

(2006) 11 RAJ CK 0013
In the Rajasthan High Court

Bhanu Kumari (Smt.)

APPELLANT

Vs

Jitendra Singh and Others

RESPONDENT

Date of Decision : 27-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471

Citation : (2007) 2 RLW 1077

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Jitendra Singh Vs. Bhanu Kumari and Others, AIR 2008 SC 2987 : (2008) 5 JT 650 : (2008) 6 SCALE 594 : (2009) 1 SCC 130 : (2008) 1 UJ 663 : (2008) AIRSCW 5038 : (2008) 2 Supreme 833

Shiv Kumar Sharma, J.—Invoking Section 24 of the CPC (for short "CPC") the petitioner has filed the instant petition seeking transfer of the civil suit No. 41/2002/05 (Jitendra Singh v. Bhanu Kumari and Ors.) pending before District Judge, Alwar.

2. As per the facts pleaded in the petition the petitioner and her father Maharaja Sawai Tej Singh, former Ruler of erstwhile State of Alwar aged 95 years, are presently residing in New Delhi. In accordance with Article XI of the Covenant for the formation of the United State of Matsya in the year 1949 an inventory of Maharaja's private properties was drawn with the approval of Government of India. In terms of the said covenant the properties owned by Maharaja Sawai Tej Singh are being continued to be held by him. On July 29, 1970 a notice was issued by State Government to Maharaja Sawai Tej Singh under the provisions of Rajasthan Tenancy Act, 1955 seeking to acquire the land in excess of the ceiling limits. Objections were filed on February 19, 1971 and vide order dated September 30, 1971 Sub Divisional Officer held that 576 standard acres of land is being possessed by Maharaja Sawai Tej Singh and it was directed to acquire

the land in excess. On appeal the matter was remanded by Revenue Appellate Authority vide order dated February 6, 1973 with the directions to decide the matter afresh in terms of new Ceiling Act. On revision by State the Board of Revenue vide order dated May 16, 1977 quashed the order of Revenue Appellate Authority and directed SDO to decide the matter in terms of old Ceiling Law. Finally the SDO vide order dated June 21, 2005 held that 576 standard acres of land was in excess and directed the owner Maharaja Sawai Tej Singh to surrender the aforesaid land. Pursuant to the order dated June 21, 2005 Maharaja Sawai Tej Singh submitted his option for the properties sought to retain vide letter dated September 12, 2005 and surrendered the rest of the land to the State Government.

3. It is further averred that respondent Jitendra Pratap Singh son of late Kunwar Pratap Singh (one of the grand sons of Maharaja Sawai Tej Singh), who is currently a member of Rajasthan Legislative Assembly from Alwar, residing at Alwar intended to take possession of the entire properties of Alwar owned by Maharaja Sawai Tej Singh with a malafide intention to grab the same without giving any share to existing sons, daughters and grand children of Maharaja Sawai Tej Singh. In spite of the letter dated September 12, 2005 of Maharaja Sawai Tej Singh, respondent Jitendra Pratap Singh challenged the order dated June 21, 2005 by filing three appeals. One appeal was filed on behalf of Maharaja Sawai Tej Singh without any authority or power from Maharaja Sawai Tej Singh, second on behalf of Jitendra Singh and third on behalf of Minakshi Kumari. In none of the three appeals the petitioner was impleaded as party. The Revenue Appellate Authority took cognizance of the fact that in spite of surrendering the land and complying with the impugned order by Maharaja Sawai Tej Singh the same has been challenged therefore the surrendering of land appeared to be suspicious and vide order dated June 2, 2006 quashed the order of SDO and also the surrender deed. In the meantime on November 5, 2005 respondent Jitendra Pratap Singh lodged complaint against the petitioner with the Superintendent of Police Alwar alleging forgery, undue influence and captivity of Maharaja Sawai Tej Singh. The complaint was filed with an ulterior motive for wreaking vengeance and for exerting undue pressure over the petitioner with a view to grab whole properties of grand father of the petitioner Maharaja Sawai Tej Singh. He also filed suit before district & Sessions Judge Alwar seeking declaration and mandatory injunction against the petitioner and her brother and others. The suit was filed on November 7, 2005. On November 10, 2005 the District Judge Alwar passed ex-parte order for constitution of Medical Board for ascertaining the status of Maharaja Sawai Tej Singh. No notice were issued either to petitioner or Maharaja Sawai Tej Singh. Without giving any opportunity of hearing to petitioner or Maharaja Sawai Tej Singh the letter was issued to Chief Medical Officer, Govt. Hospital Alwar to examine the health of Maharaja Sawai Tej Singh. On November 11, 2005 itself the respondent Jitendra Pratap Singh along with several persons (about 25) entered into the house of Maharaja Sawai Tej Singh at New Delhi without serving any notice or copy of the order. Subsequently an

