

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

MISCELLANEOUS CIVIL APPLICATION NO.83 OF 2019

Manisha Wd/o Shivaji Pawar
Age 45 years, Occupation : Nil
Residing at C/o Mr. D.D.Ware,
Plot No.2, N-8, CIDCO,
Aurangabad

.. APPLICANT
[ORIGINAL DEFENDANT NO.1]

Versus

- 1] Chandrabhaga w/o Dinkar Pawar
Age 66 years, Occupation : Agriculture
Residing at Wadalamahadev,
Tq.Shrirampur, Dist.Ahmednagar
- 2] Sambhaji s/o Dinkar Pawar,
Age 44 years, Occupation : Agriculture
Residing as above.
- 3] Suresh s/o Dinkar Pawar
Age 42 years, Occupation : Agriculture
Residing as above.

.. RESPONDENTS
[NO.1 - ORIGINAL PLAINTIFF
NOS.2 & 3 ORIGINAL DEFENDANTS

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Adv. Mr.Hemant Surve for applicant.
Senior Advocate Mr.V.D.Sapkal for respondent Nos. 1 to 3

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CORAM : MANGESH S. PATIL, J.
DATE : 11.09.2020

ORAL ORDER :-

Heard both the sides.

2] This is an application under Section 24 of the Code of Civil Procedure seeking transfer of Regular Civil Suit No.55/2019 filed by respondent no.1 against the applicant and the respondent nos.2 and 3 and pending in the Court of Civil Judge, Junior Division, Shrirampur to a Court of Civil Judge, Junior Division, at Aurangabad.

3] The learned advocate for the applicant submits that the respondent no.1 has filed the Suit at Shrirampur being the Court of competent jurisdiction. However, the applicant is the daughter in law of the respondent no.1. Her husband was suffering from HIV and died in the year 1996. Subsequently even she has become a victim of HIV and currently has been staying in Aurangabad and undergoing treatment in the Government Medical College and Hospital at Aurangabad. She is unable to undertake travel between Aurangabad and Shrirampur. There is no one else in her family to pursue the litigation. She has been taking the treatment at Aurangabad since the year 2006. The papers have been produced to substantiate her such version regarding the ailment. There is no ulterior motive in seeking transfer of the Suit to Aurangabad. It is only because of her serious ailment and inability to commute that she is seeking transfer. The Suit pertains to immovable property and may be transferred to Aurangabad.

4] The learned Senior Advocate Mr.Sapkal strongly opposes the application. He submits that merely because it would be convenient for the applicant the Suit cannot be directed to be transferred to Aurangabad. Her request is also not *bona fide*. She has stated the place of her parental home to be Wakala, Tq.Vaijapur, Dist.Aurangabad. In the medical certificate (page 28) submitted by her she has stated her address to be "Wakala, Tq.Vaijapur,

District Aurangabad". He would further submit that even accepting the version of the applicant, she does not have any permanent place of residence at Aurangabad and it is not sure if she would continue to stay in Aurangabad. He would submit that hypothetically it is just possible that she may migrate from Aurangabad and in that eventuality, there is just possibility that she may thereafter seek to transfer the Suit elsewhere as well for the self-same reason. He therefore, submits that since the dispute is not in the nature of a matrimonial dispute, it would not be appropriate to transfer the Suit from the place where the Court has jurisdiction to a place where the Court will have no jurisdiction but for the order of transfer to be passed. The learned advocate then refers to the decision of this Court in the case of Smt.Rekha wd/o Late Avinash Raut V/s Shivaji Bhimrao Sapate; 2011(3)All MR 279 and particularly the observations in paragraph no.5 which read as under :

"5] Section 24 of the Code of Civil Procedure confers a discretionary power upon this Court to transfer the proceedings pending in one subordinate Court to another subordinate Court. It has to be exercised keeping in view the facts and circumstances of each case. The same cannot be exercised *ipse dixit*. The transfer of proceedings, which are filed in the Court of competent jurisdiction, defeats the right of *dominus litis* to choose the forum. While deciding the application, the Court has to balance the convenience by taking into consideration relevant facts and circumstances and to see that the greater hardship is not caused by transfer of proceedings. Mere convenience of the parties or of any one of them may not be enough for exercise of power, but it must

also be shown that the forum chosen by the other side will result in denial of justice. The choice of forum should not be to cause inconvenience to the adversary with a view to deprive that party of a fair trial. The power is to be exercised in the interest of justice. The cases of transfer of matrimonial proceedings stand on a little different footing in view of the special provision for transfer of petition under Section 21-A of the Hindu Marriage Act, 1955. There also, the payment of to and fro expenses for travel for attending the matter by the wife is one of the important considerations for refusal to transfer. "

The learned Senior Advocate would submit that in a similar set of circumstances when a proceeding pending at Latur was sought to be transferred to Nagpur on the ground that the applicant therein was in employment of M.S.R.T.C. and was transferred from Latur to Nagpur. He would submit that the proceedings under Section 24 of the Code of Civil Procedure cannot be transferred just because it would be convenient for one of the parties.

