

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
UDUPI DISTRICT, UDUPI

Present: **Sri T. Venkatesh Naik, B.A.L., LL.M.,**
Principal District Judge, Udupi.

Dated **4th** day of **June, 2018**

MISCELLANEOUS CASE No.1 of 2018

1. Gowri Poojarthi,
aged about 57 years,
D/o late Manju @ Shankar Poojary.

2. Narasimha Poojary,
aged about 61 years,
S/o late Sadiyamma Poojarthi.

3. Sharada,
aged about 51 years,
D/o late Deva Poojary.

All are residing at Kumribettu,
Koteshwara Village,
Kundapura Taluk,
Udupi District. PETITIONERS

(By: Sri H. Raghavendra Shetty., Advocate)

Vs.

Gururaj Puranik,
aged about 66 years,
S/o late Narayana Puranik,

R/at Kumbri,
Koteshwara Village,
Kundapura Taluk,
Udupi District.

.... RESPONDENT

(- EXPARTE -)

ORDERS

The petitioners have filed this petition under Section 24 of C.P.C. praying to withdraw the suit O.S.No.195/2013 from the file of learned II Additional Civil Judge & J.M.F.C., Kundapura and to transfer the same to the Court of learned Principal Civil Judge & J.M.F.C., Kundapura for trial and disposal along with O.S.No.146/2013.

2. According to the petitioners, they have filed a suit in O.S.No.195/2013 against the respondent herein, claiming the relief of declaration and injunction in respect of the suit schedule property, which is now pending before the Court of learned II Additional Civil Judge & J.M.F.C., Kundapura and the said suit is stood for cross-examination of P.W.1. The respondent, who is defendant in that suit, has also filed a suit in

O.S.No.146/2013 against them, claiming the relief of permanent injunction and the said suit is pending on the file of learned Principal Civil Judge & J.M.F.C., Kundapura. In the said both the suit, the parties and subject matter of the suits are one and the same. According to the petitioners, if both the suits are enquired into by different Courts, then there is every chance of passing of conflicting judgments and also there will be multiplicity of proceedings. Therefore, if the said suits are tried by same Court, no hardship or loss will be caused to any of the parties to the suit. Hence the petition.

3. In spite of service of notice, the respondent has remained absent and has been placed exparte.

4. Heard the arguments of the learned Advocate for the petitioners

5. On perusal of the records and after hearing the arguments, the only point that would arise for consideration of the Court is as under:

“Whether O.S.No.195/2013 now pending on the file of learned II Additional Civil Judge, Kundapura is required to be transferred to the Court of learned Principal Civil Judge, Kundapura where O.S.No.146/2013 is pending for common trial, as prayed for?

6. My answer to the above point is in the affirmative, for the following:

REASONS

7. On perusal of the certified copies of the complaints and written statements of both the suits, i.e., O.S.Nos.146 and 195/2013 filed along with the petition, it appears that the parties and subject matter of the both the suits are one and the same. Both oral and documentary evidence to be adduced in these suits are almost common. Under these circumstances, it would be expedient in the interest of justice that these two suits are tried by the same Court in order to avoid multiplicity of proceedings and conflicting judgment. Therefore, answering the above point in the affirmative, I pass the following:

ORDER

The petition filed by the petitioners under Section 24 of C.P.C. is allowed.

O.S.No.195/2013 pending on the file of learned II Additional Civil Judge, Kundapura is withdrawn and transferred to the Court of learned Principal Civil Judge, Kundapura for trial and disposal along with O.S.No.146/2013 in accordance with law.

Intimate the concerned Transferor and Transferee Courts.

(Dictated to the Judgment Writer, transcribed by him, corrected and then pronounced by me in the open Court, this the **4th** day of **June, 2018**.)

(T. VENKATESH NAIK)
PRINCIPAL DISTRICT JUDGE,
UDUPI