
(2002) 06 OHC CK 0046

In the Orissa High Court

Case No : Misc. Judicial Case No. 364 of 1999

Deepika Maharana

APPELLANT

Vs

Prasanna Maharana ' Prasanna Kumar Maharana

RESPONDENT

Date of Decision : 26-06-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24
Hindu Marriage Act, 1955 — Section 13

Citation : (2002) 94 CLT 168 : (2002) 2 OLR 311

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : B.S. Tripathy, for the Appellant; N. Patra, for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The petitioner, a young lady of twenty four years, has filed this application u/s 24 read with Section 151 of the Code of Civil Procedure, 1908 inter alia praying to transfer Civil Proceeding No. 147 of 1999 pending adjudication before the Judge, Family Court, Rourkela to the Judge, Family Court, Cuttack.

2. It is alleged that the petitioner married the opposite party as per the Hindu rites and customs on April 19, 1998. The opposite party-husband is serving as an Additional Veterinary Assistant Surgeon and is at present posted at Kuanrunda Veterinary Hospital, Rourkela. According to the petitioner-wife, dowry amount as demanded both in the shape of cash and kind was paid to the parents of the opposite party, the details of which are vividly described in paragraph - 4 of the petition. As ill luck would have it, dissensions cropped at the very inception, inasmuch as the opposite party did not accept the petitioner and she was told that the opposite party had been forced to marry her unwillingly. It is further alleged that the petitioner was tortured and physically man-handled and ill-treated by the opposite party and there was demand of further dowry. Several other allegations have also been made in the petition which are not very much

relevant for the purpose of adjudicating the present petition which is one u/s 24, CPC. It is suffice to say that the petitioner left her in-laws' place in the year 1999 and since then is alleged to be staying with her grand-parents at village Bandha Huda, F.S. Narasinghpur in the district of Cuttack. It is averred that the petitioner-wife has also lodged an FIR before the State Manila Commission as well as the Inspector-in-charge of H.R.P.C., Tulsipur, Cuttack for redressal of her grievance.

3. While the matters stood thus, on November 19, 1999 the petitioner was informed by her father that Civil Proceeding No. 147 of 1999 had been instituted by the opposite party-husband before the Judge, Family Court, Rourkela inter alia for dissolution of the marriage between the petitioner and opposite party by a decree of divorce. The petitioner has alleged that the opposite party-husband with an avowed oblique motive of harassing her has initiated the said proceeding at Rourkela knowing fully well that it would not be convenient or possible for her to travel all the way to Rourkela to contest the litigation and the petitioner has no way out, but to file the present petition for transfer of the said Civil Proceeding to the Judge, Family Court, Cuttack for effectual adjudication. In support of her prayer, the petitioner has put forth the following grounds :

(1) The petitioner is a young unemployed lady and has no place to stay at Rourkela and prosecute the litigation.

(2) She is staying with her grand-parents in her native village. She does not have the means to travel all the way from her village Bandha Huda in the district of Cuttack to Rourkela and neither her grand-parents nor the parents have the ability to meet her travelling expenses; and

(3) The petitioner, a young lady as she is, apprehends danger to her life if she is made to go to Rourkela, which is 500 kilometres away from her native place, for the purpose of prosecuting the litigation and she has no other male member to accompany her.

4. The opposite party-husband after receiving notice has appeared and filed a counter-affidavit repudiating different allegations made in the petition. It is stated that in spite of his best efforts, the dissensions between him and the petitioner could not be ironed for which he had no way out but to file the petition for divorce u/s 13 of the Hindu Marriage Act before the Judge, Family Court, Rourkela which has been registered as C.P. No. 147 of 1999. It is further stated that though notice was duly served on the petitioner in the said proceeding, neither the petitioner has appeared before the Court nor has shown any cause. It is also contended by the opposite party that the father of the petitioner is working in the State Bank of India and is presently posted at Sambalpur and there would be no inconvenience for her to prosecute the case at Rourkela, Mr. Tripathy, learned counsel for the petitioner has denied this fact and has filed documents to show that in the meanwhile the father of the petitioner has been transferred from Sambalpur to Bhubaneswar module.

