

(1955) 11 PAT CK 0009

In the Patna High Court

Case No : Misc. Judicial Case No's. 291 to 293 of 1955

Lalita Rajya Lakshmi and Another

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 17-11-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 24
Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 101, 102, 103, 104

Citation : AIR 1957 Patna 198

Hon'ble Judges : Raj Kishore Prasad, J

Bench : Single Bench

Advocate : B.K. Banerji, for the Appellant; Lal Narayan Sinha and Bajrang Sahay, for the Respondent

Final Decision : Allowed

Judgement

Raj Kishore Prasad, J.—These three applications are for the transfer of three suits pending before the Court of Mr. Sachindanand Sinha, Subordinates Judge, Hazaribagh, from his Court to the Court of any other Subordinate Judge attached at Hazaribagh.

2. Miscellaneous Judicial Case No. 291 of 1955 is in respect of Title Suit No. 66 of 1951, in which the petitioner who is the wife of Raja Bahadur of Ramgarh, is the plaintiff; Miscellaneous Judicial Case No. 292 of 1955 is in respect of Title Suit No. 24 of 1953 in which the Raja Bahadur of Ramgarh is himself the plaintiff, and Miscellaneous Judicial Case No. 293 of 1955 is in respect of Title Suit No. 53 of 1954, in which the State of Bihar is the plaintiff and the Raja Bahadur is one of the several defendants. Hearing of Title Suit No. 24 of 1953 and Title Suit No. 53 of 1954 has not yet commenced; Title Suit No. 66 of 1951, however, is being heard, with the consent of all the parties along with 25 other suits since November 1953. Mr. K. K. Bose the then Subordinate Judge of Hazaribagh, commenced the hearing of these suits, but when he was transferred from there

in June, 1954 and in his place the present Subordinate Judge came, he took up the hearing of these suits. So far 37 witnesses have been examined on behalf of the plaintiffs of the different suits. The present Subordinate Judge has examined out of 37 witnesses about 8 or 10 witnesses. When these suits were proceeding before the present Subordinate Judge, applications for transfer of 5 suits, 2 of which are not before this Court were filed on the 24th of February, 1955, on several grounds, before the District Judge, Hazaribagh, who by his order dated the 4th April 1955, after considering the applications for transfer, the counter-affidavit filed by the State of Bihar, and, the report of the learned Subordinate Judge, came to the conclusion that no case for transferring the suits from the file of the learned Subordinate Judge had been made out, and, as such as he rejected all the transfer applications.

3. The three petitioners mentioned above have now moved this Court u/s 24 of the Code of Civil Procedure. The State of Bihar, which is the opposite party in these applications, is represented before this Court by Mr. Bajrang Sahay. A counter-affidavit on behalf of the opposite party has been filed in this Court on the 6th September, 1955, replying to the various allegations made in the applications for transfer filed before this Court.

4. All the three applications have been heard together with the consent of the parties, when the hearing of these cases was taken up. Mr. B. K. Banerji, appearing for the petitioners pressed his application u/s 151, CPC filed on the 7th of November, 1955, before this Court for amendment of the transfer applications by treating these applications also under Article 227 of the Constitution of India, and wanted amendment of these applications by merely adding Article 227 of the Constitution of India to the provision of law stated in the applications for transfer on the ground that these transfer applications also fell within the ambit of Article 227 of the Constitution. It is concluded by Mr. Banerji that Section 24, CPC alone is sufficient to cover the present case, and this Court has ample powers to pass necessary and effective orders, in appropriate cases, u/s 24 of the Code of Civil Procedure.

The mere fact, therefore, that an application for transfer also falls within the ambit of Article 227 of the Constitution is no ground for allowing the amendment merely *ex abundanti cautela*. In my opinion, the amendment asked for, in the circumstances, is unnecessary. I therefore, disallow the prayer of Mr. Banerji.

