

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.206 of 2017

Ramesh Prasad Sharma, Son of Late Binda Prasad, Resident of Village -
Nayagaon, P.S. Nayagaon, District - Saran at present J.P. Prathisthan, Baadha
Sector, H.S.C.L. Colony, Bhilai, District - Durg, Chhatisgarh.

... .. Petitioner/s

Versus

1. Vijay Krishna Sharma, Son of Suraj Prasad
2. Mira Devi
3. Baby
4. Anju
5. Putul, respondent no. 2 to 4 are Daughters of Late Ajay Krishan Sharma @
Raju
6. Chanda, wife of Late Ajay Krishna Sharma @ Raju All are residents of
Chapra Mohan Nagar, P.S. Town Nagar, District Chapra, Saran.
7. Munna Prasad
8. Vinod Prasad
9. Tuffan Prasad, respondent nos. 7 to 9 are sons of Ramanand Prasad All
residents of Shitalpur, P.S. Shitalpur, District Chapra, Saran.
10. Ajay Kumar Sharma @ Shyamjee
11. Suresh Prasad Sharma, Sons of Kanhaiya Lal Prasad, respondent nos. 10 &
11 sons of Kanhaiya Lal Prasad
12. Amrendra Nath Sharma,
13. Devendra Nath Sharma
14. Kamendra Nath Sharma, respondent nos. 12 to 14 are sons of Late Jitendra
Prasad Sharma
15. Pushpa
16. Prema
17. Munni, respondent nos. 15 to 17 Daughter of Late Jitendra Prasad Sharma,
All residents of C - 33/142, Chhatitupur, Sagra Banarsa, P.S. Sagra Banaras,
District - Banaras.
18. Vinod Prasad Sharma, Son of Late Binda Prasad Karnal Market, Bokrao,
P.S. Bokrao, District - Bokaro.
19. Prabha, wife of Late Laxman Prasad Sharma, Devanti Apartment, Budha
Colony, P.S. Budha Colony, District - Patna.
20. Vinayshil Sharma, Son of Late Laxman Prasad Sharma
21. Anita
22. Benu respondent nos. 21 & 22 are daughters of Late Laxman Prasad
Sharma, both are residents of Budha Colony, P.S. Budha Colony, District
Patna.



... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Bishwa Nath Chaudhary, Adv.
For the Respondent/s : Mr.Vijay Kumar

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 29-04-2019

Heard the parties.

2. This civil revision application has been filed for setting aside the order dated 24.07.2017 passed by learned District Judge, Chapra Saran, in Misc. Case No. 87 of 2017 by which the learned District Judge, Chapra, Saran allowed the application of defendant No.1/opposite party no.1 filed under Section 24 of the C.P.C. and transferred the Title Partition Suit no. 1014 of 2013 from the Court of 6th Additional Judge, Sub-Divisional Court, Sonapur to the Civil Court, Chapra on the ground of illness of defendant No. 1/opposite party no.1.

3. Plaintiff/petitioner had filed Title Suit no. 1014 of 2013 in the Court of Sub-Judge-1st, Chapra on 15.11.2013 seeking partition of the joint family properties as detailed in the plaint claiming 1/27th share in the suit properties. Title Suit for partition was filed on 15.11.2013 and admitted on 05.02.2014 in the Court of Sub-Judge 4th Chapra.

4. Notices were issued to defendants but they did not appear in the Title Partition Suit and gazette publication



was made on 26.08.2015 for appearance of defendants and next date was fixed on 22.09.2015 and due to non-appearance of defendants the case was fixed for *ex-parte* hearing on 20.07.2016. However, subsequently defendant nos. 11, 13 and 18 appeared on 22.07.2016 and were granted time to file written statement and defendants nos. 11, 13, 18 and 20 filed their written statement on 28.11.2016.

5. Defendant no.1/opposite party no.1 appeared in the trial court on 13.12.2016 and filed his written statement on 20.02.2017. The [Title (partition) Suit was suo moto transferred to Sonapur court after creation of Sub-Divisional Court at Sonapur.

