

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.
C.T.A No.40 of 2013.

DATE	ORDER WITH SIGNATURE OF JUDGE
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FOR KATCHA PESHI.

26.08.2014

Mr. Irfan Ahmed Qureshi Advocate for the applicant.
Mr. Wali Muhammad Khoso Advocate for the respondent
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NAZAR AKBAR J: The applicant has filed this application for transfer of suit No.244/2012 from the court of learned Senior Civil Judge, Matiari to the court at Hyderabad and the only ground advanced by the learned counsel for the applicant at bar is that another suit bearing No.207/2013 between the same parties is pending before learned IIIrd Senior Civil Judge, Hyderabad.

It is admitted by the learned counsel for the applicant that the suit filed at Matiari in 2012 is in respect of ðagricultural landö situated at District Matiari and the suit filed subsequently at Hyderabad is in respect of ðimmoveable propertyö situated at District Hyderabad. When confronted with the provisions of section 16 CPC, learned counsel for the applicant though conceded about the territorial jurisdiction of the court at Matiari to try suit No.244/2012 but he insisted that since in both the cases, one and the same plaintiff has raised issue of Benami transaction, therefore, a common question is involved. The provisions of section 16 CPC are mandatory and the suit in respect of immoveable property which should be heard and decided by the court within local limits of which, the property is situated. Learned counsel for the applicant has relied upon the case of (i) Muhammad Bashir Vs. Mst. Razia Begum (PLD 1978 SC (AJ & K) 71, (ii) Messrs First Women Bank Ltd Vs. Registrar, High Court of Sindh, Karachi

and 4 others (2004 SCMR 108) and (iii) Sh. Iqbal Hussain Vs. Anwar Hussain (2005 YLR 181).

In all three cases, suits were transferred on the ground that there were cross suits between the same parties and one and the same property was involved when the suits were transferred from one court to another court. Section 16 CPC was not examined by the court in any of these cases, therefore, all the three cases are distinguishable on the facts and the grounds for transfer of suit from Matiari District to District Hyderabad. Another distinguishing feature the suit at Hyderabad and suit at Matiari are not cross suits.

Learned counsel for the respondents has vehemently opposed the transfer application and claimed that under the cover of this transfer application, the applicant has refused to examine the witnesses on 25.04.2014 in his suit No.244/2012, who were present before the learned Senior Civil Judge, Matiari, namely Mst. Mumtaz Begum, Abid Khan and Zeeshan Khan, who had come to the court from Quetta and the witnesses were made to go back on the pretext of pendency of this transfer application though there was no stay of proceedings of the case at Matiari.

Since two suits out of which one is sought to be transferred from one District to another are not cross suits and the question of territorial jurisdiction is also coming in the way of the applicant.

In view of the above circumstances, I do not find any merit in the instant Transfer Application, which is accordingly dismissed.

JUDGE

A.K