5. I now proceed to consider the applications for transfer, as originally made, u/s 24, Code of Civil Procedure. Mr. Banerji has confined himself to the facts mentioned in paragraphs 8, 8a, 9, 10 and 11 only as constituting his ground for the transfer. The replies to these paragraphs have been given by the State of Bihar in paragraphs 7 and 8 of the counter-affidavit filed by it. It is not necessary to reproduce the above paragraphs, because Mr. Banerji and Mr. Sahay both are agreed that the admitted facts, which emerge from the allegations made in the petitions and, the replies thereto, are the following:--

1. Mrs. Annapurna Sinha, the wife of Mr. Sachchidanand Sinha, the Subordinate Judge, who has seisin of the case is a member of the Congress.

2. She was granted a Congress ticket, on the basis of which she contested the last general election to the Assembly in the State of Bihar;

3. She is a member of the Working Committee of the Ranchi District Congress Committee and also of the Bihar Pradeshik Congress Committee; and was a delegate to the All India Congress Committee from Ranchi.

4. She is the President of the Manila Charkha Sangh, Ranchi, which receives regular aid from the Government of Bihar, and

5. She is the President of the Ranchi Municipal Committee, as a nominated Commissioner, having been nominated by the State of Bihar.

6. The question for consideration, therefore, is whether, on the above-admitted facts, a case for a transfer has been made out. The above admitted facts have to be considered along with, and in the background of, two other facts, which are also almost admitted, and which have been placed before me by Mr. Banerji.

7. The first contention of Mr. Banerji in this connection is that, although the State of Bihar is the defendant in all the suits, except in one, in which it is the plaintiff, but, in fact, for all practical purposes it is Mr. K. B. Sahay, who is the real person behind all the suits. He has drawn my attention to paragraph 3 of the counter-affidavit filed on behalf of the State of Bihar. Towards the end of paragraph 3 of the counter-affidavit the State of Bihar has stated as follows:--

"The fact of the matter is that due to the Zamindari abolition programme of the Government of Bihar and to other measures adopted by the Government for the preservation of the forest wealth of the State, "Shri Kamakshya Narain Singh has been harbouring feelings of ill-will against Shri Krishna Ballabh Sahay, who, as Minister, in charge of Revenue and Forests, has been taking steps for implementing the Zamindari Abolition measures" and the Bihar Private Forests Acts." (Underlined (here into " ") by me.)

Mr. Banerji therefore, contends that the suits, which are being tried, and, which are pending for trial, in the Court below, all relate to the Bihar Land Reforms Act and as such appertain to the portfolio of Mr. K. B. Sahay, and, he himself, as is admitted in the above paragraph of the counter affidavit, is taking steps to implement the zamindari abolition measures, and, as such he submits, that it is obvious that it is Mr. K. B. Sahay personally, who is really interested in the successful termination of the suits pending before the court below, because directly or indirectly the Raja Bahadur is concerned in all these suits.

8. The second contention is that there are bitter feelings between the Raja Bahadur and Mr. K. B. Sahay. In this connection, Mr. Banerji has placed before me paragraphs 4 and 5 of the transfer applications. Replies to these two paragraphs are to be found in paragraphs 3 and 4 of the counter-affidavit of the

State of Bihar.

9. It is not necessary to reproduce the above paragraphs also, because on reading the above paragraphs two facts are clear:

(1) that cordial feelings do not exist between, the Raja Bahadur and Mr. K. B. Sahay due to political rivalries; and (2) that Mr. K. B. Sahay as Minister in charge is interested in the successful prosecution of the suits, which are pending in the court below, and, which appertain to his portfolios. The above two facts are not seriously disputed, and on the allegation and counter-allegations made, taking both of them on their face value shorn of all superlatives, they cannot possibly be disputed. These are the two other facts, which have also to be considered, as I stated before, along with the admitted facts mentioned earlier.

