

(2002) 01 OHC CK 0030
In the Orissa High Court
Case No : Civil Revision No. 430 of 2001

Abhimanyu Sahu

APPELLANT

Vs

J. Krishnaveni Amma ' J. Krishnavani and Others

RESPONDENT

Date of Decision : 16-01-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151, 24, 25

Citation : (2002) 93 CLT 180 : (2002) 1 OLR 267

Hon'ble Judges : P.K. Patra, J

Bench : Single Bench

Advocate : Manoj Misra, for the Appellant; R.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

P.K. Patra, J.—In this application under Sections 115 read with Section 151 of the CPC (for short CPC), the petitioner has prayed for setting aside the order dated 19.11.2001 passed by the District Judge, Ganjam-Gajapati, Berhampur in M.J.C. No. 16 of 2001 refusing to allow the prayer of the petitioner u/s 24 CPC to transfer Title Appeal No. 7 of 2000 pending before Shri A.C. Patnaik, Second Addl. District Judge, Berhampur to the court of the District Judge or any other court of Additional District Judge at Berhampur and to allow his prayer for transfer of the said Title Appeal to any other court.

2. The petitioner along with his parents (pro forma opposite party Nos. 7 and 8) was a plaintiff in Title Suit No. 58 of 1996 in the court of the Civil Judge (Junior Division), Berhampur in which they had prayed for declaration of their right, title and interest over the suit property and for permanent injunction. The suit was decreed in part. Being aggrieved by the said judgment and decree, the petitioner preferred Title Appeal No. 53 of 1999 in the court of the District Judge, Ganjam-Gajapati, Berhampur which was transferred to the file of the Second Addl. District Judge, Berhampur and renumbered as Title Appeal 7 of 2000. During the course of argument in the appeal, the petitioner filed a petition u/s 24 CPC before the District Judge, Ganjam-Gajapati, Berhampur praying for transfer of

the said appeal to the file of the District Judge or any other Additional District Judge at Berhampur alleging that he would not get fair Justice from the said Second Addl. District Judge in view of certain adverse orders passed against him while disposing of certain applications. The learned District Judge rejected the said prayer of the petitioner, vide his order dated 19.11.2001 holding that the petitioner failed to substantiate his apprehension of not getting fair justice at the hands of the said Second Addl. District Judge.

3. Mr. Manoj Misra, learned counsel for the petitioner, and Mr. R. K. Mohanty, learned counsel for the opposite parties were heard at length.

4. Mr. Mishra strenuously urged for allowing the prayer of the petitioner for transfer of the Title Appeal from the file of the Second Addl. District Judge, Berhampur to the file of the District Judge or any other Addl. District Judge available at Berhampur contending that the conduct of the learned Second Addl. District Judge clearly revealed a bias against the petitioner with a view to dispose of the matter hastily before his retirement on superannuation on 31.1.2002. Mr. Mohanty opposed with vehemence the contention of Mr. Misra contending that mere passing of adverse orders on the petitioner filed by the petitioner will not reveal prejudicial mind of the judge and that the petitioner intentionally prolonged the proceeding to harass the opposite parties.

5. Mr. Misra placed reliance on the following decisions in support of his contention :

In the case reported in Hazara Singh Gill Vs. The State of Punjab , the petitioner prayed for transfer of two criminal cases pending against him in the court of a Magistrate, first class, Amritsar to a court outside the State of Punjab apprehending that he would not get fair justice from the said court which was under the Executive pressure of the State, there being no separation of Judiciary from Executive. He made serious allegations against the Government of Punjab and others in his affidavit and there was no specific denial on the part of the State of Punjab and others. The Apex Court was of the opinion that the petitioner had by his affidavit made out sufficient circumstances from which it could be inferred that he did entertain and entertained reasonably an apprehension that he would not get justice in the said cases and, therefore, directed that the two cases be transferred to Saharanpur district to be tried by a Magistrate to be chosen by the District Magistrate of Saharanpur in accordance with law.

In the case reported in Dr. Subramaniam Swamy Vs. Ramakrishna Hegde , the Apex Court held as follows :

"The cardinal principles for the exercise of power under S. 25 is that the ends of justice demand the transfer of the suit, appeal or other proceeding. The question of expedience would depend on the facts and circumstances of each case but the paramount consideration for the exercise of the power must be to meet the ends of justice. It is true that if more than one court has jurisdiction under the Code to try the suit, the plaintiff as dominus litis has a right to choose the Court and the

defendant cannot demand that the suit be tried in any particular court convenient to him. The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Cases are not unknown where a party seeking justice chooses a forum most inconvenient to the adversary with a view to depriving that party of the fair trial. The Parliament has, therefore, invested Supreme Court with the discretion to transfer the case from one Court to another if that is considered expedient to meet the ends of justice. Words of wide amplitude - for the ends of justice, have been advisedly leave the matter to the discretion of the Apex Court as it is not possible to conceive of all situations requiring or justifying the exercise of power. But the paramount consideration must be to see that justice according to law is done, if for achieving that objective the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff."

In the case reported in Pushpa Devi Saraf and another Vs. Jai Narain Parasrampur and others, the facts and circumstances are similar to the facts and circumstances of the present cases, in as much as the prayer for transfer of the suit in that case was based on the allegations made against the Additional District Judge impugning his fairness, independence and impartiality and the prayer was rejected by the District Judge as well as the High Court. It was held by the Apex Court that though in the facts and circumstances of the case, the allegations in the transfer petition were not sufficient to warrant order of transfer, the Additional District Judge being unduly affected by the allegations, it was expedient to direct the District Judge to transfer the suit to another court in the interest of the Additional District Judge himself. The above decision of the Supreme Court is fully applicable to the present case, in as much as serious allegations have been levelled against the learned Additional District Judge regarding his impartiality and fairness and his imminent retirement from service on superannuation at the end of this month.

6. Though the learned District Judge has correctly held that mere passing of adverse orders by the learned Addl. District Judge against the petitioner will not be sufficient ground to transfer the appeal from his file to another court, he has failed to appreciate the case of the petitioner challenging the impartiality and fairness of the learned Addl. District Judge.

7. In the facts and circumstances of the case and keeping in view the decisions of the Apex Court as well as the imminent retirement of Shri A. C. Patnaik, Second Addl. District Judge on superannuation by the end of this month, it will be expedient in the interest of justice as well as in the interest of the presiding officer himself who is bound to have been affected by the allegations levelled against him, to direct transfer of the Title Appeal from his file. The revision petition is bound to be allowed.

8. In the result, the revision is allowed. The impugned order is set aside. The learned District Judge, Ganjam-Gajapati, Berhampur is directed to transfer Title

Appeal No. 7 of 2000 from the file of the Second Addl. District Judge, Berhampur to his file and to dispose of the same as expeditiously as possible. There shall be no order as to costs.

9. Revision allowed.