5] I have carefully gone through the papers. At the outset it is necessary to observe that the respondents particularly the respondent no.1 has not filed any affidavit in reply and consequently the facts averred in the application go without any demur and will have to be accepted.

6] The petitioner is a woman aged 45 years. Her husband has died in the year 1996 having been contacted with AIDS. Even the applicant is now

suffering with the same disease since the year 2006 and has been taking treatment therefor as can be seen from the copies of the papers of the Government Medical College and Hospital, Aurangabad.

7] One need not delve much as to the plight which has to be faced by a person suffering from such deadly virus.

8] The respondent no.1 is a woman aged 66 years who has filed Regular Civil Suit No.55/2019 in the Court of Civil Judge at Shrirampur seeking declaration that after demise of the husband of the applicant on 3/2/1996, by virtue of Mutation Entry no.5207 only the name of the applicant was mutated when even the respondent no.1 being heir of the deceased was entitled to have her name mutated to the 1/4 share to the extent of 1 Hectare 73 Are from the Suit property. It is thus quite clear that the respondent no.1 is claiming a share in the property inherited by the applicant from her husband. I do not intend to go into the merits.

9] The husband of the applicant has died in the year 1996 whereas the respondent no.1 has chosen to file the Suit in the year 2019. Conspicuously, as can be seen from the averments in the plaint of the respondent no.1 she has arrayed her other two sons as respondent nos.2 and 3 stating that they were being arrayed merely as formal parties and she had no claim against them. There is no record to show that the respondent no.1 is separate from her other two sons. Rather all of them are stated to be residents of the same village. I am pointing this out so as to emphasize that though the respondent no.1 is an aged lady, she has assistance of her two sons who are aged more than 40 years. Conversely the applicant does not have anybody who would look after

her welfare albeit she is also aged 45 years and is suffering from the dreaded illness.

10] True it is that a party cannot be allowed to chose a forum much less on the ground of convenience. It is true that the Court of Shrirampur has a territorial jurisdiction which the Court at Aurangabad would be lacking unless the matter is transferred to it in the present proceeding. As has been observed in the case of Rekha Avinash Raut (supra) convenience alone could not be a ground for transfer of a Suit. It is also a fact that there is no assurance that the applicant would continue to stay in Aurangabad. But then the aforementioned circumstances are peculiar and clearly demonstrate that the applicant is suffering from a serious illness which would make her difficult to commute between Aurangabad and Shrirampur which are the places atleast 75 Kms. apart. Whereas the respondent no.1 with the help of respondent nos.2 and 3 who are her sons would be able to prosecute the Suit even in the Court at Aurangabad without much difficulty.

11] In view of above, the discretion vested in this Court under Section 24 of the Code of Civil Procedure deserves to be exercised in favour of the applicant. However, necessary precaution needs to be taken to obviate any further leverage being taken by the applicant while defending the Suit at Aurangabad. Keeping in mind this fact the application is disposed as under :

[I] The application is allowed.

[II] The Regular Civil Suit No.55/2019 pending on the file of Civil Judge, Junior Division, Shrirampur, Dist.Ahmednagar is transferred to the

Court of Civil Judge, Junior Division, Aurangabad to be tried and decided on its own merits from the stage at which it has reached. All the parties shall appear before the Court of Civil Judge, Junior Division, Aurangabad on 1/10/2020 and there shall be no need for the Court at Aurangabad to issue any notice to the parties.

[III] The applicant shall furnish an undertaking before the Court at Aurangabad that any further service of process of the Court to her on her Cell Phone by way of text message and the address of her parental home at Wakala, Tq.Vaijapur, Dist. Aurangabad shall be treated as due service and she will not raise any objection on that ground and that she will not cause any deliberate delay in conduct of the Suit.

[MANGESH S. PATIL, J.]

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