10. Mr. Bajrang Sahay, appearing for the State of Bihar has submitted that, although the learned Subordinate Judge took seisin of the case in June, 1954, and he was proceeding with the hearing of the suits, and also examined some witnesses, still curiously enough no application for transfer was filed by the petitioners earlier, and, therefore, it is obvious that the present applications for transfer are not bona fide, but they are meant to delay the hearing of the suits. In reply to this, Mr. Banerji has submitted that the Raja Bahadur was then not a party and before that he would not get a fair trial from the court of the learned Subordinate Judge but, on the 4th December, 1954, the learned Subordinate Judge, while discharging an order of ad-interim injunction in Title Suit No. 9 of 1954, to which the Raja Bahadur was then not a party and in which the State of Bihar was a defendant, made the following observations:--

"The defendant, State of Bihar, has also submitted that after the issue of ad interim injunction the plaintiff under collusion of "Raja Kamakshya Narain Singh has contemplated to demolish the buildings covered by the suit and, in fact, has demolished some of the buildings covered by T. Section 9/54" (underlined (here into " ") by me). The plaintiff is, therefore, directed to maintain the status quo of the leasehold property mentioned in the plaint till the proceedings u/s 4 (h) are over and final order passed thereunder,"

11. Mr. Banerji's contention is that the allegations against the Raja Bahadur which were made by the State of Bihar in that suit to which he was then not a party, even up to the stage of the order passed by the court below on the 4th December 1954, the learned Subordinate Judge accepted the allegations of the State of Bihar against the Raja Bahadur as correct, and on that basis passed the order in its favour in the suit. This incident has been mentioned by the petitioners in paragraph 7 of their respective applications for transfer.

12. A reply to this paragraph 7 has been given by the State of Bihar in paragraph 6 of its counter-affidavit.

13. It is not necessary to reproduce these two paragraphs, because the above fact is admitted, but Mr. Bajrang Sahay has submitted on the basis of his counter-

affidavit that the learned Subordinate Judge accepted the statement of fact made by the State of Bihar in the injunction matter, because there was no counter-affidavit denying the allegations made by the State of Bihar on behalf of the plaintiff of that suit, and, as such, the learned Subordinate Judge was perfectly justified in accepting that statement of fact as correct, and in passing the order he did on that basis. The question before me is, not whether the statement made by the learned Subordinate Judge was correct or incorrect, or whether it was justified or unjustified. The question is whether that statement could be taken as a likely circumstance for creating the alleged suspicion in the mind of the Raja Bahadur. The Raja Bahadur has stated in paragraph 7 of his petition that because of the adverse remarks against him misgivings were aroused in his mind and he caused enquiries to be made about the Subordinate Judge's relations with Mr, K. B. Sahay, and after making enquiries, he says, he came to know about the facts which have been stated earlier. Whether this could be a justification for the Raja Bahadur to think like that or not, it all depends on the temperament and sensitiveness and the mental make up of the person concerned. But in my opinion the above circumstance was likely to arouse a suspicion in the mind of a person like the Raja Bahadur so as to prompt him to make enquiries as alleged by him.

14. In reply to Mr. Sanay's contention that the applications for transfer are not bona fide, and are only delaying tactics, Mr. Banerji has submitted that he has no intention to delay the hearing of the suits because he does not want a de novo trial, but what he wants is that these suits should be tried by any other Subordinate Judge, competent to hear these suits, stationed at Hazaribagh, and, he should proceed with the trial of the suits from the point at which they were stayed by this Court.

In my opinion, in view of this attitude of Mr. Banerji's clients, I cannot say that these applications, which have been filed in this court, are not bona fide, and that they are only a step, out of many steps, to quote the words of Mr. Sahay, taken by Raja Bahadur to delay the hearing of the suits. Mr. Sahay has conceded that whatever steps have been taken by the Raja Bahadur so far, have all been in accordance with law, but his grievance is that these steps have led to the delay in the disposal of the suits.

If the law allows a party a particular right, he is entitled to avail himself of that right, irrespective of the fact whether his action will, or will not, delay the hearing of a suit, and a Court cannot condemn a party on that, account and say that his application although in accordance with law, is not bona fide, and is only a delaying tactics. T. S. 66/51 is pending since 1951, and, still even towards the end of 1955, it has not yet been disposed of. The suits will now be taken up for further hearing only after the reopening of the Civil Courts, either by the transferee court, if I decide to transfer these suits, or, by the present Subordinate Judge, only from the point at which they were stayed by this-Court. In these circumstances, I do not understand how a transfer of these suits will

cause any delay in their disposal at all.

