

(2019) 08 SIK CK 0009

In the Sikkim High Court

Case No : Suo Motu Transfer Petition (Civil) No. 09 Of 2019

Tshewang Rinzing Dorjee

APPELLANT

Vs

Uwendra Thapa @ Nordy & Ors

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 24, 151

Citation : (2019) 08 SIK CK 0009

Hon'ble Judges : Vijai Kumar Bist, CJ

Bench : Single Bench

Final Decision : Disposed Off

Judgement

1. The learned District & Sessions Judge, West Sikkim at Gyalshing has sent a letter bearing No.841/D&SJ(W) dated 09.08.2019 along with the copy of the order dated 07.08.2019 passed by her in Title Suit Case No.01 of 2019 (Shri Tshewang Rinzing Dorjee Versus Shri Uwendra Thapa @ Nordy & 4 others).

2. In the said order, the learned District & Sessions Judge has stated that counsel for both the parties filed applications under Section 151 of Code of Civil Procedure, 1908 (for short CPC) stating therein that the plaintiff and defendants no.1 & 2, all are residents of Gangtok, East Sikkim and as such, it will be convenient for all concerned, if the matter is taken up at Gangtok, East Sikkim, as great hardship and inconvenience is being faced by the parties in coming to Gyalshing especially during the monsoon season. It is also observed in the order that plaintiff is a senior citizen of ailing health. Hence both the learned Counsel for parties prayed that in the interest of justice and convenience of the parties the matter be referred to the High Court of Sikkim for necessary orders for transfer of the same to East District.

3. Considering the applications of the parties, the learned District & Sessions Judge forwarded the matter to the High Court on administrative side.

4. Earlier also the matter relating to Title suit Case No.01 of 2019 was referred to

the High Court by the District & Sessions Judge, South Sikkim at Namchi on administrative side expressing his inability to hear the matter by stating therein that the document dated 23.09.2008 was issued by him, when he was practicing advocate and an empanelled counsel for Union Bank of India pertaining to certificate of title of landed property in question and the same document was being relied upon by the defendant No.3. Considering the said facts, this Court transferred the case from the Court of learned District & Sessions Judge, South Sikkim at Namchi to the Court of learned District & Sessions Judge, West Sikkim at Gyalshing. Now, the learned District & Sessions Judge, West Sikkim at Gyalshing has referred the matter to the High Court for transfer of case from her Court on the ground of inconvenience of the parties.

5. In my view, the learned District & Sessions Judge is not correct in referring the matter to the High Court. Judicial Officer can seek transfer of a case from his Court if (a) his close family member is appearing before him, (b) he is related to any of the parties in the case (c) earlier he had been counsel for any of the parties in the case (d) he has financial interest in the matter. In other matter Court should not ask for transfer of case from his Court. Section 24 CPC speaks about power of transfer and withdrawal of the case. According to this Section, the High Court or the District Court may 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 at any stage transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same and retransfer the same for trial or disposal to the Court from which it was withdrawn. Therefore, the law is clear on this point. The case can be transferred from one Court to the another Court on the application moved by any of the parties and after notice to the parties and after hearing to the parties.

6. In this case also the request was made by the parties by moving application under Section 151 of CPC for transfer of the case from the Court of learned District & Session Judge, West Sikkim at Gyalshing, to another District. The application moved by the parties under Section 151 CPC cannot be referred by the District Judge to the High Court for transfer. The case can be transferred from one District to another District by High Court only but in such cases one of the parties or both the parties are required to approach the High Court under Section 24 of CPC to transfer the case to another District. Here none of the parties have approached the High Court.

7. In view of above, the request made by the learned District & Session Judge, West Sikkim at Gyalshing for transfer of Title Suit Case No.01 of 2019 (Shri Tshewang Rinzing Dorjee Versus Shri Uwendra Thapa @ Nordy & 4 others) is hereby rejected.

8. This Suo Motu Transfer Petition is, accordingly, disposed of.