

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

**TA No.517 of 2016
Date of decision: 23.02.2017**

Swaran Singh

... Applicant

Vs.

Gurniwaj Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Gurcharan Dass, Advocate
for the applicant.

Mr. Sansar Kundi, Advocate
for respondents No.1 & 2.

RAMESHWAR SINGH MALIK, J. (ORAL)

Applicant, by way of instant transfer application under Section 24 of the Code of Civil Procedure, seeks transfer of the Civil Suit No.0000214 of 2016 titled as Gurniwaj Singh and another Vs. Swaran Singh and another from Malout, District Sri Muktsar Sahib to Ludhiana.

Notice of motion was issued and in the meantime, further proceedings before the learned Court below were stayed.

Heard learned counsel for the parties.

It has gone undisputed before this Court that two civil suits bearing Civil Suit No.1083 dated 04.02.2016 (Annexure P-2) and Civil Suit No.3183 dated 07.04.2016 (Annexure P-3) filed by the respondents themselves are already pending at Ludhiana. Applicant is a senior citizen of

77 years of age. Distance between Malout and Ludhiana is about 120 kilometers. In addition to this, it would be in the fitness of things that all the three suits between the same parties are tried and decided by the same Court, so as to avoid any contradictory judgments and also to avoid multiplicity of litigation.

The contention raised by learned counsel for respondents No.1 and 2 that the suit is not liable to be transferred from Malout to Ludhiana, has been duly considered but the same has been found misplaced and not worth acceptance.

In view of the abovesaid undisputed fact situation of the case, this Court feels no hesitation to conclude that it is just and expedient to transfer the abovesaid civil suit from Malout to Ludhiana. It is so said because all the abovesaid undisputed facts clearly go in favour of the applicant and against the respondent. In the circumstances of the case, it will not only be inconvenient but would be very difficult for the applicant to go from Ludhiana to Malout to pursue the litigation imposed on the applicant by the respondents. The cardinal principle for exercise of power under Section 24 of the Civil Procedure Code is that the ends of justice demand the transfer of the suit, appeal or other proceeding.

The abovesaid view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Dr. Subramaniam Swamy Vs. Ramakrishna Hegde, 1990 (1) SCC 4**. The relevant observations made by the Hon'ble Supreme Court in **Dr. Subramaniam Swamy's** case (supra), which can be gainfully followed in the present case, read 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) ”

Reverting to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court, it is unhesitatingly held that applicant is entitled for getting the abovesaid civil suit transferred from Malout to Ludhiana, so as to enable him to pursue the litigation without facing any undue hardship or harassment at the hands of the respondents. It is the settled principle of law that justice is not only to be done but it should also appear to have been done. If the applicant is forced to go from Ludhiana to Malout, it would amount to denial of justice to him. Thus, to strike a balance between the parties with a view to do complete and substantial justice and proceeding on a holistic view of the matter, this Court is of the considered view that it would be just and expedient to transfer the abovesaid civil suit from Malout to Ludhiana.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that instant transfer application deserves to be accepted and the same is hereby allowed. Civil Suit No.0000214 of 2016 titled as Gurniwaj Singh and another Vs. Swaran Singh and another is ordered to be transferred from Malout, District Sri Muktsar Sahib to Ludhiana.

Accordingly, the learned District Judge, Sri Muktsar Sahib is directed to send complete record of the abovesaid civil suit to the learned District Judge, Ludhiana, at an early date but in any case within a period of one month from the date of receipt of certified copy of this order.

The learned District Judge, Ludhiana is also directed to assign this case to the learned Civil Judge (Sr. Divn.), who is stated to be trying and conducting the abovesaid two other cases between the same parties, for early decision of all the three civil suits, in accordance with law.

With the abovesaid observations made and directions issued, present transfer application stands disposed of, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

23.02.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No