
(2005) 12 AP CK 0049
In the Andhra Pradesh High Court
Case No : Tr. CMP No. 375 of 2005

Yeleti Pedaveerraju and Another

APPELLANT

Vs

Vanka Jayalakshmi and Others

RESPONDENT

Date of Decision : 28-12-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 115, 24, 24(2)
Constitution of India, 1950 — Article 227

Citation : (2006) 1 ALD 642 : (2006) 1 ALT 472

Hon'ble Judges : G. Chandraiah, J

Bench : Single Bench

Advocate : G. Krishna Murthy, for the Appellant; M.S. Ramachandra Rao and Ganeswara Raidu, for the Respondent

Final Decision : Allowed

Judgement

G. Chandraiah, J.—Heard Sri G. Krishna Murthy, Counsel for the petitioners and Sri S. Ramachandra Rao, Counsel for the respondents.

2. This petition is filed seeking transfer of O.S. No.161 of 2000 on the file of Principal Junior Civil Judge, Peddapuram to the Court of II Additional Judge, Rajahmundry for being tried along with O.S. No.7 of 2002.

3. The 1st petitioner is the brother of 2nd petitioner. Their case in the affidavit filed in support of the transfer petition is that the 1st respondent filed O.S. No.161 of 2000 on the file of Junior Civil Judge, Peddapuram against the petitioners and Respondents 2 to 5 herein for permanent injunction, restraining them and their men from interfering with the plaint schedule, which is an extent of Ac. 1-80 cents covered by S.No.17/1C of Yerrampalem Village, Gondepalli Mandal, East Godavari District, basing on the will dated 19-6-2000, alleged to have been executed by late Yeleti Dhanayya, who is the father of the petitioners and 6th respondent. The petitioners have filed written statement in the said suit and denied the claim of the 1st respondent. Subsequently, during the pendency of the said suit, the 1st respondent and Respondents 6 to 10 herein filed another

suit in O.S. No.7/2002 on the file of II Additional District Judge, Court, Rajahmundry against the petitioners and Respondents 2 to 5 herein for partition of Item No. 1 of the plaint schedule properties into three equal shares and allotment of one such share to the Respondent No. 6 and also for mesne profits till the delivery of his share and also for declaration that the Respondent No. 1 and Respondents 7 to 10 herein are absolute owners and are in position of their respective items of the plaint schedule and for consequential permanent injunction restraining the defendants therein, from interfering with the possession and enjoyment of Item Nos. II to IV of the plaint schedule and for such other reliefs. It is stated that the petitioners filed written statement and denied the claim of the plaintiffs therein. It is stated that the plaint schedule property in O.S. No. 161 of 2000 is only one item and the said item is covered in the suit in O.S. No. 7 of 2002 on the file of II Additional District Judge, Rajahmundry and the said suit is a comprehensive suit. It is further stated that the petitioners filed Tr.O.P. No. 813 of 2005 on the file of Principal District Judge, East Godavari District, Rajahmundry to transfer the suit in O.S. No. 161/2000 on the file of Junior Civil Judge, Peddapuram to the II Additional District Judge, Rajahmundry for being tried along with O.S. No. 7/2002, but the same was dismissed on 23-8-2005 on the sole ground that the petition is belated. It is finally stated that since the suit property in O.S. No. 161/2000 is covered in O.S. No. 7/2002 and in both the suits, since the alleged will dated 19-6-2000 is being relied upon, in order to avoid conflicting judgments, the petitioners sought for transfer.

4. The 1st respondent filed counter and mainly stated that since the Tr.O.P. No. 813/2005 which was for the same relief, was dismissed by the Principal District Judge, East Godavari, Rajahmundry, again the present transfer petition for the very same relief is not maintainable and the same is hit by the principles of res judicata. It is stated that though Section 24 of C.P.C. provides for concurrent exercise of power by District Court and High Court, this exercise of discretionary power cannot be exercised by both Courts simultaneously. It is further stated that all the parties in O.S. No. 7/2002 are not parties to O.S. No. 161/2000 and that the trial in O.S. No. 161/2000 has already commenced and P.Ws.1 and 2 were cross-examined and P.Ws.3 and 4 are to be cross-examined and if the suit is transferred at this stage and clubbed with O.S. No. 7/2000, the entire depositions may have to be eschewed and fresh trial may have to start which would unreasonably delay O.S. No. 161/2000. Further there is unreasonable delay of 5 years in filing this transfer petition. With these contentions, the 1st respondent sought for dismissal of the transfer petition.

