

(2014) 01 SHI CK 0054
In the High Court Of Himachal Pradesh
Case No : C.M.P.M.O. No. 4212/2013

Vishwa Nath Singh

APPELLANT

Vs

Pushpinder Singh Rana and Others

RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 20, 151, 24, 25, 92

Citation : (2014) 01 SHI CK 0054

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : G.D. Verma, Senior Advocate and B.C. Verma, Advocates for the Appellant

Judgement

Rajiv Sharma, J.—This petition under Section 24 read with Section 151 of the Code of Civil Procedure has been filed on behalf of the plaintiff seeking transfer of Civil Suit No. 88 of 2012, titled Col. Vishwanath Singh Rana v. Lt. Col. Pushpinder Singh Rana from the Court of learned District Judge, Kangra at Dharamshala to this Court.

2. "Key facts" necessary for the adjudication of this petition are that the petitioner/plaintiff (hereinafter referred to as the "plaintiff" for convenience sake) filed a suit for decree of declaration on the basis of title and also for grant of injunction before this Court. Notices were issued for the service of defendants on 19.9.2012. Most of the defendants have been served. An application under Order 5 Rule 20 of the Code of Civil Procedure has been filed by the plaintiff for service of defendant No. 7. Written statement has been filed on behalf of defendants No. 1 and 2. Civil Suit No. 88 of 2012 was transferred to the court of learned District Judge, Kangra, at Dharamshala after the increase of pecuniary jurisdiction.

3. Mr. G.D. Verma, learned Senior Advocate, has vehemently argued that his client is 69 years old. He is doctor by profession. Journey to Dharamshala is arduous. His wife is also unwell. His client has no son and has only two daughters.

4. The Civil Suit has been transferred after the pecuniary jurisdiction has increased upto Rs. 30 lacs. The civil suit has rightly been transferred to the Court of learned District Judge, Kangra at Dharamshala. No ground is made out for transfer of the case from the court of learned District Judge, Kangra at Dharamshala to this Court. The case has to be tried according to territorial and pecuniary jurisdiction, where the cause of action has arisen. In this case, admittedly the cause of action has arisen within the territorial jurisdiction of District Kangra and the learned District Judge, Kangra, at Dharamshala, has the territorial and pecuniary jurisdiction to try Civil Suit No. 88/2012. The suit cannot be ordered to be transferred to this Court merely on the ground that the petitioner is 69 years old and his wife is unwell.

5. Learned Single Judge of Calcutta High Court in Baburam Agarwalla Vs. Jamunadas Ramji and Co., has laid down following principles to determine balance of convenience:

"14. The expression "balance of convenience" has inspired profound legal thought and has acquired the gloss of many judicial interpretations. Restated in simple terms it is a question of fact in each case. Balance of convenience is neither the convenience of the plaintiff alone nor of the defendant alone but the balance of convenience of both. In determining the balance of convenience for the trial of a suit the Court has to take into consideration (1) the convenience or inconvenience of the plaintiff and the right of the plaintiff to choose his own forums (2) the convenience or inconvenience of the defendant (3) the convenience or inconvenience of the witnesses required for a proper trial of the suit (4) the convenience or inconvenience of a particular place of trial having regard to the nature of the evidence on the main points involved in the suit and also having regard to the doctrine of "forum conveniens" and (5) the nature of issues in the suit."

6. Their Lordships of Hon"ble Supreme Court in Indian Overseas Bank, Madras Vs. Chemical Construction Company and Others, have held that greater inconvenience or expenditure to one of the parties may be a factor to be considered, but cannot be the sole ground for transferring the suit. Their Lordships have held as under:--

"16. The principle governing the general power of transfer and withdrawal under S. 24 of the Code is that the plaintiff is the dominus litis and, as such, entitled to institute his suit in any forum which the law allows him. The Court should not lightly change that forum and compel him to go to another Court, with consequent increase in inconvenience and expense of prosecuting his suit. A mere balance of convenience in favour of proceedings in another Court, albeit a material consideration may not always be a sure criterion justifying transfer.

