

CASE NO.:
Appeal (civil) 2786 of 2008

PETITIONER:
Jitendra Singh

RESPONDENT:
Bhanu Kumari & Ors

DATE OF JUDGMENT: 11/04/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 2786 OF 2008
(Arising out of SLP (C) No. 4120 of 2007)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to order passed by a learned Single Judge of the Rajasthan High Court, Jaipur Bench. Respondent No. 1 had filed application in terms of Section 24 of the Code of Civil Procedure, 1908 (in short the 'CPC') seeking transfer of Civil Case No.41/202/05 titled Jitendra Singh v. Smt. Bhanu Kumari & Ors. pending before the District and Sessions Judge, Alwar, Rajasthan to some other Court. By the impugned order the High Court directed that the suit in question to be transferred from the Court of Additional District Judge No.2 Alwar to the Court of District Judge, Jaipur City.

3. Learned counsel for the appellant submitted that this is yet another attempt to deny the appellant of his legitimate entitlement. It is pointed out that in an earlier petition (Transfer Petition (C) No.1105 of 2005 titled Maharaja Sewai Tej Singh v. Jitender Singh & Ors.) this court declined to accept the prayer for transfer. But keeping in view the age and the state of health of the petitioner in that case, directed appointment of a Guardian ad litem. It is pointed out that in fact as has been noted by the High Court, a learned counsel has been appointed as guardian ad litem. It is the stand of the appellant that the reason which weighed with the High Court to direct transfer is really of no consequence, more particularly in view of what has been stated by this Court in the earlier Transfer Petition.

4. Learned counsel for the respondent on the other hand submitted that taking into consideration the serious nature of the allegations made the High Court has rightly directed transfer.

5. The High Court's conclusions based on the basis of which order of transfer has been made, read as follows:

"Having scanned the record, I noticed that the suit was transferred by the District Judge to the Court of Additional District Judge

No.2, Alwar in the month of December, 2005. The petitioner although filed instant petition in this Court on August 17, 2006, did not mention this fact that the suit stood transferred from the Court of District Judge Alwar. The Petitioner stated in para 3 of the petition that the respondent Jitendra Pratap Singh is influential person and MLA of Alwar City and he has created such a situation that there is a strong likelihood of the matter pending before the District Judge being decided ex-parte against the petitioner and other members. This apprehension of petitioner, in my opinion, is baseless. The Courts are not influenced by politicians and influential persons. The petitioner should repose full confidence upon the court of justice. If ex-parte order was passed by the learned District Judge and the petitioner was aggrieved by it, she ought to have assailed it legally. Passing of ex-parte order by the Presiding Officer of the court cannot be a reasonable ground for transferring the case.

But looking to the fact that on January 8, 2006 respondent Jitendra Singh lodged FIR No. 19 of 2006 with the Police Station Kotwali Alwar against the petitioner and respondents Amar Raj Pal and Jaswant Singh and case under Sections 420, 467, 468 and 471 IPC has been registered against them and considering the overall view of the nature of the case and convenience of the parties and in the interest of justice, it would be just and reasonable to direct transfer of suit from the court of Additional District Judge No. 2 Alwar to the Court of District Judge, Jaipur City."

6. It appears that the High Court referred to the fact that the criminal proceedings have been instituted against the appellant. It is pointed out by learned counsel for the appellant that the filing of the FIR is really of no consequence. In respect of the plaint averments, in his reply before the High Court to the transfer petition it was inter alia stated as follows:

"That the contents of sub para (xviii) are not admitted in the manner stated. The answering respondent lodged the FIR (Annexure-9) on the facts constituting the offences under different Sections of the Penal Code committed by the accused persons named therein. It is denied that the respondent No.1 filed the FIR to exert pressure on the petitioner and to pressurise the lawyer seeking to represent the petitioner. The allegations are baseless and wholly without substance. It is humbly submitted that the respondent No. 2 acted hand-in-gloves with the petitioner Smt. Bhanu Kumari and her brother Yashwant Singh, got a purported power of attorney prepared in his favour and acting upon that the respondent No.2 negotiated for sale of the property of respondent No. 4 Maharaja Sawai Tej Singh Ji for a

consideration of Rs.77,30,328/-. The agreement entered into on 18.4.2005 besides being void was for inadequate consideration. The respondent No.2 as attorney received the part payment of the consideration in cash and by cheque in his own name. The petitioner and the respondent Nos. 2&3 to make wrongful gain colluded and connived with each other to make the respondent No.4 sign documents or papers who was a person under incapacity, incapable of understanding the contents to which he was made to sign and/or that his signature was forged. The respondent No.2 Shri Amar Raj Lall, Advocate acted against professional ethics and involved himself in criminal conspiracy. True and correct copy of the power of attorney, agreement for sale dated 18.4.2005 and the receipt dated 25.4.2005 are enclosed herewith and marked as Annexure R-1/4, R-1/5 and R-1/6 respectively. A true and correct copy of the affidavit of respondent No.2 Amar Raj Lall, filed in transfer petition before the Hon'ble Apex Court is filed herewith and marked as Annexure R-1/7."

7. Though grievance is made by the respondents that no competent lawyer at Alwar is willing to represent them, it is of significance to note that the suit has been filed by two persons. Respondents 2 & 3 are represented by experienced lawyers and they have been representing the respondents for very long period. The parameters for exercise in Sections 24 & 25 have been laid down by this Court in several cases. Earlier than Transfer Petition (Civil) No.1105 of 2005 was disposed of with certain directions.

8. The reasons which weighed with the High Court to direct transfer do not appear to be germane warranting an order of transfer.

9. The purpose of Section 24 CPC is merely to confer on the Court a discretionary power. A court acting under Section 24 CPC may or may not in its judicial discretion transfer a particular case. Section 24 does not prescribe any ground for ordering the transfer of a case. In certain cases it may be ordered suo motu and it may be done for administrative reasons. But when an application for transfer is made by a party, the court is required to issue notice to the other side and hear the party before directing transfer. To put it differently, the Court must act judicially in ordering a transfer on the application of a party. In the instant case the reason which has weighed with the High Court for directing transfer does not really make out a case for transfer.

10. Accordingly the impugned order of the High Court is set aside.

11. Appeal is allowed.