5. The learned Counsel appearing for the petitioners submitted that the 1st respondent filed the suit on O.S. No. 161/ 2000 on the file of Junior Civil Judge, Peddapuram for injunction against the petitioners and Respondents 2 to 5 herein, based on the will dated 19-6-2000 alleged to have been executed by late Yelethi Dhanayya, who is the father of the petitioners and 6th respondent. He stated that the 1st respondent along with Respondents 6 to 10 herein again filed suit in

O.S. No. 7/2002 on the file of II Additional District Judge, Rajahmundry, against the petitioners and Respondents 2 to 5 for partition and for declaration that they are the absolute owners and are in possession of their respective shares and for consequential permanent injunction, restraining the defendants therein, from interfering with their peaceful possession, based on the will dated 19-6-2002. He further submitted that the suit schedule property in O.S. No. 161/ 2000 is covered in O.S. No. 7/2002. The learned Counsel also filed copy of issues in both the suits. He contended that since the issues in both the suits are overlapping and the parties are common and both the suits are filed based on the will dated 19-6-2000 and the suit schedule property in OS. No. 161/2000 is covered in O.S. No. 7/2002 and the parties are also common, therefore, in order to avoid conflicting judgments and for the convenience of the parties and to avoid multiplicity of proceedings, he sought for transfer of the case from Peddapuram to Rajahmundry. In support of his contention, he relied on the judgments of this Court reported in *Shriram Investments Ltd. v. M. Ramachandra Reddy* 2002 Supp (2) ALD 341 : 2002 (1) An. WR 49 Nellore *Arya Vysya Bullion Merchants and Pawan Brokers Association and Others Vs. K. Bhaskar Rao and Others*, , *S. Purnachandra Rao Vs. Paleti Linga Rao*, and the judgment of the Kerala High Court in *Rosamma Joseph Vs. P.C. Sebastian*, . With regard to dismissal of the earlier transfer petition by the District Judge is concerned, he contended that though the earlier transfer petition u/s 24 was dismissed by the District Judge, that will not be a bar for the petitioners from filing another petition before this Court u/s 24 of C.P.C. and there is no question of any res judicata. In support of this contention, he relied on the Division Bench judgment of this Court in *Munnangi Ramakrishna Rao Vs. Dr. Vanakuru Venkata Siva Ramakrishna Prasad and Others*, .

6. The learned Counsel for the 1st respondent submitted that since the transfer petition already filed was dismissed by District Judge, though this Court has concurrent jurisdiction to consider transfer petition u/s 24 of C.P.C., the same cannot be exercised simultaneously and the present petition for the very same relief is not maintainable and hit by principles of res judicata. He contended that the petitioners have already filed a petition in LA. No. 805/2004 u/s 10 of C.P.C. in O.S. No. 161/2000 for stay of the suit and the same was dismissed and challenging the same, a revision in C.R.P. No. 4974/2005 was filed and the same is pending before this Court. He further contended that all the parties in O.S. No. 7/2002 are not parties to the suit in O.S. No. 161/2000 and the suit in O.S. No. 161/2000 is an identified old matter and the evidence of P.Ws. 1 and 2 is closed and the case is coming for the cross-examination of P.Ws.3 and 4. He stated that this transfer petition is filed belatedly and there are no merits in the same. He stated that the suit filed by the 1st respondent in O.S. No. 161/2000 is for injunction, where only possession has to be proved and the question of title need not be gone into and if the title is not clear, the same can be left open for adjudication and since the subsequent suit is for partition and declaration of title, there is no question of any conflicting judgments and overlapping of issues. In

support of this contention, he relied on the judgment of the three judge Bench of the Apex Court in Rame Gowda (died) by Lrs. v. M. Varadapa Naidu (Died) by LRs. 2004 (2) ALD 31 (SC) With these contentions, he sought for dismissal of the transfer petition.

7. From the above rival contentions, the points that arises for consideration are:

1. Whether the dismissal of the earlier Tr.O.P. No. 813/2003 filed u/s 24 of C.P.C. by the District Tudge, operates as res judiata for filing of the present transfer petition u/s 24 of C.P.C. before this Court?

2. Whether there is possibility of conflicting judgments being rendered in both the suits filed by the parties in O.S. No. 161/2000 on the file of Principal Junior Civil Judge, Peddapuram and in O.S. No. 7/2002 on the file of II Additional District Judge, Rajahmundry and whether there will be multiplicity of proceedings?

8. The first issue is no longer res integra. A Division Bench of this Court in Munangi Ramakrishna Rao's case (supra) considering Section 24 of C.P.C. and various judgments of this Court and also the judgments of the Patna and Calcutta High Courts, held that in spite of dismissal of the petition by the District Judge u/s 24 of C.P.C., the parties can file another petition for the very same relief before this Court, even in the absence of any revision, challenging the order of dismissal of transfer petition by the District Judge. The relevant portion of the judgment is extracted as under for ready reference:

5. ... Therefore, we hold that a petition u/s 24 of C.P.C. is maintainable even without the order of dismissal of such petition by the District Court being questioned either u/s 115 C.P.C. or under Article 227 of the Constitution of India... .