19. Here, in the two suits, one in the District Court Seoni, Madhya Pradesh, and the other filed by the petitioner in the High Court of Madras, the parties are the same except that in the Madras suit five other persons who are alleged to be

partners of the first respondent, herein, and two of whom furnished collateral securities, have also been joined as defendant. Further, the material issues in both the suits are common or interdependent. For instance, issue No. 14 in the Seoni Suit is substantially the same as issue No. 7 framed by the Madras High Court in the suit filed there by the petitioner. The questions involved inter alia, in issues 9, 10, 12, 18, 19 and 20 in the Seoni Suit have a substantial bearing on the decision of issues 1, 2, 6, 8, 9 and 10 framed in the Madras Suit. The basic question commonly arising in each of the two suits concerns the liability of the second respondent and the fourth respondent to make payment as the acceptor of the bills of exchange and the guarantors, respectively, for due payment under those bills. If the two suits are allowed to continue in their original form there is a possibility of conflicting findings on the question of liability under the Usance Bills and under the guarantees. It is not disputed (we are told) that the payments of the bills were to be made to the petitioner bank at Madras. The evidence in both the suits would mostly be common and locally available at Madras. Transfer of the Seoni suit of Madras High Court will avoid multiplicity in the trial of the common issues and obviate the risk of conflicting decisions. Under the circumstances, it is manifestly "expedient in the interest of justice" that both the suits should be tried by the Madras High Court on its Original Side by the same Judge/Judges."

7. Learned Division Bench of Madhya Pradesh High Court in Jagatguru Shri Shankaracharya Jyotish Peethadhiswar Shri Swami Swaroopanand Saraswati Vs. Ramji Tripathi and Others, have held that the onus of establishing sufficient grounds for the transfer lies heavily on the applicant. Preponderance of balance of convenience is of prime consideration for transfer of suit. Learned Division Bench has held as under:--

"11. The plaintiff, as arbiter litis, has a right to choose his own forum and that right should not be interfered with except on very strong grounds. The search should be for justice and the Court must be satisfied that justice could more likely be done between the parties by refusing to allow plaintiff to continue his suit in the forum of his choice. The onus of establishing sufficient grounds for the transfer lies heavily on the applicant. There is unanimity of opinion that preponderance of balance of convenience is of prime consideration for transfer of suit. So the convenience of the parties is a valid ground of transfer though there is no unanimity about it being a material ground for transfer (See Ramkumar v. Tularam, AIR 1920 Pat 138 (2), Thakur Singh v. Thakurain Sheo Ratan Kaur, AIR 1923 Oudh 30, Soroj Bashini Debi Vs. Girija Proshad Bhattacharjee, , Soroj Bashini Debi Vs. Girija Proshad Bhattacharjee, , Mt. Basanti Devi Vs. Mt. Sahodra and Others, , G.M. Rajulu Vs. Rao Bahadur M. Govindan Nair, , Vaman Vasudeo Chitaley Vs. Raghunath Ganesh Thakar, , Purna Chandra Mahanty and Others Vs. Samanta Radhaprasana Das, , P. Sadayandi Nadar and Others Vs. Venugopala Chetty and Others, , Jyotsna Raje v. Jagpalsingh, AIR 1961 Punj 560, Sundardas Thackersay and Bros. Vs. The New Commercial Mills Co. Ltd., and Sri Pamban Kumaragurubara Swami Temple Vs. K. Subramanya Mudaliar, . In Firm

Kanhaiyalal v. Zumerlal (supra) it has been held by this Court as under:--

"In deciding the question whether it is expedient to order transfer of the suit the convenience of the parties is indeed a factor which enters into consideration, but it is obvious that the convenience of both parties have to be weighed and the matter must ultimately turn on the balance of convenience."

