

(2025) 04 AP CK 0345

In the Andhra Pradesh High Court, Amaravati

Case No : Transfer Civil Miscellaneous Petition No: 262, 269 Of 2024

Manepalli Mohan Rao

APPELLANT

Vs

Kotipalli Lakshmi Saraswathi Parvathi And Others

RESPONDENT

Date of Decision : 09-04-2025

Acts Referred:

Code Of Civil Procedure, 1908 — Section 24, 24(1)(b), 38, 39, 39(4), 42(2)(a)
Code Of Civil Procedure, 1908 — Order 21 Rule 3, Order 21 Rule 48

Citation : (2025) 04 AP CK 0345

Hon'ble Judges : Venuthurumalli Gopala Krishna Rao, J

Bench : Single Bench

Advocate : P Rajesh Babu, Dasari S V V S V Prasad

Final Decision : Dismissed

Judgement

Venuthurumalli Gopala Krishna Rao, J

Transfer Civil Miscellaneous Petition No.262 of 2024:

1. The petitioner filed this petition under Section 24 of the Civil Procedure Code, seeking to withdraw E.P.No.2 of 2024 in O.S.No.91 of 2017 on the file of Civil Judge (Senior Division), Narsapur, West Godavari District along with E.A.No.68 of 2024 and transfer the same to the Court of III Additional District Judge, Kakinada, East Godavari District.

Transfer Civil Miscellaneous Petition No.269 of 2024:

The petitioner filed this petition under Section 24 of the Civil Procedure Code, seeking to withdraw E.P.No.3 of 2024 in O.S.No.93 of 2017 on the file of on the file of Civil Judge (Senior Division), Narsapur, West Godavari District along with E.A.No.70 of 2024 and transfer the same to the Court of III Additional District Judge, Kakinada, East Godavari District.

2. The case of the petitioner in both the Transfer Civil Miscellaneous Petitions, in brief, are as follows:

(i) The petitioner filed a suit for specific performance of agreement of sale in O.S.No.13 of 2014, on the file of X Additional District Judge, Narsapur, West Godavari District, against the respondents herein. He came to know that two others persons viz., Maram Dattu and Maram Krishna Prasad in collusion with the vendors of the agreement of sale i.e., the defendants in his suit have filed two independent suits for recovery of amount due to them in O.S.No.3 of 2014 and O.S.No.4 of 2014 before the same Court where his suit in O.S.No.13 of 2014 for specific performance is pending. He further contended that he came to know that two money suits which were fraudulently got filed, the defendants in his suit only with a view to create litigation and to see that he shall not get the relief, he sought in his suit and that obtained collusive decrees under the colour of contest, since no appeals were preferred against two decrees.

(ii) The petitioner pleaded that he came to know they have already initiated execution for the sale of the same schedule property which is covered under his agreement of sale and the suit schedule property in his suit in O.S.No.13 of 2014 and that in collusion when all of them decided to get the property sold in the execution in order to create third party interest and multiple litigation, he filed two claim petitions in two Execution Petitions filed by the said Maram Dattu & Maram Krishna Prasad, which are pending enquiry.

(iii) The petitioner pleaded that the schedule property is one and the same in his suit, O.S.No.13 of 2014 of X Additional District Court, Narsapur and in all five Execution Petitions and that therefore, he is advised to seek transfer of the present claim petition i.e., E.A.No.70 of 2024 in E.P.No.3 of 2024 in O.S.No.93 of 2017, which is pending before Civil Judge (Senior Division), Narsapur, West Godavari District and it will be proper if it is transferred to III Additional District Court, Kakinada, East Godavari District, which is nearby to X Additional District Court, Narsapur, West Godavari District. The petitioner further pleaded that the same Judge i.e., X Additional District Court, Narsapur is also the in-charge Judicial Officer of other District Courts of West Godavari District at Bhimavaram and Tanuku, he is advised to seek transfer to Kakinada District Court, in order to get justice.

(iv) The petitioner pleaded that the respondents brought into existence of two promissory notes, dated 10.08.2015 and 07.09.2015 as if the 2nd respondent borrowed a sum of Rs.12,00,000/- and Rs.13,00,000/- from the 1st respondent on 10.08.2015 and 07.09.2015 respectively on executing demand promissory notes in favour of 1st respondent, on the guise of the said pronotes which were brought into existence collusively got filed suits in O.S.No.93 of 2017 and O.S.No.91 2017 on the file of Civil Judge (Senior Division), Narsapur and obtained order of attachment before judgment of the petition schedule property in I.A.No.958 of 2017 and I.A.No.938 of 2017, which is the subject matter in O.S.No.13 of 2014. The 1st respondent also obtained a collusive decree in the above suit on 15.03.2023.