incorrect report of medical examination was prepared and photographs so snapped were published in local news papers. The petitioner then came to know about the proceedings of suit which was posted to December 3, 2005. With a view to prevent the petitioner from appearing in court on November 3, 2005 respondent Jitendra Singh alongwith 5-8 persons entered Maharaja's house with an intention to abduct Maharaja and caused bodily harm to petitioner and her daughter. Respondent Jitendra Pratap Singh was caught red-handed by the police on the complaint lodged by Yashwant Singh, but was released. The respondent Jitendra Pratap Singh is major threat to the life and security of all the family members of the petitioner as she is looking after Maharaja Sawai Tej Singh.

4. It is also stated in the petition that the respondent Jitendra Pratap Singh also tried to put pressure upon the lawyers at Alwar and lodged two FIRs on January 8, 2006 against Advocates Shri Amar Raj Lal, Shri Rahul Chaudhary, Shri Ajay Malviya as well as the petitioner and her family members. The events that occurred have shaken the confidence of the petitioner and she has apprehension that fair trial of suit is not possible at Alwar.

5. Pursuant to the direction of the Hon"ble Supreme Court Shri Jagdish Thada, Advocate was appointed guardian-ad-litem for respondent Maharaja Sawai Tej Singh. Shri Thada put up his appearance and agreed to be appointed as guardian-ad-litem. He however did not choose to file reply to the transfer petition.

6. In the reply respondent Jitendra Pratap Singh submitted that the instant petition is the second attempt of petitioner to transfer the suit. The petition has been filed on false, frivolous and untenable grounds. In the first attempt the transfer petition (TP (C) No. 1105 of 2005) filed on behalf of Maharaja Sawai Tej Singh before the Supreme Court which was dismissed on May 8, 2006 pursuant to a report dated April 13, 2006 of the Medical Board appointed by the Hon"ble Supreme Court coming to a conclusion that the recent memory, recall, calculation, writing and overall mental state of health is impaired and that this impairment was due to various causes including prior stroke and advance age of 95 years. Even though the respondent No. 4 Maharaja Sawai Tej Singh is not capable of understanding the contents to which he was being made to sign and or append his signature by the petitioner and respondents No. 2&3, the respondent Jitendra Pratap Singh was constrained to file suit. This second attempt by the petitioner to have the said suit transferred out of Alwar is nothing but a blatant attempt to circumvent the order dated May 8, 2006 passed by the Supreme Court. The act of petitioner of commission and/or omission in making the respondent Maharaja Sawai Tej Singh sign all kinds of documents, the purport and content of which cannot be understood by Maharaja Sawai Tej Singh is nothing short of criminal conduct. The suit, sought to be transferred, has been filed for the benefit and/ or protection of Maharaja Sawai Tej Singh, who have been virtually kept him under house arrest, refusing access to even the respondent Jitendra Pratap Singh, who is grand son. The suit was filed because the petitioner and respondents No. 2&3 were causing the respondent Maharaja

Sawai Tej Singh to sign and or append his signatures to documents and papers/ letters, even though the respondent Maharaja Sawai Tej Singh is not in a mental state to be able to understand the content and purport of documents. The petitioner and respondents No. 2&3 have jointly or severally caused the respondent Maharaja Sawai Tej Singh to surrender the land which was already given to respondent Jitendra Pratap Singh through registered Family Arrangement/ Settlement dated July 20, 1968, and this was the main cause of action for filing the suit. The respondent Jitendra Pratap Singh contended that the transfer petition ought not to be allowed in view of the fact that properties and lands sought to be sold/ alienated and/ or surrendered are situate at Alwar, as such the suit is maintainable at Alwar only. The allegation against Jitendra Pratap Singh of influential position and of lodging FIRs against lawyers are vague, bereft of particulars and absurd since considering the mental health of Maharaja Sawai Tej Singh Supreme Court already ordered for appointing guardian-ad-litem and the respondent Jitendra Pratap Singh being his grand son trying to safeguard the properties. If the Local Advocate of Alwar could not be engaged by the petitioner, she may engage the Advocates from Delhi or Jaipur. It is also contended that petitioner or other defendants in the suit are not required to be personally present on all dates and when they need to be present for being examined they can be examined on commission. The respondent Jitendra Pratap Singh prayed to dismiss the petition.