This Court in Sri Pamban Kumaragurubara Swami Temple Vs. K. Subramanya Mudaliar, has held "where in a partition suit greater part of the property is situated, it is to be tried in that Sri Pamban Kumaragurubara Swami Temple Vs. K. Subramanya Mudaliar, this Court has held as under:--

"Since both the suits relate to the same transaction and involve common questions of fact, it is desirable that they should be tried by the same Judge."

The Kerala High Court in David Vs. James Arthur Edwards and Another, , has observed that if in choosing a particular Court, the plaintiff has acted mala fide to harass the defendants, the case ought to be transferred.

12. Another factor that has to be taken into consideration is the interest of justice. A case has to be transferred if there is reasonable apprehension of a party to a suit that he might not get justice in the Court where the suit is pending. This may be because the trial Judge is prejudicial or because there in the" surcharged atmosphere no fair trial is possible at that place. This Court in Raghunandan v. G.H. Chawla, 1963 MPLJ (Notes) 117 has held as under:--

"The learned District Judge lost sight of the well recognized position that the question whether the apprehension entertained by an applicant that he might not get justice at the hands of a particular Judge, was a reasonable apprehension or not had to be determined on such material as was on record and on the explanation of the Judge concerned. The onus of establishing sufficient grounds for transfer lay very heavily on the applicant. No account of imaginary suspicion or capricious belief could be permitted to be raised as a ground for transfer. The view, in the circumstances on record, taken by the learned District Judge was as capricious as the feeling of the applicant seeking transfer."

13. On merits, we are in full agreement with the learned single Judge that the preponderance of probabilities are in favour of trying the suit at Allahabad. All the defendants in the suit are residents of U.P. In the earlier proceedings the plaintiff had also shown his residence at Banaras, U.P. Most of the properties of the Jyotishpeeth are located in U.P. According to the plaintiff's own showing, the properties at U.P. are worth Rupees 7,12,000/- while the properties at M.P. are worth Rs. 61,000/- only. In earlier suit valuation was only Rs. 13,500/-. The respondent No. 1 has challenged the valuation and asserts that the value of the immovable properties alone at U.P. cannot be less than 8 lacs. By amendment the plaintiff has increased the valuation of the properties in M.P. by five lacs by increasing the value of the property at Jabalpur from Rs. 500 to five lacs. Whatever that be, the property at Seoni is valued at Rs. 25,060/- only. There is

no valid reason except convenience to the plaintiff for choosing the forum for filing this suit at Seoni when the previous litigations were in Allahabad and Banaras Courts. The cause of action and the subject-matter of the present suit are similar to those in C.S. No. 3/63. The schedule of properties in this suit is lifted from the schedule of properties in the earlier suit. The plaintiff in his pleading has admitted that the earlier suit is pending. We are here not concerned as to whether the plaintiff could or could not have continued that suit as legal representative of Swami Krishna Bodhashram and whether the present suit is competent or not. In the earlier suit under Section 92 of the Code all the witnesses examined belonged to U.P. In the present case the main cause of action is shown to be installation of the plaintiff as Shankaracharya on 7-12-73. Obviously, this was at Varanasi. The plaintiff has also challenged the will dated 18-12-52 in favour of the respondent No. 1. There can be no doubt that for proving the will and also for proving installation of the plaintiff as Shankaracharya, most of the witnesses must be of the places where these events purported to have taken place. It will not be, therefore, convenient for the parties to have the suit tried at Seoni. The standing counsel of both the parties belong to Allahabad and they have been appearing in this proceeding. It would suit them better if the case is tried at Allahabad. The plaintiff has shown in the plaint that part of the cause of action arose at Seoni because of the location of part of properties of Jyotishpeeth there but this cannot outweigh the other overwhelming factors which require that the suit should be tried at Allahabad. In case, the plaintiff succeeds, the execution of the decree has to be given effect at U.P. Appellant has not substantiated as to why he would not get fair trial at Allahabad. Looking to the overall considerations and circumstances of the case, the case has been rightly transferred to the Court of District Judge, Allahabad."

