

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

CIVIL REVISION PETITION No.1780 of 2023

ORDER:

The petitioner is the son of Late Sri B. Sriramulu. The 1st respondent had filed O.S.No.191 of 2015 in the Court of the Principal Junior Civil Judge, Tadepalligudem against the petitioner herein, on the ground that she is the second wife of late Sri B.Sriramulu and the step mother of the petitioner. Later, the 2nd respondent herein was added as defendant No.2 in the suit, on his request. This suit had been filed for an injunction restraining the petitioners and the 2nd defendant from interfering with the possession of the 1st respondent over two immovable properties, namely Ac.200 cents of land in R.S.No.272.2 and Ac.1.05 cents of land in R.S.No.264/5 of Mudunuru Village, Pentapadu Mandal, West Godavari District. It is the claim of the 1st respondent that the said property had been bequeathed to her by late Sri B.Sriramulu, by way of a Will.

2. Prior to the filing of this suit, the sister of the petitioner namely Smt. N.Jaya lakshmi had filed O.S.No.72 of 2009 in the Court of the Senior Civil Judge, Tadepallidugem for partition of various properties, specified in the schedule annexed to the plaint, between her and the other members of the family. Initially late Sri B.Sriramulu the petitioner herein and two

sisters of the petitioner had been arrayed as defendants 1 to 4 in the suit. The 1st respondent herein was impleaded as defendant No.5, by orders of the Court dated 10.03.2014, as one of the legal representatives of late Sri B.Sriramulu as he had passed away during the pendency of the suit.

3. The petitioner moved Transfer O.P.No.1 of 2023 before the Principal District Judge, West Godvari, Eluru for transfer of O.S.No.191 of 2015, to the Court of the Senior Civil Judge, Tadepalligudem in view of the pendency of O.S.No.72 of 2009 before the said Court. It is the case of the petitioner that the properties which are the suit schedule property in O.S.No.191 of 2015 are enumerated as item Nos.10 and 15 in the schedule of properties, attached to the plaint in O.S.No.72 of 2009. This application was dismissed by the Principal District Judge on 09.05.2023, on the ground that there are other parties in O.S.No.72 of 2009 and there is no necessity of parties in O.S.No.72 of 2009 and O.S.No.191 of 2015. The Principal District Judge had also held that there is no identity of properties as the two properties which are the subject matter of O.S.No.191 of 2015 is only part of the list of properties set out in O.S.No.72 of 2009 and as such, it would not be appropriate the transfer the O.S.No.191 of 2015 to the Court of the Senior Civil Judge, Tadepalligudem.

4. Sri Mangena Sree Rama Rao, learned counsel for the petitioner would submit that the issues that come up in both the suits is whether the 1st respondent is the legally wedded wife of late Sri B.Sriramulu; whether the Will said to have been executed by late Sri B.Sriramulu is a valid Will conveying interest and rights in the suit schedule properties in O.S.No.191 of 2015 and whether the said properties are the absolute properties of the 1st respondent. He would submit that these issues would arise in both suits and any contradiction in findings by the Presiding Officers in these suits would result in further litigation and complications which can be obviated by transfer of O.S.No.191 of 2015 to the Court of Senior Civil Judge, Tadepalligudem.

5. Sri K.V.L. Narasimha Rao, learned counsel for 1st respondent would submit that there are two more defendants in O.S.No.72 of 2009 and they have not been put on notice of the application for transfer of O.S.No.191 of 2015 to the Court of Senior Civil Judge, Tadepalligudem. He contends that transfer of the suit would only prejudice the rights of the other defendants 3 and 4 in O.S.No.72 of 2009 and the transfer petition itself is not maintainable. He would further contend that the causes of action in both the suits are different apart from the fact that the reliefs sought in both the suits are different. He submits that the

application for transfer was dismissed on proper and cogent grounds which do not require any interference.

6. A perusal of the complaints in both the cases would show that the Courts, in both cases, would have to determine ownership, title and possession of the properties for deciding on whether the property is amenable to partition between the members of the family and whether the Will said to have been executed by late Sri B.Sriramulu, in favour of the 1st respondent would confer absolute title to the 1st respondent in items 10 and 11 of the schedule annexed to O.S.No.72 of 2009.

7. This Court is of the opinion that it would be appropriate that O.S.No.191 of 2015 is transferred to the Court of Senior Civil Judge, Tadepalligudem to ensure that these common questions which arose in both the suits are considered by one Court.

8. On the question of non-joinder of defendants 3 and 4 in O.S.No.72 of 2009, in the transfer petition, it may be noted that they are not parties to O.S.No.191 of 2015 and this suit which is being transferred to the Senior Civil Judge, Tadepalligudem. Apart from this transfer of the suit before the same Court would benefit respondents 3 and 4 as there would

not be any possibility of conflicting judgments being delivered in the case.

9. Accordingly, this Civil Revision Petition is allowed by transferring O.S.No.191 of 2015 to the Court of Senior Civil Judge, Tadepalligudem.

10. As the suit O.S.No.72 of 2009 before the Senior Civil Judge, Tadepalligudem has been pending for the past 14 years, it would also be appropriate to direct that both the suits be disposed of by the Senior Civil Judge, Tadepalligudem at the earliest and in any event within three months from the date of receipt of this order. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

R. RAGHUNANDAN RAO, J

23.08.2023

RJS

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