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**(2008) 01 OHC CK 0070**  
**In the Orissa High Court**

Ippili Lakshman Rao

APPELLANT

Vs

Ipilli Jagannath Swamy alias Ravi and Others

RESPONDENT

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**Date of Decision :** 18-01-2008

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 10, 151, 24

**Citation :** (2008) 105 CLT 472 : (2008) 1 OLR 532 Supp

**Hon'ble Judges :** Pradip Mohanty, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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**Judgement**

Pradip Mohanty, J.—Both the civil revisions are directed against the common Order Dated 11.12.2006 passed by the Learned District Judge, Koraput in T.R. No. 5 and 6 of 2006 rejecting applications for transfer u/s 24 of the Code of Civil Procedure.

2. The Petitioner as the Plaintiff has filed C.S. No. 16 of 203 in the Court of the Civil Judge (Sr. Division), Rayagada for partition of the family properties. The Opposite Party in CRP No. 37 of 2007 has also filed C.S. No. 4 of 2003 in the said Court for eviction of the Petitioner from two godowns, which he claims to be in occupation as per the decision of the Arbitrators and for recovery of rent. A petition was filed before the Civil Judge (Senior Division), Rayagada u/s 10 of the C.P.C. read with Section 151 of C.P.C. to stay further proceeding of C.S. No. 4 of 2003 till disposal of C.S. No. 16 of 2003. The said prayer was rejected by the Trial Court and both the suits were directed to be heard analogously. Thereafter, both the transfer applications were filed by the Petitioner before the District Judge, Koraput to transfer the suits to some other Court on the apprehension that he may not get fair deal, even justice from the said Court. The Learned District Judge, Koraput after hearing the parties by his Order Dated 11.12.2006 rejected the said applications holding that those are devoid of merit.

3. Mr. Das, Learned Counsel for the Petitioner submits that since the Civil Judge

refused to stay further proceeding in C.S. No. 4 of 2003, tried both the suits analogously, and recorded the evidence improperly, the Petitioner has a reasonable apprehension that his case may not be dealt with fairly by the Civil Judge. Therefore, he prays for transfer of the cases to any other Court.

4. Mr. Nanda, Learned Counsel for the Opposite Parties vehemently contends that merely because some adverse orders have been passed, the same can hardly be a ground to attribute bias against the Court and justify transfer of the cases. He further submits that it is the settled principle of law that justice must not only be done but also appear to have been done and a party is entitled to a fair deal in the hand of the Presiding Officer.

5. Both the parties, in support of their respective contentions, cited decisions in Bennett Coleman & Co. Ltd. and Ors. v. Shri Janaki Ballav Patnaik and Anr. 63(1987) CLT 470; Orissa Mining Corporation Limited Vs. Klockner and Company and Others, ; Abhimanyu Sahu Vs. J. Krishnaveni Amma " J. Krishnavani and Others, ; and Samsher Singh Vs. State of Punjab and Another, .

6. Perused the records and the decisions cited by the parties. The main thrust of argument of the Petitioner is that inference of bias on the part of the Civil Judge is irresistible. On this score, this Court is of the opinion that Courts do work in an anxiety to see that each and every point raised by the Counsel is met after due discussions. In their anxiety to do so, they may omit to state something or state something that may not be strictly necessary for decision of material issues. In either case, that would at best amount to an error or it can be said to be a wrong committed by the Court, but it cannot be said that Courts in all such cases entertain a bias or prejudice intentionally to frustrate the cause of the party affected. Secondly, merely because the decision on the stay petitions went against the Petitioner, there could not be reasonable apprehension for denial of justice. Non-recording of the answers given by the witnesses also does not show any bias on the part of the Presiding Officer so as to make out a case for transfer.

7. Considering the ratio decided in Sadhu Singh (Deceased) and Others Vs. Union of India (UOI) and Others, ; Bennett Coleman's case (supra) and Orissa Mining Corporation's case (supra), this Court is of the opinion that the prayer for transfer of the cases on the grounds raised by the Petitioner cannot be allowed, and no illegality has been committed by the District Judge, Koraput in rejecting the applications for transfer u/s 24 C.P.C.

In the result, both the civil revisions are dismissed.