8. Their Lordships of Hon"ble Supreme Court in Dr. Subramaniam Swamy Vs. Ramakrishna Hegde, have held that the paramount consideration for transfer of the case under Section 25 of the CPC must be the requirement of justice. The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Their Lordships have held as under:--

"8. Under the old section the State Government was empowered to transfer a suit, appeal or other proceeding pending in the High Court of that State to any other High Court on receipt of a report from the Judge trying or hearing the suit that there existed reasonable grounds for such transfer provided the State Government of the State in which the other High Court had its principal scat consented to the transfer. The present Section 25 confers the power of transfer on the Supreme Court and is of wider amplitude. Under the present provisions the Supreme Court is empowered at any stage to transfer any suit, appeal or other proceeding from a High Court or other Civil Court in one State to a High Court or other Civil Court of another State if it is satisfied that such an order is expedient for the ends of justice. The cardinal principle for the exercise of power under this section is that the ends of justice demand the transfer of the suit,

appeal or other proceeding. The question of expediency would depend on the facts and circumstances, of each case but the paramount consideration for the exercise of power must be to meet the ends of justice. It is true that if more than one Court has 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 be tried in any particular Court convenient to him. The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that 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 depriving that party of a fair trial. The Parliament has, therefore, invested this Court with the discretion to transfer the case from one Court to another if that is considered expedient to meet the ends of justice. Words of wide amplitude -for the ends of justice - have been advisedly used to leave the matter to the discretion of the apex Court as it is not possible to conceive of all situations requiring or justifying the exercise of power. But the paramount consideration must be to see that justice according to law is done; if for achieving that objective the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner's plea for the transfer of the case must be tested on this touchstone.

10. Counsel for the respondent pointed out that mere convenience of the petitioner and absence of likelihood of prejudice to the respondent should not weigh with the Court in directing the transfer of the suit from the Bombay High Court to a Civil Court in Karnataka. We have already emphasised that the paramount consideration for transfer of the case under Section 25 of the Code must be the requirement of justice. If the ends of justice so demand, the case may be transferred under this provision notwithstanding the right of dominus litis to choose the forum and considerations of plaintiff's convenience, etc., cannot eclipse the requirement of justice. Justice must be done at all costs, if necessary by the transfer of the case from one Court to another. That is why in Union of India (UOI) and Another Vs. Shiromani Gurdwara Prabandhak Committee and Others, this Court while sounding a note of caution that the power must be exercised with circumspection observed that the Court should not hesitate to act if the ends of justice so demand in an appropriate case."

9. Learned Single Judge of Orissa High Court in Dinabandhu Patro and Others Vs. State Bank of India and Others, has held that insertion of words "competent to try or dispose of same" indicates competence of Court now required is both pecuniary and territorial. There was nothing in pleading or in petition for transfer to indicate as to how interest of applicant seeking transfer would be served best by transfer of suit to place where transfer is sought. Learned Single Judge has held as under:--

"9. In the case at hand, it appears that the suit has been instituted in the Aska Court which is having both pecuniary jurisdiction as well as the territorial

jurisdiction and there is nothing to indicate either in the pleading or in the petition as to how the interest of the defendants would be served best in transferring the same to Berhampur Court. The Aska Court having pecuniary and territorial jurisdiction to try the suit, I do not find any justification to set aside the impugned order passed by the learned District Judge, Ganjam-Gajapatt, Berhampur."

10. In the instant case merely that the plaintiff has to travel another 250 kms. cannot be a ground to transfer the case from the Court of learned District Judge Kangra at Dharamshala to this Court. Moreover, the record would be available within the territorial jurisdiction of District Kangra. Most of the witnesses must be drawn from District Kangra since the cause of action has arisen in District Kangra. No ground has been made out how there would be failure of justice in case the suit is not transferred, as prayed for.

11. Accordingly, in view of the analysis and discussion made hereinabove, there is no merit in the petition and the same is dismissed. The pending application(s), if any, also stands dismissed. No costs.