

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.989 of 2018**

Satyaroopa Jha, W/o late Dhrukumar Jha, aged 71 years, resident of Durga Chowk, near Ajanta Printing Press ward no.33, Police Station Basantpur, Rajnandgaon, Tehsil and District Rajnandgaon (CG)

---- Petitioner

Versus

Ashok Kumar Jha Alias Munwa, S/o Late Jugalkishor Jha, aged about 45 years, resident of Ward No.33 Brahmanpara near Chhattisgarh Jhalak Press, Police Station Basantpur, Rajnandgaon, Tehsil and District Rajnandgaon (CG)

---- Respondent

For Petitioner	: Mr.Manay Nath Thakur, Advocate
For Respondent	: Mr.S.S.Baghel, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

22.08.2019

1. Smt.Satyaroopa Jha preferred Civil Suit No.8A/2014 against Ashok Kumar Jha on 29.9.11 before the Additional District Judge, Rajnandgaon with respect to the suit land bearing Plot No.27/1, area 1025 sq.ft.. Later on, Ashok Kumar Jha preferred Civil Suit No.15A/2017 on 16.2.2017 before IInd Civil Judge Class-II, Rajnandgaon, which also relates to the suit land bearing Plot No.27/1, area 1025 sq.ft. Thereafter, respondent No.1-Ashok Kumar Jha filed an application under Section 24 of the CPC for transfer of Civil Suit No.8A/2014 pending before the Additional District Judge to the Court of IInd Civil Judge Class-II, Rajnandgaon on the ground that subject matter of both civil suits are identical and parties are similar and as such, in order to avoid conflicting decree, both civil suits be transferred

in one Court having jurisdiction to try and decide the suits, which was opposed by the petitioner.

2. By the impugned order, learned District Judge, Rajnandgaon after hearing both the parties, transferred the earlier suit preferred by petitioner-Satyaroopa Jha in the Court of Second Civil Judge, Class-II, Rajnandgaon for hearing and disposal in accordance with law in exercise of power conferred under Section 24 of the Code of Civil Procedure, 1908.
3. Feeling aggrieved and dissatisfied with the order granting application under Section 24 of the CPC, this writ petition has been preferred by the petitioner herein.
4. Mr.Manay Nath Thakur, learned counsel for the petitioner, would submit that Court of Second Civil Judge, Class-II to whom case has now been transferred is not competent to try the suit preferred by the petitioner/plaintiff. Therefore, power and jurisdiction under Section 24 (1) of the CPC could not have been exercised by learned District Judge, as such, the impugned order deserves to be set aside.
5. Mr.S.S.Baghel, learned counsel for the respondent, would support the impugned order and submit that Second Civil Judge, Class-II is competent to try the suit valued up to Rs.5,00,000/- as per provision amended & contained in Section 6(1)(a) of the Chhattisgarh Civil Courts Act, 1958 by which Civil Judge Class-II can try suit valued up to Rs. 5 lakhs and therefore, the learned District Judge is absolutely justified in granting the application.
6. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with

utmost circumspection.

7. In order to consider the plea raised at the Bar, it would be appropriate to notice Section 24 of the CPC which states as under:-

“24. General power of transfer and withdrawal.-(1)

On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and-

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of any order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,-

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) “proceeding” includes a proceeding for the execution of a decree or order.

(4) xxx xxx xxx

(5) xxx xxx xxx.”

8. A bare perusal of expression “competent to try or dispose of the same” appearing in Section 24(1)(a) of the CPC makes it clear that the High

Court or the District Judge is having jurisdiction and power under Section 24 of the CPC to withdraw any suit or appeal or other proceeding in any Court subordinate to it and competent to try or dispose of the same and by virtue of Section 24 (1) (b) (ii) of the CPC can transfer the same for trial and disposal to any Court subordinate to it and competent to try and dispose of the same.

- 9.** In the matter of Church South India Trust Association v. Telugu Chruch Council¹ the Supreme Court while dealing with Section 24(1) of the CPC has held as under:-

“28. Under sub-clause (a) of sub-section (1) of Section 24 of the Code, the High Court or the District Court can transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it or competent to try or dispose of the same. Similarly, under sub-clause (ii) of clause (b) of sub-section (1) of Section 24, the High Court or the District Court can withdraw any suit, appeal or other proceeding in any court subordinate to it and transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same. There is near unanimity amongst the High Courts that the words "competent to try" in Section 24 refer to pecuniary competence of the Court only and do not comprehend the territorial aspect of jurisdiction. [See : Krishna Lal v. Balakrishnan, AIR 1932 All. 660 at p. 661 per Sulaiman C.J.; P.M. Unni v. M.J. Nadar, AIR 1973 Mad. 2 (F.B.); Mulraj Doshi v. Gangadhar Singhania, AIR 1982 Orissa 191; Prabha Singh v. S.Narasimha Rao, AIR 1957 Andhra Pradesh 992; Mohd. Ali v. Bhanwari Bai, AIR 1981 Raj. 176].”

- 10.** Reverting to the facts of the present case in light of principle of law laid down in the above-stated judgments (supra), it is not in dispute that Second Civil Judge Class-II, Rajnandgaon to whom the case has been transferred now by the learned District Judge is having pecuniary as well as territorial jurisdiction to try the subject suit up to valuation of

¹ AIR 1996 SC 987

Rs. 5 lakhs by virtue of amendment in Section 6 (1) (a) of the Chhattisgarh Civil Courts Amendment act, 2016 w.e.f. 12.8.2016, as such, the said Court is competent to try and dispose of both suits. Therefore, the learned District Judge is justified in transferring the suit to IInd Civil Judge Class-II, Rajnandgaon to try and dispose of the suits in accordance with law. I do not find any illegality or perversity in the impugned order passed by the learned District Judge transferring Civil Suit No.8A/2014 to the Court of IInd Civil Judge Class-II, Rajnandgaon. Accordingly, the writ petition being without substance is liable to be and is hereby dismissed. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-