3. The 2nd respondent filed counter-affidavit. The brief facts are as follows:

As per Section 24(1)(b) and Section 39(4) and Section 42(2)(a) of Civil Procedure Code, execution of decree cannot pervade beyond local limits of the jurisdiction of District Court taking note of Court which passed original decree. He further contended that the petitioner misusing and abusing provisions of the Civil Procedure Code and got filed the present transfer petitions in Tr.C.M.P.Nos.6, 7, 28, 29, 262 and 269 of 2024 by seeking transfer beyond their jurisdiction including execution petitions, which are not maintainable under law. The 2nd respondent further contended that the respondents in the above transfer petitions are residents of Narasapuram and its surroundings. Even though the petitioner mentioned his address at Hyderabad/Secunderabad, he is the permanent resident of Rajahmundry, East Godavari District. The general rule of jurisdiction vested to the Court where the property is situated or where the defendant is residing or where cause of action arises i.e., territorial jurisdiction and pecuniary jurisdiction depending on the subject matter of the suits.

4. Heard Sri P. Rajesh Babu, learned counsel for the petitioner and heard Sri Dasari S.V.V.S.V. Prasad, learned counsel for the respondents.

5. The petitioner herein is instituted E.A.No.68 of 2024 in E.P.No.2 of 2024 in O.S.No.91 of 2017 and the petitioner instituted another E.A.No.70 of 2024 in E.P.No.3 of 2024 in O.S.No.93 of 2017. Both the applications are pending before the Senior Civil Judge, Narsapur, West Godavari District. The petitioner sought transfer of the aforesaid applications and filed Transfer Civil Miscellaneous Petition Nos.262 and 269 of 2024 before this Court for seeking transfer of the aforesaid execution proceedings filed by the respondent/deed holder from the Court of Senior Civil Judge, Narsapur to the Court of III Additional District Judge, Kakinada. Admittedly, the execution petition schedule property is situated within the territorial jurisdiction of Narsapur Court limits. Moreover, the execution applications are filed by the petitioner by approaching the Executing Court at Narsapur in execution petitions.

6. The grounds urged for seeking transfer of the Execution Applications in E.P.No.2 of 2024 in O.S.No.91 of 2017 and E.P.No.3 of 2024 in O.S.No.93 of 2017, on the file of the Court of X Additional District Judge, Narsapur, West Godavari District to the Court of III Additional District Judge, Kakinada, East Godavari District, is that he filed two applications vide E.A.Nos.196 and 217 of 2023 before the Executing Court to receive the certified copies of orders of dismissal passed by the same Court in the implead application filed by the aggrieved person in I.A.Nos.780 and 779 of 2019, which were opposed, but the learned Judge dismissed his applications on the ground that the certified copies of orders in I.A.Nos.780 and 779 of 2019 were challenged by the said persons before this Court in Civil Revision Petition Nos.2275 and 2276 of 2022 and that the orders, dated 06.09.2022 passed by the learned trial Judge dismissing the implead petitions having not become final due to the pendency of the Civil Revision Petition Nos.2275 and 2276 of 2022.

7. The apprehension of petitioner is he made a complaint against X Additional

District Judge, Narsapur, who is in-charge of Courts at Narasapur and that he was advised to seek transfer of these cases from Senior Civil Judge, Narasapur to III Additional District Judge, Kakinada. Moreover, the Judicial Officer against whom the petitioner has been leveled allegations has been transferred from X Additional District Court to some other place in general transfers on 07.04.2025.

8. There cannot be any dispute over the proposition that the Court which passed the decree is entitled to execute the decree. Section 39 of the Code of Civil Procedure does not authorize the Court to execute the decree outside its jurisdiction, but it does not dilute the other provisions giving such power on complaint with the conditions stipulated in those provisions. Thus, the provisions such as Order XXI Rule 3 or Order XXI Rule 48 which provide differently would not be effected by Section 39(4) of the Code of Civil Procedure. There cannot be any dispute over the proposition that the Court which passed the decree is entitled to execute the decree. It is clear that Section 38 of the Code of Civil Procedure which provides that a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution.

9. The law is well settled that mere apprehension of not getting a fair and impartial enquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises.

10. Learned counsel for the petitioner placed a reliance of Gurcharan Dass Chadha vs. State of Rajasthan AIR 1966 Supreme Court 1418, wherein the Apex Court held as follows:

"A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not."

In the case on hand, the execution petition proceedings are instituted by the respondents before the executing court. The petitioner herein filed claim petitions in the aforesaid execution proceedings and the decree passed by the trial Court is not yet sent for execution under Section 38 of the Code of Civil Procedure. In the aforesaid case law, the Apex Court held that a mere apprehension that justice will not be done in a given case does not suffice to transfer the case from one Court to another Court. Moreover, The Apex Court in the case of Captain Amrinder Singh vs. Prakash Singh Badal and 5 others 2009 (6) SCC 260, held as follows:

"Mere allegations that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the

apprehension alleged is reasonable or not. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.”

11. The execution proceedings schedule property is situated within the limits of Narsapur Mandal. As noticed supra, the other claim applications filed by the petitioner are also pending in execution proceedings before the X Additional District Court at Narsapur. Moreover, the petitioner has not seeking transfer of two execution petitions to X Additional District Court at Narsapur. The law is well settled that necessity or occasion to transfer a suit from one Court to another Court would arise, if only, there exists in similarity of cause of action or commonality of the parties. Such situation does not arise in the present case on hand.

12. For the aforesaid reasons, I am of the considered view that there are no grounds to allow the present Transfer Civil Miscellaneous Petitions.

13. In the result, both the Transfer Civil Miscellaneous Petitions are dismissed.