

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA No.644 of 2016
Date of decision: 02.02.2017

Vijay Kumari and others

... Applicants

Vs.

Rameshwar Raj Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Munish Bhardwaj, Advocate
for the applicants.

None for the respondent.

RAMESHWAR SINGH MALIK, J. (ORAL)

Applicants, by way of instant transfer application under Section 24 of the Code of Civil Procedure (for short 'CPC'), seek transfer of a petition bearing Succession Case No.106/2014 under Section 372 of the Indian Succession Act, 1925 ('the Act' for short) titled as Rameshwar Raj Kumar Vs. General Public filed by respondent from Panipat to Jalandhar.

Notice of motion was issued.

Learned counsel for the respondent appeared on 06.12.2016. He prayed and was granted time to get instructions and also to file reply, if any. Neither any reply has been filed nor anybody came present on behalf of the respondent to oppose the present transfer application, when it came up for hearing on 20.01.2017. However, in the interest of justice, case was adjourned to today, granting another opportunity to the respondent. Similar is the position today. Neither anybody has come present on behalf of the respondent

nor any request for pass over has been made.

Heard learned counsel for the applicants.

It has gone undisputed before this Court that sister of the applicants was married with respondent on 17.01.1991. There was no child out of this wedlock. Sister of the applicants died at Panipat under mysterious circumstances on 4/5th April, 2008. It was also the allegation on behalf of the applicants in para 3 of the instant transfer application, which has gone undisputed that during subsistence of the marriage with sister of the applicants, respondent performed second marriage on 21.02.1992. After the death of sister of the applicants in April 2008, respondent filed the present litigation at Panipat, claiming himself to be husband of the sister of the applicants. Learned counsel for the applicants also submits that as and when any of the applicants go to Panipat, they were attacked and in this regard, FIR No.288 dated 19.03.2010 was registered at Police Station Panipat City, which is Annexure P-2.

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 proceedings pending at Panipat, at the instance of the respondent to Jalandhar, so as to secure the ends of justice.

The 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), 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)”

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. Petition bearing Succession Case No.106/2014 under Section 372 of the Act titled as Rameshwar Raj Kumar Vs. General Public filed by the respondent is ordered to be transferred from Panipat to Jalandhar.

Accordingly, the learned District Judge, Panipat is directed to send complete record of the abovesaid petition to the learned District Judge, Jalandhar, 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, Jalandhar is also directed to assign the case to the learned Court of Competent jurisdiction at Jalandhar, for an early decision, 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

02.02.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No