

21.04.2021.
Item No. 10

(Via Video Conference)

C.O. 4618 of 2006

Sm. Manjushree Sarkar and another.
Vs.
Sm. Gitashree Sarkar and others.

Mr. Partha Pratim Roy,
Mr. Soumyajyoti Sen.
... for the petitioners.

Mr. Shibaji Kumar Das.
... for the opposite party no. 1.

Mr. Sibasis Ghosh.
... for the opposite party nos. 3, 4 & 5.

This is an application for transfer of a partition suit being Title Suit No. 99 of 2006 pending before the learned Civil Judge (Senior Division) at Bankura to any appropriate court situated in Kolkata or Hooghly.

The opposite parties immediately after receiving the summons of the suit have filed the present application for transfer. This transfer application, however, is pending before this Court for about a decade and half.

The case made out in the transfer application is that the distances between Bankura and the residential addresses of the petitioners are about 200 to 250 kilometers and the petitioners being aged housewives it might not be physically possible for them to undertake such a long journey to attend the court at Bankura. The petitioners expressed their apprehension that their life would be at stake in Bankura if they appeared before the court at Bankura to contest the suit.

Mr. Partha Pratim Roy, learned Advocate appearing on behalf of the petitioners, submits that a

probate proceeding between the same parties concerning the selfsame suit properties is pending before the learned Additional District Judge, Srerampore. If the present suit for partition is transferred to the said court and heard analogously, it will be convenient for all and conflicting decisions can also be avoided. He further submits that the grounds taken in this application for transfer still subsist and, as such, this application for transfer should be allowed.

Mr. Shibaji Kumar Das, learned Advocate, appears on behalf of the opposite party no. 1 and supports the case of the petitioners. It is also the case of the opposite party no. 1 that for convenience of all the parties the probate proceeding pending before the learned Additional District Judge, Srerampore and this partition suit should be contested before the same court.

Mr. Sibasis Ghosh, learned Advocate appearing on behalf of the opposite party nos. 3, 4 and 5, submits that after receiving the summons of the suit, the petitioners entered appearance and contested the suit by filing written statement. Suggested issues have also been filed by the respective parties. He further submits that the grounds taken in the application for transfer about fifteen years ago do not subsist at present. He prays for dismissal of the transfer application.

It appears that the hearing of the suit though has not yet commenced, the suggested issues have been filed by the parties. The grounds taken in this application for transfer do not appear to be convincing because even after filing this application for transfer the petitioners have contested the suit by filing written statements and there is nothing to show

that they were in any way prevented by the petitioners from contesting the suit.

The suit properties are situated within the jurisdiction of the court at Bankura and Mr. Ghosh is right in submitting that in the event the suit is decreed in preliminary form at the time of Commissioner work, the parties again will have to come to the suit property for effecting the partition.

I also do not see any reason to direct the analogous hearing of the probate proceeding pending before the Srerampore Court and this partition suit in this application for transfer since the said facts have not been pleaded in this application. The said ground has been advanced only at the time of hearing. Transfer on that score cannot be as a matter of course. It is for the parties to take out application for analogous hearing of the said two proceedings, if they are so advised.

In transferring a case, the convenience of all the parties has to be looked into. An order of transfer under Section 24 of the Code of Civil Procedure can be passed only when the grounds are strong enough to transfer the suit to a court which otherwise has no jurisdiction to try the suit. The parties are siblings. Brothers/opposite parties are also now advanced in age and if the suit was transferred they would find no less hardship in travelling from one district to another as would the petitioners.

I am of the opinion that in this transfer application no such ground has been made out so as to justify the transfer of the partition suit to any other court.

Since the suit is pending for long time, it is expected that the trial court shall dispose of the suit as expeditiously as possible though no peremptory

direction is given in view of the prevalent pandemic situation.

With these observations, CO 4618 of 2006 is disposed of.

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(Kausik Chanda, J.)