15. Mr. Sahay has further submitted that out of 28 suits only these three petitioners have asked for a transfer of three suits only and the plaintiffs of the other 25 suits have not asked for the transfer, and this fact also shows that the present applications are not bona fide. It may be mentioned that in the other 25 suits also, directly or indirectly, only the Raja Bahadur is concerned, because 13 suits are by Companies, and 7 by trustees, created by the Raja Bahadur, and the rest by the members of the family of the Raja Bahadur himself.

It is not a case in which all the different plaintiffs are independent persons having no connection in any way with one another. Besides this the plaintiffs of the other suits know that their suits are being tried analogously with the petitioners suits, and, therefore, if these three suits are transferred, their 25 suits will also automatically be transferred. In such circumstances, this objection of Mr. Sahay also has no substance. Both the objections of Mr. Sahay are, therefore, overruled.

16. Now, the question is, whether all the circumstances stated above taken together, justify the cases to be transferred to another court, as prayed for by the petitioners. In support of their respective contentions, the parties have placed before me several decisions in order to show what are good grounds, and, what are not sufficient grounds for, transfer. Such cases are: *Mohur Singh v. Ghuriba* 15 W. R. (P. C.) 8 (at P. 10) (A) ; *Jawahir Kumar Devi v. Naresh Chandra* AIR 1920 Pat. 365 : 1 Fat. L. T. 389 (B); *Mula Naramma Vs. Mula Rengamma*, ; (*Khuaja Ahad Shah v. Mt. Ayshan Begum* AIR 1923 Lah 564 (D); and, *Binode Behary Bannerjee Vs. King-Emperor*, .

From the above cases, the following grounds of transfer, inter alia are well established. They are: (1) When the superior court is satisfied that the proceedings in one court constitute an abuse of the process of the courts; (2) when it is clear that some prejudice has been created, and that a fair hearing, and an impartial adjudication, could not be reasonably expected, even though such a state of things has been brought about by the conduct of the very party applying for the transfer; (3) where there is any reasonable ground -for supposing that a prejudice against a party's pleader has in any manner or measure affected the Judicial attitude of the court towards the petitioner, or his case; and (4) if a party feels that he is not likely to have a fair trial before a particular court. In such, a case, however, it is true that the reasonable apprehension on the part of the litigant should receive consideration, but at the same time the apprehension must be such as a reasonable man might reasonably be expected to have.

17. Therefore, 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 and impartial trial, and may not 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; and then alone the Court is at liberty to place himself in the position of, and, the same situation in which, the party himself stood with the knowledge of all the facts with which the party was acquainted, and, then only the Court can see and judge for himself how these facts would have affected the party's mind, and, if they are reasonable and sufficient to raise the reasonable apprehension complained of in the mind Of even a reasonable person.

18. Bearing the above principles in mind, in the present case, what we find is that although each of the facts mentioned earlier by itself may not be a sufficient ground to raise a reasonable apprehension in the mind of the petitioners, but, in my opinion, there is no doubt that the cumulative effect, of all the circumstances and facts stated above, is certainly such that even a reasonable man might reasonably be expected to have a reasonable apprehension that he will not have a fair trial before the Court concerned. It is not possible to get similarity of circumstances in the decided cases, cited at the Bar, with those of the present case in all respects, but, in my opinion the seven circumstances enumerated by me before taken conjunctively do show that these circumstances are not mild, but are grave, and are quite sufficient to raise a reasonable apprehension in the mind of the petitioners that they will not have a fair and impartial trial in the court of Mr. Sachchidanand Sinha.

