

THE HON'BLE SRI JUSTICE BANDARU SYAMSUNDER

TRANSFER CIVIL MISCELLANEOUS PETITION

NO.148 OF 2023

ORDER:

I have heard learned counsel Mr.Umar Abdullah, representing on behalf of Mr. S.V.S.S. Siva Ram, learned counsel the petitioner as well as Mr. S. Syamsunder Rao, learned counsel for respondent Nos. 1 and 2.

2. This petition is filed by the petitioner under Section 24 of C.P.C seeking transfer of O.S.No.152 of 2022 on the file of Junior Civil Judge's Court, Amalapuram and O.S.No.4 of 2023 on the file of Senior Civil Judge's Court at Amalapuram to VI Additional District Judge's Court, Visakhapatnam, where O.S.No.196 of 2022 is pending.

3. The case of the petitioner in brief is that she filed suit in O.S.No.196 of 2022 on the file of VI Additional District Judge's Court, Visakhapatnam against the respondent wherein she prayed to cancel the Lok-Adalat award dated 03.03.2017 passed in O.S.No.684 of 2015 on the file of II Additional District Judge's Court, Visakhapatnam in respect of agricultural land and also in respect of house property and sought for permanent injunction

against respondent Nos. 1 and 2, restraining them to interfere with her peaceful possession and enjoyment of the property.

4. The petitioner submits that respondent No.3 filed O.S.No.684 of 2015 on the file of II Additional District Judge's Court, Visakhapatnam seeking for partition of properties, wherein father of respondent No.1 and husband of respondent No.2 played fraud and obtained Lok-Adalat award dated 03.03.2017 and then she filed suit for cancelation of Lok-Adalat award. It is also the contention of the petition that respondent No.1 representing by respondent No.2 filed O.S.No.152 of 2022 on the file of Junior Civil Judge's Court, Amalapuram seeking for declaration in respect of same properties and also filed O.S.No.4 of 2023 on the file of Senior Civil Judge, Amalapuram for cancelation of the settlement deed executed by her in favour of respondent No.3.

5. The main contention of the petitioner is that in all the three suits parties and properties involved are similar due to that all three suit have to be disposed of by the same Court to avoid conflicting judgments, if any. She prays to allow the petition.

6. The respondent No.2 filed counter affidavit denying averments in the affidavit of the petitioner. The respondent No.2 submit that there are no grounds to transfer the case and plaintiff

is Dominus Litis, which he entitled to institute his suit in any forum which the Court allows and forum should not be lightly changed and the person cannot be compelled to go to another Court when cause of action for the suit are different. It is also the contention of respondent No.2 that the petitioner and respondent No.3 herein colluded together to defeat the rights of her minor son over item Nos.1 and 2 of plaint schedule property and also her right over item No.2 of plaint schedule brought into existence a settlement deed with regard to item No.1 of plaint schedule property and in order to cover up their latches, the petitioner filed suit in O.S.No.196 of 2022 to cover of the their latches, petitioner filed suit on the file of VI Additional District Judge's Court, Visakhapatnam to cancel the Lok-Adalat award on erroneous grounds. She prays to dismiss the petition.

7. Respondent No.3 filed counter stating that he has no objection for transfer both suits filed by respondent Nos.1 and 2 to VI Additional District Judge, Visakhapatnam.

8. The learned counsel for the petitioner would submit that parties in all the suits are one and the same and their respective contentions are also similar and property involved in the suits are also similar, due to that all suits have to be disposed of by the same Court to avoid conflicting decisions, if any. He would further

submit that if the suits are trial by different Courts, much prejudice will be caused to the petitioner. He prays to allow the petition.

9. The learned counsel for respondent Nos.1 and 2 would submit that cause of action in all the three suits are different and respondent No.1 also filed petition under Order VII Rule 11 of C.P.C in O.S.No.196 of 2022 on the file of VI Additional District Judge's Court, Visakhapatnam for rejection of the plaint, which is pending disposal. He would further submits that when the cause of action in all the suits are different, prayer for the petitioner to transfer the case, cannot be considered.

10. Now the point that emerges for consideration of this Court is:

“Whether there are grounds to transfer O.S.No.152 of 2022 on the file of Junior Civil Judge's Court, Amalapuram and O.S.No.4 of 2023 on the file of Senior Civil Judge's Court, Amalapuram to VI Additional District Judge's Court, Visakhapatnam to try along with O.S.No.196 of 2022.?”

11. **POINT:** Before going to the merits of the case, it would be beneficial to quote Section 24 of CPC, which reads as under:

“24. General Power of transfer and withdrawal:-

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

(a) transfer any suit, 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, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same, or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,-

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) “proceeding” includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

[(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it”.]

(a) This Court in ***Dr. Reddy's Laboratories Ltd., Hyderabad Vs. Pulletikurhti Varaha Chandra Bose and Others***¹ held which reads as under:

“Necessity for transfer of suits from one Court to another, would arise if only there exists any similarity of causes of action or commonality of parties. When such situation does not exist, the relief claimed for transfer of the suit, cannot be granted”.

