

Shakthi Enterprises Vs. Sri Maruthi Oil Traders and anr.

Shakthi Enterprises Vs. Sri Maruthi Oil Traders and anr.

SooperKanoon Citation : sooperkanoon.com/436713

Court : Andhra Pradesh

Decided On : Jun-10-2003

Reported in : 2003(4)ALD329

Judge : P.S. Narayana, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 24, 26 and 141 - Order 2, Rule 2

Appeal No. : Tr. CMP No. 111 of 2003

Appellant : Shakthi Enterprises

Respondent : Sri Maruthi Oil Traders and anr.

Advocate for Def. : Ghan Shyamdas Mandhani, Adv.

Advocate for Pet/Ap. : L.J. Veera Reddy, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

P.S. Narayana, J.

1. Heard Sri L.J. Veera Reddy, learned Counsel representing the petitioner and Sri Ganshyamdas Mandani, learned Counsel representing the 1st respondent.

2. The Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, hereinafter referred to as 'Code' in short, praying for transfer of O.S. No. 58/99 on the file of Senior Civil Judge, Proddatur, Cuddapah District to any other Court having jurisdiction in Cuddapah District and pass such other suitable orders.

3. It is stated that one Sri Rama Oil Mills of Proddatur had filed a suit O.S. No. 29/97 against the petitioner herein and the 2nd respondent for recovery of amount on the file of Senior Civil Judge, Proddatur. It is further averred that the said Sri Rama Oil Mills and the 2nd respondent in the present Transfer Civil Miscellaneous Petition have jointly engaged the petitioner to buy imported palmolein oil from the 2nd respondent to avoid multiplicity of taxation and the petitioner firm was paid its brokerage for the services rendered. As such the defence in the case was negatived though there is ample evidence to substantiate the same and the learned Senior Civil Judge, Proddatur, negating the defence had ultimately decreed the suit and aggrieved by the same A.S. No. 58/2000 was preferred before the I Additional District Judge, Cuddapah and the same is pending disposal. It is further stated that the 1st respondent had filed a suit against him for recovery of amount in O.S. No. 58/99 on the file of the learned Senior Civil Judge, Proddatur and the defence in the present suit also is the same as was taken in O.S. No. 29/97 and in the light of the view taken by the learned Senior Civil Judge, Proddatur, the petitioner expressed an apprehension that his defence may be negatived in the present suit also. In such circumstances, the petitioner filed T.O.P.No. 564/2001 before the District Court, Cuddapah and the said O.P. was dismissed on 26-12-2002 on the ground that such apprehension appears to be baseless. In the said circumstances, the petitioner is left with no other option except to move the present Transfer Civil Miscellaneous Petition under Section 24 of the Code.

4. Sri L.J.Veera Reddy, the learned Counsel representing the petitioner had submitted that in the light of the language employed in Section 24 of the Code, the powers of this Court to order transfer are very wide and inasmuch as an apprehension of bias in the light of the view already expressed by the learned Judge is taken as a ground, the Transfer Civil Miscellaneous Petition may be

ordered as prayed for transferring O.S. No. 58/99 on the file of Senior Civil Judge, Proddatur to any other Court of competent jurisdiction within Cuddapah District.

5. Per contra Sri Ganshyamdas Mandani, the learned Counsel representing the 1st respondent had made the following submissions. The learned Counsel contended that in view of the order passed by the learned District Judge, Cuddapah in T.O.P. No. 564/2001, the Transfer Civil Miscellaneous Petition under Section 24 of the Code cannot be maintained. The learned Counsel also had drawn my attention to Section 141 of the Code and Order 2 Rule 2 of the Code and had maintained that Order 2 Rule 2 of the Code operates as a bar for the maintainability of the present Transfer Civil Miscellaneous Petition. The learned Counsel also had drawn my attention to Sections 22 and 23 of the Code apart from the language of Section 24 of the Code. The learned Counsel also had contended that it is only an apprehension expressed by the petitioner and on such a ground transfer cannot be ordered.

6. Heard both the Counsel.

7. The main ground averred by the petitioner is that the defence in O.S.No. 29/ 97 on the file of Senior Civil Judge, Proddatur and also in O.S. No. 58/99 on the file of Senior Civil Judge, Proddatur virtually is one and the same and the learned Senior Civil Judge, Proddatur already had arrived at a conclusion in a particular way while deciding O.S. No. 29/97 and as against the said judgment and decree an appeal A.S. No. 58/2001 was already preferred on the file of the Additional District Judge, Cuddapah and the same is pending disposal. Except this ground, no other ground is raised in the Transfer Civil Miscellaneous Petition.

8. It is not in dispute that the petitioner moved the District Court, Cuddapah for the same relief in Transfer O.P. No. 564/2001 and the same was dismissed on 26-12-2002. This is a transfer proceeding filed under Section 24 of the Code. Section 26 of the Code dealing with institution of suits specifies:

'Every suit shall be instituted by presentation of a plaint or in such other manner as may be prescribed'.

Section 141 of the Code deals with Miscellaneous proceedings and the provision reads as hereunder:

'The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.'

Order 2 Rule 2 of the Code reads as hereunder:

Suit to include the whole claim :--(1) Every such shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim :--Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs:--A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation :--For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action'.

A proceeding under Section 24 of the Code in my considered opinion cannot be equated with a suit. A careful reading of the language of Section 141 of the Code also in a way supports this view. The language employed is '....as far as it can be made applicable..'. Hence, in my considered opinion, in view of the express language of Order 2 Rule 2 of the Code, read along with Section 26 of the Code, I am of the considered opinion that the bar under Order 2 Rule 2 of the Code cannot be extended to a transfer proceeding under Section 24 of the Code. Hence, I am not inclined to accept with the contention raised by the learned Counsel for the 1st respondent Sri Ganshyamdas Mandani. However, in view of the facts and circumstances, except making allegation that the learned Senior Civil Judge had

arrived at a particular conclusion in some other matter, no other allegations had been made, and also in view of the submission made by Sri Ganshyamdas Mandani that the said Presiding Officer who had disposed of the prior matter is no longer there, on facts I do not see any merit in the Transfer Civil Miscellaneous Petition and accordingly the Transfer Civil Miscellaneous Petition is dismissed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com