19. I am not prepared to accept the contention of the petitioners that Mr. K. B. Sahay is interested personally, apart from his position as Minister in charge of the revenue Department, in these suits. He has dual capacity, and his position as Minister is such that if he does not take interest in the suits, instituted, appertaining to his portfolio, and properly look after them, obviously he would be failing in his duty, and, will not be able to discharge the duty which his position involves. As to Mr. K. B. Sahay, not as a Minister, but in his personal Capacity, I do not understand, what and how, does it matter to him at all whether the suits were decided against, or, in favour of the State of Bihar, but certainly as a Minister of the Government, it is his bounden, duty to look after the cases and matters relating to his portfolio. It is not expected at all that he will go out of his way and ask Mrs. Sinha to influence her husband in deciding the cases in favour of the State of Bihar. But in the present case these considerations are quite irrelevant, and, therefore, it is not necessary for me to embark upon an investigation as to what Mr. K. B. Sahay would do, or would not do, or what he is likely to do or not to do, in the present cases. The question is in these circumstances, would there be any such reasonable apprehension, as entertained by the petitioners, in their mind?

20. Mrs. Sinha admittedly is a Congress worker, but I am not prepared to accept the counter-affidavit of the State of Bihar that "she is connected with the

Congress Organisation as hundreds of people are in the State of Bihar." On the admitted facts mentioned earlier and, on reading the allegations contained in the petitions, and, the replies of the State of Bihar, I have no hesitation in accepting the contention of Mr. Banerji that Mrs. Sinha is an ambitious lady and she would naturally try to bask under the sunshine Of the patronage of the Congress Government, and, of Mr. K. B. Sahay in particular. Knowing as she does that both she and Mr. K. B. Sahay belong to Chotanagpur, wherein she belongs to Ranchi, and Mr. K. B. Sahay belongs to Hazaribagh, where the suits are pending.

The question is not whether in the present case Mrs. Sinha would actually try to influence, her husband, or that as a matter of fact her husband would "be influenced, in favour of the State of Bihar, but the question is whether, because of Mrs. Sinha's connections with the Congress, Of which Mr. K.B. Sahay is an important member, and also an important Minister in the Congress Government, cannot the petitioners, in the circumstances mentioned above, be said to have the reasonable apprehension that the court below will not maintain an unprejudiced judicial mind in the trial of the suits?

21. I have no doubt that Mr. Sachchidanand Sinha the learned Subordinate Judge, before whom the suits are pending and against whom personally nothing, has been suggested before me, nor any material has been placed before me to ascribe a lack of judicial detachment and impartially by to him and in whose integrity, impartiality and independence I have absolute confidence will try these suits with an unprejudiced judicial mind, and uninfluenced by his wife. But the relationship of wife and husband is such that in view of the position of Mrs. Sinha "vis a vis" the Congress and Mr. K. B. Sahay the petitioners may understandably feel some lack of confidence in Mrs. Sinha's husband, as a Court. This apprehension of theirs, whether or not it has any factual basis must be taken into account by this Court, while considering their petitions for transfer.

22. A long line of cases shows that it is not merely of some importance, but is of fundamental importance that justice should not only be done but should manifestly & undoubtedly, seem to be done. See *Rex v. Sussex Justices* (1924) 1 KB 256 at p. 259 (F).

The Pure fountain of justice must not only remain unsullied from within, but it must also, even on the surface and outside; appear and actually remain unpolluted, so that the confidence of the citizens of the country in the Judicial administration of the country may remain unshaken. Confidence in the court administering justice on the part of both parties and of the public is a vital element in the administration of justice.

If the admitted facts are apt or at least are capable of being used, to destroy this confidence, the supreme needs of justice are clearly such as not to allow the ordinary course of justice to be left untouched, but to transfer the cases from such court. It is, as such, not only necessary that justice should be done; it is also necessary that it should be plain to all including those proceeded against

that it is being done. See Ram Prasad Mandal and Others Vs. The King, .

23. In these circumstances, I feel satisfied that the apprehension of the petitioners, that they will not have a fair trial in the Court of Mr. Sachchidanand Sinha, the present Subordinate Judge which may, or, may not be well founded and which may or may not have any factual basis, and, which is not necessary for me here to enquire into was certainly reasonable and the circumstances were likely to raise this reasonable apprehension in the mind of the petitioners.