7. I have pondered over the rival submissions.

8. Exercising powers under Section 24 of the CPC is discretionary. It is always for the court to find out from the allegations so made, whether any reasonable ground is made out for transfer of the case and the court must be satisfied that good atmosphere is likely to be extended between the parties if the case is transferred reposing full confidence upon the Court of Justice. The jurisdiction under this section should be exercised with extreme care and caution and the plaintiff could not be stopped from going on when he has right of action against defendant. The search should be for justice and the Court must be satisfied that justice could more likely be done between parties by refusing to allow plaintiff to continue his suit in the forum of his choice. In transfer application it is not necessary for petitioner to prove any definite bias against the presiding Judge but it is enough if the petitioner can show that he has genuine apprehension that he would not get justice from court in which his case is pending. Where the totality of the facts and circumstances obtaining in the case and looking at the overall view of the nature of the case and convenience of the parties it would be just and reasonable to direct transfer of the suit to the other court, the suit may be transferred to other court under Section 24 CPC.

9. In *Lalita Rajya Lakshmi and Another Vs. State of Bihar and Another*, it was indicated as under:

If there are circumstances in a case which raise a reasonable apprehension in the mind of the person applying for transfer that he would not receive fair dealings at

his trial or, in other words, that he may not have a fair & impartial trial, & may get justice in the Court, where the suit is pending the case should be transferred. In such a case in order to decide whether the facts and circumstances are sufficient to raise such a reasonable apprehension in the mind of the party applying for transfer, the Court should put himself in such a party's armchair.

10. In *Rupendra Deb Raikut Vs. Ashrumati Debi and Others*, it was observed as under:

72. What, then, is the meaning of the expression "in the interests of justice"? It must mean, I think, to promote or advance the cause of justice. Justice is a principle which regulates the distribution of things, valued by men awarding them to some, denying them to others. It is, at the same time, a principle whereby each man's worth is appraised. Justice gives to "every one that which is his". It is not a free gift from the Court. The subject of a civilised country is entitled as a matter of right to get it "freely without sale, fully without any denial and speedily without delay". The court only appraise it. In doing so the Court must act and appear to act without partially and without prejudice or as it is often expressed, "justice should not only be done but should manifestly and undoubtedly seem to be done.

73. If a litigant feels that he will not get justice in a particular tribunal, he can demand a transfer of the case to some other court. In this view I am fortified by a judgment of the Judicial Committee, *Mohur Singh v. Chu* 15 WR 8 : 6 Ben. LR 495. That was a case in which before the Privy Council the appellant sought to set aside a finding of fact made by the lower Court. Mr. Leith on behalf of the appellant contended inter alia that the testimony of the witnesses who deposed against the appellant should not have been accepted as they were prompted by a general feeling against the appellant in the district. Their Lordships observed (pp.9-10):

Certainly the general feeling of the district seems to be strongly against him.... But can we hence infer that the respondent's is a false story?.... If he (the appellant) felt that he was not likely to have a fair trial before the local Judge with that feeling in the district against him, his proper course was to petition the European Judge to remove the case into his Court and to try it in the first instance.

The words I have underlined (here italicised) are very important. The observations are full of meaning and furnish a ground on which a Court may act in a matter like the one under consideration.

74. The question is for the Court to determine whether the applicant who applies for the transfer feels that he is not likely to have a fair trial in the other court.

75. In coming to a conclusion on this point, the question for consideration is what is the effect likely to be produced in the mind of the party and not in the mind of the Judge. It is the feeling of the party that has to be ascertained and it

necessarily depends on the individual concerned, his temperament and failing, his interest and circumstances.

76. If the Court on a consideration of all the facts come to the conclusion that the applicant feels that he is not likely to have a fair trial in the Court from which he seeks the transfer it is the duty of the Court to make the order.