(b) The Hon'ble Apex Court in ***Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and Others***² held which reads as follows:

“Section 24 C.P.C. confers comprehensive power on the Court to transfer suits, appeals or other proceedings “at any stage” either on an application by any party or suo motu. Although the discretionary power of transfer of cases cannot be imprisoned within a straitjacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection.

It is true that normally while making an order of transfer, the Court may not enter into merits of the matter as it may affect the final outcome of the proceedings or cause prejudice to one or the other side. At the same time, however, an order of transfer must reflect application of mind by the Court and the circumstances which weighed in taking the action. Powers under Section 24 C.P.C. cannot be exercised *ipse dixit* in the manner in which it has been done in the present case”.

(c) It is further held by the Hon'ble Supreme Court that the following factors have to be taken into consideration in a situation in which it is the duty of the Court to transfer the case.

¹ (2004) 5 ALT 209

² (2008) 3 SCC 659

- i) balance of convenience or inconvenience to the plaintiff or defendant or witnesses;
- ii) convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit;
- iii) issues raised by the parties;
- iv) reasonable apprehension in the mind of the litigant that he might not get justice in the Court in which the suit is pending;
- v) important questions of law involved or a considerable section of public interested in the litigation;
- vi) “interest of justice” demanding for transfer of suit, appeal or other proceeding, etc.

12. The Hon’ble Apex Court observed that the above guidelines are illustrative but not substantive guidelines. The Hon’ble Apex Court in **Kulwinder case** referred supra held that, ‘when the property is one and the same, the Court may exercise its inherent discretion to avoid conflicting judgments and convenience of the parties is one of the considerations to exercise power under Section 24 CPC’.

13. In the present case, respondent Nos.1 and 2 said to be got right in the disputed property as per award passed by Lok-Adalat in O.S.No.684 of 2015 on the file of VI Additional District Judge’s Court, Visakhapatnam dated 03.03.2017 in a suit filed by respondent No.3 seeking for partition.

14. Now the contention of the petitioner is that the said Lok-Adalat award obtained by father of respondent No.1 and husband of respondent No.2 by playing fraud on her, due to that she filed suit for cancelation of the Lok-Adalat award, dated 03.03.2017 in O.S.No.684 of 2015 on the file of II Additional District Judge, Visakhapatnam. The rights flown to respondent Nos. 1 and 2 is admittedly through award passed in O.S.No.684 of 2015 on the file of II Additional District Judge's Court, Visakhapatnam due to that reason only respondent No.1 has chosen to file O.S.No.152 to 2022 on the file of Junior Civil Judge's Court, Amalapuram and O.S.No.4 of 2023 on the file of Senior Civil Judge's Court, Amalapuram in respect of his rights, which he got in the properties as per Lok-Adalat award, dated 03.03.2023 passed in O.S.No.684 of 2015. When petitioner has challenged the award passed by Lok-Adalat in O.S.No.684 of 2015, which is a comprehensive suit and properties involved in all the three suits are similar and parties are also similar, due to that certainly it would be desirable to dispose of all the suits by the same Court. As O.S.No.196 of 2022 on the file of VI Additional District Judge's Court, Visakhapatnam is a comprehensive suit, where the award passed by Lok-Adalat said be challenged, the said Court can also decide other two suits by

recording the common evidence in all the suits to avoid multiplicity of litigation and to avoid conflicting judgments, if any.

15. There are grounds to consider the request of the petitioner to transfer O.S.No.152 of 2012 on the file of Junior Civil Judge's Court, Amalapuram of East Godavari District and O.S.No.4 of 2023 on the file of Senior Civil Judge's Court, Amalapuram of East Godavari District to try along with O.S.No.196 of 2022 on the file of VI Additional District Judge's Court, Visakhapatnam by recording common evidence.

16. In the result, this transfer civil miscellaneous petition is allowed. The O.S.No.152 of 2022 on the file of Junior Civil Judge's Court, Amalapuram of East Godavari District and O.S.No.4 of 2023 on the file of Senior Civil Judge's Court, Amalapuram, East Godavari District are hereby withdrawn and transferred to VI Additional District Judge's Court, Visakhapatnam to try all the two suits along with O.S.No.196 of 2022 by recording common evidence and dispose of the cases. The learned Junior Civil Judge, Amalapuram and learned Senior Civil Judge, Amalapuram shall transmit the case records in O.S.No.152 of 2022 and O.S.No.4 of 2023 respectively to VI Additional District Judge, Visakhapatnam duly indexed as expeditiously as possible within a period of three

(03) weeks from the date of receipt of orders of this Court in the present petition. No order as to costs.

Consequently, miscellaneous petitions, if any, shall stand closed. The interim stay granted if any, shall stand vacated.

JUSTICE BANDARU SYAMSUNDER

Date: 22.08.2023
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