

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

Tr.C.M.P.No.667 of 2017

ORDER:

The petitioner has filed this Transfer Civil Miscellaneous Petition under Section 24 of the Civil Procedure Code, 1908 (for short 'CPC') with a prayer to withdraw EP No.3 of 2007 in OS No.451 of 2005 pending on the file of the learned III Additional Chief Judge, Hyderabad and to transfer the same to this Court to be tried along with CCCA No.225 of 2006 pending on the file of this Court.

2. The main averments of the affidavit filed by the petitioner in support of his claim are that he is the claim petitioner No.5 and he is well-acquainted with the facts of the case. A suit in OS No.518 of 2001 (old OS No.50 of 1996) on the file of the learned X Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad was filed in the year 1996 for specific performance of forged agreement of sale dated 12.03.1991. That suit was dismissed. Feeling aggrieved by the same, an appeal was preferred before the High Court, vide CCCA No.225 of 2006, which is pending

on the file of this Court. Thereafter, EP No.3 of 2007 was filed before the trial Court wherein two claim petitions in EA No.45 of 2007 and EA No.56 of 2016 are filed and some of the claim petitioners are also died, it is therefore just and essential to transfer EP No.3 of 2007 to this Court to be tried along with CCCA No.225 of 2006.

3. Despite best efforts, notice could not be served on some of the respondents. Steps were taken for service of notices by way of substituted service. Accordingly, as per the orders in IA No.1 of 2022, notice was issued to respondents 1, 2 and 4 by way of substituted service by publishing the same in Etemad, Urdu newspaper, Hyderabad edition. The respondents called absent and there was no representation on their behalf, accordingly, they were set *ex parte*. Despite service of notice, the third respondent remained absent and he was also set *ex parte*.

4. Heard learned counsel for the petitioner. The submissions made by the learned counsel have received due consideration of this Court. Perused the material available on record.

5. This Tr.CMP is only filed with a prayer to withdraw EP No.3 of 2007 pending on the file of the learned III Additional Chief Judge, City Civil Court, Hyderabad and to transfer the same to this Court to be tried along with CCCA No.225 of 2006 pending on the file of this Court.

6. Be it stated that the petitioner has alleged that two claim petitions are filed and they are pending in EP No.3 of 2007 and that the claim petitions have to be adjudicated along with CCCA No.225 of 2006 pending on the file of this Court.

7. Section 24 of CPC deals with general power of transfer by the High Court and the District. The cardinal principle for exercise of such power under Section 24 of CPC is that the ends of justice should demand the transfer of suit, appeal or other proceedings. Whenever courts are called upon to consider such plea for transfer, the Courts have to look into the nature of litigation and the necessity for transfer to avoid any conflicting or contradictory findings to be recorded.

8. In the case on hand, it is alleged by the petitioner that feeling aggrieved by the judgment and decree, the parties in OS No.518 of 2001 (old OS No.50 of 1996) have assailed the judgment and decree before this Court in CCCA No.225 of 2006 and the same is pending disposal. Thereafter, EP No.3 of 2007 is filed wherein two claim petitions are filed. Accordingly, it is requested to transfer the entire EP proceedings to this Court to be tried or heard along with CCCA No.225 of 2016 pending on the file of this Court.

9. It is not explained as to the status of EA No.45 of 2007 or EA No.56 of 2016, that apart if any such claim petitions are filed and pending, this Court cannot take the burden of recording the evidence and adjudicating the claim petitions while hearing CCCA No.225 of 2006, which is pending for the last 15 years ago before this Court. The remedy of the petitioner lies elsewhere, but certainly not under Section 24 of CPC.

10. In that view of the matter, I do not find any merit in the request of the petitioner for withdrawal of EP No.3 of

2007 pending on the file of the learned III Additional Chief Judge, City Civil Court, Hyderabad and to transfer the same to this Court.

11. In the result, the Transfer Civil Miscellaneous Petition is dismissed as devoid of merit. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, interlocutory applications, if any pending in this Tr.CMP shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 06.09.2022
Isn