6. Defendant No.1/opposite party no.1 filed a Misc. Case No. 87 of 2017 under Section 24 of C.P.C. to transfer the suit from Sonapur to Chapra on medical grounds before the District Judge, Chapra as both courts lie within the territorial jurisdiction of District Judge, Chapra Civil Court.

7. Plaintiff/Petitioner filed his reply on 05.06.2017 in Misc. Case no. 87 of 2017 opposing the transfer petition and stating therein that he is also suffering from heart disease and has undergone heart surgery and is suffering from high blood pressure and high sugar. However, learned District



Judge, Chapra allowed the Misc. Case no. 87 of 2017 on 24.07.2017 filed on behalf of defendant No. 1/opposite party no.1 under Section 24 of the C.P.C.

8. Counter affidavit has been filed on behalf of defendant No.1/opposite party No. 1 supporting the case of transfer on medical grounds.

9. Plaintiff/petitioner had filed the suit in Chapra Civil Court however, after creation of Sub-Divisional Civil Court at Sonapur the case was suo moto transferred in the Court of Additional Judge, Sonapur, Civil Court as most of the suit properties were within the territorial jurisdiction of newly created Sub-Divisional Court at Sonapur. However, defendant No. 1/opposite party No. 1 thereafter filed a petition in the court of District Judge, Chapra, for transfer of the Title Suit to the Chapra Civil Court on the medical ground and same was opposed by plaintiff/petitioner on the ground that he was also suffering from heart problem and had undergone heart surgery recently and it was difficult for him to peruse his case in Chapra. The transfer of case was opposed also on the ground that substantial suit property was within of territorial jurisdiction of Sonapur Sub-Divisional Court and since it was a Partition Suit, most of the parties and witnesses resided



within the territorial jurisdiction of Sonapur Sub-Divisional Court however, the learned District Judge while transferring the case has not taken into account the grounds taken by the plaintiff /petitioner against the transfer of suit from Sonapur to Chapra. In present case, although plaintiff/petitioner himself has filed suit in the court of Chapra as on said date the Sub-Divisional court at Sonapur was not created. However, on case being transferred to the court at Sonapur he has a right to oppose the prayer of transfer again to the court of Chapra on the ground that it is convenient for him to attend the court at Sonapur.

10. Plaintiff has the right to choose his own forum and burden lies on the applicant to make out a strong case for transfer. Plaintiff has a right to choose the forum where he has the choice of two or more courts in which he can institute a suit. However, defendant may apply in such case to have the suit transferred from the court in which it is filed to another court which has also the jurisdiction to hear the suit and the District Judge after considering the objections of other parties shall determine in which of the several courts having jurisdiction the suit shall proceed

11. The District Judge is empowered to transfer any



case pending in any court subordinate to him to another court however while considering the case of transfer the District Judge has to look into the convenience as well as hardship of all the parties. The transfer of a suit cannot be made in a light hearted fashion. Convenience, comfort and hardship of all parties and the expenses likely to be incurred by them are also relevant consideration to be considered by the Court while making an order for transfer of the suit. As a general rule courts should not interfere in such matters unless and until strong case for transfer is made out.

12. The District Judge in his order has not discussed and considered the convenience and relative hardships of the parties in the Title Suit. The District Judge has only dealt with medical reasons of defendant No.1/opposite party No.1 for transfer of suit. However, the order is completely silent on the objections filed by plaintiff/petitioner that he was also suffering from heart ailment and had undergone heart surgery and as such there was no occasion for transfer of the case from Sonapur to Chapra.

13. After hearing the parties and considering the materials available on record as in the order of transfer passed by District Judge, the objections of plaintiffs and other



defendants is not reflected in the order as impugned, the order dated 24.07.2017 passed by learned District Judge, Chapra in Miscellaneous Case No. 87 of 2017 is set aside and the matter is remanded to the Court of learned District Judge, Saran (Chapra) who shall decide the Miscellaneous Case after hearing all the parties and considering the convenience and hardships of all the parties while considering the transfer of case and pass a fresh order, assigning reasons to transfer or refuse to transfer the Title Suit.

14. The civil revision is allowed.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01.06.2019
Transmission Date	N.A.

