

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**TA No. 33 of 2016
Date of decision: 30.3.2016**

Gurdeep Kaur and others

.. Applicants

Vs.

Anil Chopra and others

... Respondents

2

TA No. 99 of 2016

Gurdeep Kaur and others

.. Applicants

Vs.

Avtar Singh Cheema and others

... Respondents

3

TA No. 100 of 2016

Gurdeep Kaur and others

.. Applicants

Vs.

Avtar Singh Cheema and others

... Respondents

4.

TA No. 101 of 2016

Gurdeep Kaur and others

.. Applicants

Vs.

Anil Chopra

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. P.S. Jammu, Advocate
for the applicant in TAno. 33 of 2016.
Mr. Varun Sharma, Advocate
for the applicant in TAno. 99 to 101 of 2016.

Mr. Pranav Handa, Advocate for
Mr. R.S. Bajaj, Advocate
the respondent No.1 in TAno. 33 and 101 of 2016

Mr. S.S. Chatrath, Advocate
for respondent No.1 in TAno. 99 and 100 of 2016.

Mr. M.S. Rana, Advocate
for respondent No.3 in TAno. 99 of 2016.

RAMESHWAR SINGH MALIK, J. (Oral)

These four identical transfer applications bearing TAnos. 33, 99 to 101 of 2016 filed under Section 24 of the Code of Civil Procedure, 1908, are being decided together vide this common order, as all these applications raise identical issues. However, with the consent of learned counsel for the parties and for facility of reference, facts will be referred, wherever required, from TAno. 33 of 2016 (Gurdeep Kaur and others VS. Anil Chopra and others).

Heard learned counsel for the parties.

It has gone undisputed before this Court that learned Presiding Officer before whom all the four civil suits are pending, had already decided another criminal matter, pertaining to the same Will dated 17.3.1977, which is subject matter of dispute in the civil suits, making some observations in favour of one of the parties. When the said fact was brought to the notice of the learned

Presiding Officer, he himself made a reference vide order dated 20.10.2015, to the learned District Judge, Jalandhar, for transfer of the cases to some other court of competent jurisdiction. However, learned District Judge did not accept the said reference necessitating filing of all these transfer applications before this Court.

It is the settled proposition of law that justice is not only to be done but it should also seem to have been done. Once the same learned Presiding Officer had already made some observations in favour of one of the parties, while deciding another matter at an earlier occasion, he was well justified in making reference to the learned District Judge for transfer of the cases to some other court of competent jurisdiction vide his abovesaid order dated 20.10.2015. In such a situation, learned District Judge ought to have accepted the reference.

It is so said because the course of action proposed by the learned Presiding Officer would cause no harm to any of the parties, nor anybody would have any objection. Further, transfer of all these cases to other courts of the competent jurisdiction would have saved the learned Presiding Officer from facing any unpleasant situation. The learned Presiding Officer seems to be well justified in passing the order dated 20.10.2015 which ought to have been accepted by the learned District Judge, in the interest of justice.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court, as well as different High Courts, including this Court: -

1. *Mrs. Maneka Sanjay Gandhi and another Vs. Miss*

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Rani Jethmalani, AIR 1979 (SC) 468.

2. Dr. Subramaniam Swamy Vs. Ramakrishna Hegde, 1990 (1) SCC 4.

3. Neelam Kanwar Vs. Devinder Singh Kanwar, 2000 (10) SCC 589.

4. Sumita Singh Vs. Kumar Sanjay and another, AIR 2002 (SC) 396.

5. Mangla Patil Kale Vs. Sanjeev Kumar Kale, 2003 (10) SCC 280.

6. Fatema Vs. Jafri Syed Husain @ Syed Parvez Jafferi, AIR 2009 (SC) 1773.

7. Anjali Ashok Sadhwani Vs. Ashok Kishinchand Sadhwani, AIR 2009 (SC) 1374.

8. Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others, AIR 2008 SC 1333.

9. Nisha Vs. Dharmenda Pratap Singh Rathore, 2015 (3) All. LJ 168.

10. M.V. Rekha Vs. Sathya, 2011 (2) HLR 34.

11. Sneha Vs. Vinayak, 2013 ILR (Karnataka) 165.

12. Rimpal Vs. Balinder Kumar, 2010 (7) RCR (Civil) 286.

13. Anju Vs. Sanjay, 2011 (6) RCR (Civil) 112.

14. Komal Devi @ Komal Kumari @ Komal Rani Vs. Harbhajan Singh, 2012 (8) RCR (Civil) 84.

The relevant observations made by the Hon'ble Supreme Court in para 14 of its judgment in **Kulwinder Kaur @ Kulwinder Gurcharan Singh's** case (supra), which can be gainfully followed in the present case, read as under: -

“Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula unanimously applicable to all situations, it

cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; interest of justice demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a fair trial in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order.”

Again, deliberating on an identical issue, in the case of **Dr.**

Subramaniam Swamy Vs. Ramakrishna Hegde, 1990 (1) SCC 4,

the Hon'ble Supreme Court held as under: -

“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.

(emphasis supplied)”

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered opinion that all these transfer applications deserve to be accepted and the same are hereby allowed.

The Order dated 20.10.2015 passed by the learned Presiding Officer in all these four cases making reference to the learned District Judge, Jalandhar, is hereby accepted. Consequently, all the four civil suits pending before the learned Civil Judge (Sr. Division) shall stand withdrawn from said court.

Accordingly, learned District Judge, Jalandhar, is directed to assign all the four civil suits to any other court of competent jurisdiction for early decision, in accordance with law.

With the abovesaid observations made and directions issued, all these four transfer applications stand disposed of, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)
JUDGE**

30.3.2016
AK Sharma