69 of 2009 pending on the file of Senior Civil Judge, Mahabubabad, be withdrawn and transferred to the file of Senior Civil Judge, Khammam or the Suit in O.S.No.262 of 2010 pending on the

file of Senior Civil Judge, Khammam, be withdrawn and transferred to the file of Senior Civil Judge, Mahabubabad?"

6. As per the material placed on record and the submissions made by both the sides, the Suit in O.S.No.262 of 2010 is a comprehensive Suit, which is filed for partition and separate possession of the suit schedule properties, consisting of distinct agricultural lands, house sites and houses, altogether seven items, with distinct boundaries, whereas the Suit in O.S.No.69 of 2009 is filed for specific performance of contract in respect of residential house bearing Nos.5-7-15 and 5-7-16 situated at Maripeda Village and Mandal, within the territorial jurisdiction of the Senior Civil Judge, Mahabubabad. The suit schedule property in O.S.No.69 of 2009 forms only a small part of the suit schedule properties in O.S.No.262 of 2010, as submitted by the learned counsel for the petitioner/defendant No.2. Further, the place of residence of respondent No.1/plaintiff is quite near to the Senior Civil Judge's Court at Khammam. Furthermore, almost all the parties to the litigation are residing within the territorial jurisdiction of the Senior Civil Judge, Khammam. Further, respondent Nos.3 and 4 herein/defendant Nos.3 and 4 in O.S.No.69 of 2009 have no objection for withdrawal of the Suit in O.S.No.69 of 2009 from the file of Senior Civil Judge, Mahabubabad and transfer the same to the file of Senior Civil Judge, Khammam. Since the Suit in O.S.No.262 of 2010 is a comprehensive Suit, where all the issues raised are likely to be

answered, and except the property covered under item No.5 of the suit schedule properties in O.S.No.262 of 2010, the other properties are situated within the territorial jurisdiction of the Senior Civil Judge's Court at Khammam, the Senior Civil Judge's Court at Khammam is convenient to both the parties and it can effectively adjudicate the dispute between the parties to the litigation in both the Suits.

7. Under these circumstances, the Transfer Civil Miscellaneous Petition is allowed and the Suit in O.S.No.69 of 2009 pending on the file of Senior Civil Judge, Mahabubabad, is withdrawn and transferred to the file of Senior Civil Judge, Khammam, for disposal in accordance with law. It is left open to the Senior Civil Judge, Khammam, either to club or not both the suits or to decide them independently.

Miscellaneous petitions, if any, pending in this Transfer Civil Miscellaneous Petition shall stand closed. There shall be no order as to costs.

January 03, 2020
MD

Dr. SHAMEEM AKTHER, J