11. In *Nandini Chatterjee v. Amp Hari Chatterjee* AIR 2001 Calcutta 26 it was held as under:

5. The basic principle governing the granting of a petition under Section 24 of the CPC which should be borne in mind that the petition like this is not to be dealt with in a light-hearted manner and transfer of a case from one Court to another should not be granted readily for any fancied notion of the petitioning litigant because of the reason that such transfer of a case from one Judge to another in effect casts doubt on the integrity competence and reputation of the concerned Judge. Unless and until a sufficiently cogent ground is disclosed transfer should not be allowed as a matter of course. The court from which the case is sought to be transferred must be shown to have disclosed a definitely unfair attitude or biased frame of mind against the petitioner and the petitioner must have some reasonable grounds for apprehending that he or she may not get justice from that Presiding Officer if the trial of the case is.

12. In *T.N. Indrani Devi v. Municipal Board Imphal* AIR 1958 Manipur 27 it was held as under:

It is well settled that a case ought to be transferred when a party reasonably apprehends that he is not likely to have a fair trial before a particular court.

Held that the cumulative effect of all the circumstances of the instant case must have had the effect of raising such an apprehension in the minds of the plaintiffs.

13. In *Vivekananda Nidhi v. Asheema Goswami*, (2000) 10 SCC 23, their Lordships of the Supreme Court propounded as under:

When an order is passed suo motu under Section 24 CPC there is no question of issuing notice to the other side. Section 24 CPC itself provides that either on the application of any of the parties and after notice to the parties and after hearing such of them that desired to be heard, or of its own motion without such notice, the High Court or the District Court can at any stage pass appropriate orders u/s 24 CPC, if the conditions provided therein are satisfied. Now, on the facts of the present case, it is difficult to appreciate how the order of the learned District Judge can be considered to be a suo motu order when he was moved by an application by the respondent and on that application the learned District Judge thought it fit to invoke his jurisdiction and pass an order u/s 24 CPC. Therefore, invoking of powers u/s 24 CPC was not suo motu, but only on the basis of the abovesaid application. Once that conclusion is reached the statutory provisions of Section 24 start operating and whatever may be the ultimate nature of the order, the notice had to go to the other side.

14. The Division Bench of Madhya Pradesh High Court in Union Carbide Corporation Vs. Union of India (UOI) and Others, observed as under:

The jurisdiction u/s 24 has to be exercised with extreme caution and the plaintiff could not be stopped from going with his suit in his chosen forum, where he has right of action against the defendant. As a general rule, the Courts should not interfere unless the expenses and the difficulties of the trial would be so great as to lead to injustice or the suit has been filed in a particular Court for the purpose of causing injustice.

15. Having scanned the record, I noticed that the suit was transferred by the District Judge to the Court of Additional District Judge No. 2, Alwar in the month of December 2005. The petitioner although filed instant petition in this Court on August 17, 2006 did not mention this fact that the suit stood transferred from the Court of District Judge Alwar. The petitioner stated in para 3 of the petition that the respondent Jitendra Pratap Singh is influential person and MLA of Alwar City and he has created such a situation that there is a strong likelihood of the matter pending before the District Judge being decided ex-parte against the petitioner and other members. This apprehension of petitioner, in my opinion, is baseless. The Courts are not influenced by politicians and influential persons. The petitioner should repose full confidence upon the court of justice. If ex-parte order was passed by the learned District Judge and the petitioner was aggrieved by it, she ought to have assailed it legally. Passing ex-parte order by the Presiding Officer of the court cannot be a reasonable ground for transferring the case.

16. But looking to the fact that on January 8, 2006 respondent Jitendra Singh lodged FIR No. 19/2006 with the Police Station Kotwali Alwar against the petitioner and respondents Amar Raj Pal and Jaswant Singh and case under Sections 420, 467, 468 and 471 IPC has been registered against them and considering the overall view of the nature of the case and convenience of the parties and in the interest of justice, it would be just and reasonable to direct transfer of suit from the court of Additional District Judge No. 2 Alwar to the Court of District Judge Jaipur City.

17. For these reasons, I allow the application and transfer the suit (titled Jitendra Singh v. Bhanu Kumari and Ors.) from the court of Additional District Judge No. 2, Alwar to the court of District Judge Jaipur City. Deputy Registrar Judicial shall send the original record to the court of District Judge Jaipur City. The parties are directed to appear in the court of District Judge, Jaipur City on December 11, 2006 for seeking further instructions. There shall be no order as to costs.