10. In the present case, the petitioners have filed C.R.P. No. 4974/2005 challenging the order passed by the Court below in dismissing LA. No. 805/2004 in O.S. No. 161/ 2000, filed u/s 10 of C.P.C. In my considered view, since the parties have right to file a fresh petition u/s 24 of C.P.C. for transferring of the case, filing of a above said revision and its pendency, does not come in way of disposal of this petition and the result of this transfer petition will have a bearing on the said revision.

11. In view of the Division Bench judgment of this Court Munangi Ramakrishna Rao's case (supra), the issue is answered in favour of the petitioners.

12. With regard to second issue it is to be seen that the 1st respondent filed suit in O.S. No. 161/2000 against the petitioners and Respondents 2 to 5 herein on the file of Junior Civil Judge, Peddapuram for grant of permanent injunction restraining them from interfering with the plaint schedule, which is an extent of Ac.1-80 cents covered by Sy.No. 17/IC of Yerrampalem Village, Gondepalli Mandal, East Godavari District basing on the will dated 19-6-2000, alleged to have been executed by late Yeleti Dhanayya, who is the father of the petitioners

and 6th respondent. It is to be further seen that 1st respondent along with Respondents 6 to 10 filed suit in O.S. No. 7/ 2002 on the file of II Additional District Judge, Rajahmundry against petitioners and Respondents 2 to 5 for partition and for declaration that the 1st respondent and Respondents 7 to 10 are the absolute owners and are in possession of their respective items of the plaint schedule property and further restraining the defendants therein from interfering with the possession and enjoyment of Items Nos. II to IV of the plaint schedule and for such other reliefs. Further it is not in dispute that the suit schedule property in O.S. No. 161/2000 is 1st item in the will dated 19-6-2000 and the suit schedule properties in O.S. No. 7/2002 covers the remaining items, including the 1st item. Therefore, it is clear that for grant of relief, both the Courts have to invariably adjudicate the validity or otherwise of the will. The learned Counsel for the petitioners filed the certified copies of the issues in both the suits in O.S. No. 161/2000 and O.S. No. 7/2002. The overlapping issues in both the suits are extracted as under for better appreciation.

O.S. No. 161/2000

1. Whether polograph will dated 28-5-1998, rough draft will dated 19-6-2000 and will dated 19-6-2000 executed by late Dhanayya in favour of plaintiff is true, valid and binding on the defendants?
2. Whether the plaintiff has been in possession and enjoyment of plaint schedule property by the date of the suit?
3. Whether the plaintiff is entitled for permanent injunction as prayed for?
4. To what relief?

O.S. No. 7 of 2002

1. ...
2. ...
3. ...
4. ...
5. Whether the will dated 19-6-2000 said to have been executed by late Dhanayya is true, valid and binding on the defendants?
6. Whether Dhanayya became imbecile, lost mental capacity since July 1997 due to old age and continuous sickness and not capable of executing the gift deeds and the Will mentioned above?
7. Whether Dhanayya is competent to execute any WILL in respect of the entire house properties of the plaint schedule?
8. ...
9. ...

10. ...

11. ...

12. Whether the Plaintiffs 2 to 6 are entitled to a decree for declaration of their title and possession to the respective suit properties claimed by them under various gift deeds?

13. Whether the plaintiffs are entitled to a decree for permanent injunction restraining the defendants in interfering with the alleged possession and enjoyment of the suit properties by the plaintiffs?

14. ...

13. From a reading of the above issues in both the suits it is clear that the 1st respondent along with other respondents in both the suits is claiming injunction and tracing the title to the property under the will dated 19-6-2000. Therefore, invariably the Court has to decide the validity of the will while granting the relief.

14. Here, the contention of the learned Counsel for the petitioner is that in the suit filed in O.S. No. 161/2000, only injunction is sought, for which the title need not be gone into and if there is dispute with regard to title, the same can be left open for adjudication. In support of his contention, he relied on the judgment of the apex Court in Rame Gowda (died) by LRs. 's case (supra), wherein the Apex Court held that if the Court found that the plaintiff proved his possession, but failed to prove his title, the Court can grant decree for injunction. There is no dispute with regard to this proposition. Unlike the present case, where two suits are filed with overlapping reliefs, in the judgment of the Apex Court the facts does not disclose that two suits for similar reliefs are filed in different Courts, by the almost same party. In the present case, for seeking injunction to the property, the 1st respondent is tracing his title to the will dated 19-6-2000 and even in the subsequent suit for partition, declaration and injunction, the 1st respondent is also relying on the will dated 19-6-2000 and in both the suits, as already stated above, the validity or otherwise of the said will has to be gone into for grant of any relief either injunction or declaration. Further it is to be seen that the O.S. No. 161/2000 was filed by the 1st respondent against petitioners and Respondents 2 to 5 herein and again the 1st respondent along with Respondents 6 to 10 filed suit in O.S. No. 7/2002 against petitioners and Respondents 2 to 5. Therefore, the parties are also almost common. If both the suits are allowed to be tried independently, there is possibility of rendering conflicting judgments. Therefore, in order to avoid conflicting judgments and for convenience of the parties and also to avoid multiplicity of proceedings, it is desirable to club both the suits and dispose of them together.