(23a) After a careful consideration of the entire matter it seems to me that it will be better for Mr. Sachchidanand Sinha himself if he is not forced to try these suits, and in such a case it becomes incumbent upon this Court to transfer these three suits covered by the three applications, as also the other 25 suits, which are being tried analogously with Title Suit No. 66 of 1951, and which are also being transferred by me as mentioned hereafter, from the file of Mr. Sachchidanand Sinha the present Subordinate Judge at Hazaribagh to the court of the District Judge at Hazaribagh who will transfer all these suits to one of the two Additional Subordinate Judges, who may be stationed at Hazaribagh and who may be competent to try these suits.

In case no Additional Subordinate Judge is sent to Hazaribagh, these 28 suits will be transferred to the court of the Judicial Commissioner, Chotanagpur, at Ranchi, who will transfer them for trial and disposal to one of the Subordinate Judges competent to try these suits stationed at Ranchi.

24. I am not unmindful of the fact that in Miscellaneous Judicial Case No. 293 of 1950, which relates to Title Suit No. 53 of 1951, the State of Bihar is the plaintiff and, the Raja Bahadur is one of the several defendants, and in such a case no doubt the plaintiff, as "arbiter litis" has a right to select his own forum, and, his right should not be interfered with except on very Strong grounds, and the onus of establishing sufficient grounds for transfer lies heavily upon the applicants. But, in my opinion, for the reasons given above, the applicants have made out a good case for transfer of this suit also.

25. No transfer application has been made in any of the other 25 suits which are being tried along with Title Suit 66 of 1951. These 25 suits are being tried along with Title Suit 66 of 1951 analogously with the consent of the parties, because common questions of facts and law arise, and, therefore, in my opinion, it would be in the interest of justice, if these 25 suits, which are being tried with Title Suit 66 of 1951 are also transferred, as directed earlier for being tried together, as was being done before. I, therefore, direct u/s 24(1), Code of Civil Procedure, acting "suo motu", that these 25 suits should also be transferred as directed before.

26. I enquired from Mr. Bajrang Sahay if he was seriously opposing these applications for transfer and he replied that he was strongly opposing them. Undoubtedly every person placed in the position of the State of Bihar has the unquestioned right to oppose transfer applications, but I was a little surprised at

the attitude adopted on behalf of the State of Bihar because as far as the State of Bihar is concerned, its attitude should have been, in my opinion, one of indifference, because what does it matter to it, whether these suits are tried by one tribunal, or another.

27. For the reason given above, I, acting u/s 24(1)(b)(ii) CPC withdraw Title Suits 66 of 1951, 24 of 1953, 53 of 1954, and the other 25 suits, which are being tried analogously with Title Suit 66 of 1951 pending before Mr. Sachchidanand Sinha the Subordinate Judge in charge of the permanent court at Hazaribagh, and transfer all these 28 suits, for trial and disposal either by one of the Additional Subordinate Judges to be stationed hereinafter at Hazaribagh, or by one of the Subordinate Judges stationed at Ranchl, who may be competent to try and dispose of the same, as indicated above.

The learned Additional Subordinate Judge at Hazaribagh, or the learned Subordinate Judge at Ranchi, as the case may be, on the transfer of these suits to him, will proceed with the trial of these suits from the point at which they are being transferred to him. It is made dear that the transferee court has not to retake the evidence, which has already been taken in the 26 suits and it has to deal with the suits as they come to him. I make it clear again that the transfer of these suits from the court of Mr. Sachchidanand Sinha will not mean casting any aspersion on his integrity and impartiality.

28. In the result, the rules are made absolute and the applications are allowed, and the suits are transferred as directed above. As the State of Bihar has put a stout opposition to these applications, I would allow costs to each of the three petitioners separately against the State of Bihar: Hearing fee in each case will be Rs. 32/- only.