5. On the basis of the aforesaid factual background, it is submitted that on the basis of the ratio of several judgments of the Supreme Court, the only fact which need be considered while dealing with a petition u/s 24, CPC is the convenience of the wife and it is a fit case where the Civil Proceeding pending before the Judge, Family Court, Rourkela should be transferred to the Judge, Family Court, Cuttack. In support of his contention, Mr. Tripathy has relied upon a recent decision of the Supreme Court reported in Sumita Singh Vs. Kumar Sanjay and Another, .

6. On the other hand, Mr. N. Patra, learned counsel for the opposite party, forcefully submitted that there would be absolutely no inconvenience for the wife to contest the litigation at Rourkela, inasmuch as her parents are staying at Sambalpur which is close to Rourkela. He also stated that the averment that the petitioner is staying with her grand-parents in the Cuttack district is not correct, inasmuch as all the notices in the proceeding were served on her at Sambalpur address, it was contended that it would be most inconvenient for the opposite party-husband who is a Government employee to travel all the way from Rourkela to Cuttack.

7. Before discussing the factual background, it would be prudent to discuss the point of law. Section 24, CPC clearly stipulates that on the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard or of its own motion without such notice, the High Court may at any stage transfer any suit, appeal or other proceeding pending in any Court subordinate to it for trial or disposal to any other Court subordinate to it and competent to try and dispose of the same.

8. The cardinal principle for exercise of the powers u/s 24 as has been held in a number of cases by the Supreme Court, is the convenience and inconvenience of the parties. The question of expediency would depend upon the facts and circumstances of each case, but the paramount consideration for exercise of the power must be to meet the ends of justice. It is true that if more than one court have 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 should be tried in any particular court convenient to him or her. The mere convenience of the parties or any of them may not be enough for exercise of the powers, but it must also be shown that the 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 deprive that party of fair trial. The CPC has, therefore, vested a discretionary power on the High Court to transfer the case from one court to another, if that is considered expedient to meet the ends of justice. Thus, the paramount consideration while dealing with a petition u/s 24 of the CPC must be to see that justice according to law is done. If for achieving that objective the transfer of a case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff (see Dr. Subramaniam Swamy Vs. Ramakrishna Hegde, .

9. In the decision in Sumita Singh v. Kumar Sanjay (supra), the Supreme Court has observed that in a husband's suit against the wife, it is the wife's convenience which has to be looked at. The same is the view in the case of Mona Aresh Goel Vs. Aresh Satya Goel,

10. Considering all the facts and circumstances as, well as the submissions made by the counsel in the touch-stone of the ratio of the decisions cited above, I feel that the petitioner-wife who is a young lady would be deprived of fair trial if she is made to contest the proceeding at Rourkela which is 500 kilometres away from her place of residence. The submission made by the learned counsel for the opposite party that the parents of the petitioner are staying at Sambalpur cannot be accepted in view of the affidavit filed by the petitioner as well as other documents which clearly reveal that the father of the petitioner has in the meanwhile been transferred from Sambalpur. The grounds on which the transfer of the case from Rourkela is sought, accordingly to me, are sufficient to exercise discretionary power conferred u/s 24, CPC to transfer the Civil Proceeding pending before the Judge, Family Court, Rourkela to the Judge, Family Court, Cuttack which is also a specially constituted Court to deal with matrimonial disputes.

11. Accordingly, the M.J.C. is allowed. The Judge, Family Court, Rourkela is directed to transmit the records in Civil Proceeding No. 147 of 1999 pending before him to the Judge, Family Court, Cuttack forthwith. After receipt of the records, the Judge, Family Court, Cuttack shall issue notice to the parties and proceed with the matter in accordance with law.

Parties to bear their own costs.