15. In the decision reported in M. Ramachandra Reddy's case (supra) where two suits are filing based on a hire purchase agreement at two different Courts, which is similar to present case wherein the claim is based on the will dated 19-6-2000 in two suits, a learned single Judge of this Court held at Paragraph

No. 10 as under:

...When two suits are filed in two different Courts, power is conferred on the High Court or the District Court u/s 24 of C.P.C. for transfer of any suit for trial or disposal to any Court subordinate to it and competent to try or dispose of the same. This is intended to avoid conflicting decisions. The second one is the convenience of both the parties. Admittedly in both the suits the basic document upon which the parties have placed reliance is the hire-purchase agreement; the dispute has to be adjudicated on the basis of that agreement. Apart from the possibility of delivery of conflicting decisions, the precious time of the Courts and the money required to be spent by both the parties in attending two Courts for adjudication of the same lis would be wasted. Hence both the Courts below cannot be allowed to proceed with the suits pending on their respective files. Firstly I am of the view that though both the suits arose from the same cause of action, the reliefs sought for in both the cases are not the same. Even assuming that the issue to be decided in both the cases is substantially same u/s 24 of C.P.C. the District Judge or the High Court is empowered to transfer one of the suits to the Court where the other suit is pending to be tried along with it to avoid conflicting decisions and also keeping the convenience of the parties in mind instead of directing the Court where second suit is filed not to proceed with the case otherwise the power of transfer conferred other (sic over) superior Courts becomes redundant. Hence, I cannot agree with the contention of the respondent's Counsel in this regard.

16. Another learned single Judge of this Court in S. Purnachandra Rao's case (supra) held at Paragraph No. 7 of the judgment as under:

It is well settled that there is no hard and fast rule to be followed for consolidating the suits which are pending in different Courts. It is well recognized that when the issue in all the suits is common and identical, to avoid multiplicity of proceedings and conflicting judgments and also to secure ends of justice the suit pending in one Court can be transferred to other Court to be tried along with the suit pending on its file, which will also save the time of the Courts.

17. To the same effect also is the judgment of another learned single Judge of this Court in K. Bhaskar Rao's case (supra).

18. The other contention of the learned Counsel for the 1st respondent is that if the suit in O.S. No. 161/2000 pending on the file of Junior Civil Judge, Peddapuram is transferred to the Court of II Additional District Judge, Rajahmundry the entire depositions of P.Ws.1 to 4, whose evidence is completed, has to be eschewed and fresh trial has to be started. This contention cannot be accepted for the reason that under Subsection (2) of Section 24 of C.P.C. if the suit or proceedings are transferred, the Court which has to be try the transferred suit or proceedings, 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. Therefore, it is for the transferee Court to decide from which stage it

has to proceed and pass appropriate directions.

19. With regard to laches, it is to be seen that the 1st respondent filed the suit in the year 2000 for injunction simplicitor based on the will and again filed suit in the year 2002 in a different Court for partition, declaration and injunction, again tracing the title on the said will. The petitioners have earlier filed transfer petition before the District Court and on being unsuccessful, filed revision and also filed the present transfer petition. In these circumstances, I do not find any laches on the part of the petitioners.

20. In view of the foregoing facts and circumstances of the case, since the main issues in both the suits are similar and are based on the will dated 19-6-2000, on which, the Court has to invariably record a finding and most of the parties are similar and further the suit schedule property in O.S. No. 161/2000 is included in the suit schedule properties in O.S. No. 7/2002, and in order to avoid conflicting judgments and multiplicity of proceedings and for convenience of the parties and also since the later suit being comprehensive in nature and ultimately in the interest of justice, I feel it appropriate to allow this transfer petition. Accordingly, the issue framed in this regard is answered in affirmative and I pass the order as under:

Tr.C.M.P. is allowed. O.S. No. 161/2000 on the file of Principal Junior Civil Judge, Peddapuram is hereby withdrawn and transferred to the Court of II Additional District Judge, Rajahmundry for being tried along with O.S. No. 7/2002, in accordance with law.

21. In the circumstances of the case, there shall be no order as to costs.