

HIGH COURT OF ORISSA: CUTTACK

TRP(C) No.242 of 2020

(An application under Section 24
of the Code of Civil Procedure, 1908)

Prativa Manjari Dash @ Sarangi ...

Petitioner
(In person)

-versus-

Leelabati Mohanty and another ...

Opposite Parties

Mr. Prafulla Kumar Rath, Advocate
(For Opposite Party Nos. 1 and 2)

Date of Order: 26.07.2022

CORAM:
JUSTICE KRUSHNA RAM MOHAPATRA

ORDER

K.R.MOHAPATRA

1. This matter is taken up by virtual/physical mode.
2. This application under Section 24 of the Code of Civil Procedure, 1908 has been filed for transfer of CS No.97 of 2015 pending before learned Senior Civil Judge (LR), Baripada to the Court of learned Civil Judge (Senior Division), Balasore for adjudication.
3. Petitioner, who appeared in person, submitted that the suit property stood recorded in the name of her father, namely, late Ratnakar Sarangi. After death of her husband, she left the Government Quarters and started residing in the said house situated at Ward No.19, Balarampur, Baghara Road in Baripada town along with her widowed mother. Due to a dispute in respect of the title of the property, she filed CS No.97 of 2015, which is pending before

Senior Civil Judge (LR), Baripada. Taking advantage of the recording of the property in his name, her elder brother created disturbance in her peaceful possession in the residential house. Hence, she was constrained to file the aforesaid suit. Learned Senior Civil Judge also finding a fair case in favour of the Petitioner passed an order of *status quo* in IA No.17 of 2015 in the aforesaid suit. When the matter stood thus, the Petitioner had been to Dehradun on 21st March, 2020 to attend her son, who was hospitalized, keeping the portion she was residing under lock and key. But taking advantage of her absence, the Opposite Party No.2 with the help of his brother-in-law initially demolished the first floor of the house and thereafter demolished the entire building, when the order of *status quo* was in force. On her return from Dehradun, the Petitioner finding no residential accommodation and constant threat of the husband of Opposite Party No.1 along with their henchmen had to leave Baripada and stayed at her cousin's residence at Balasore. The Petitioner does not have any residential accommodation at Baripada. She does not have any sufficient means to take on rent a house and also does not feel safe to stay there alone due to constant threat of Opposite Party No.1 and her husband.

4. It is her submission that the Defendants to the suit are influential persons of Baripada and are not allowing the Petitioner to take steps for early disposal of the suit. In view of the above, interest of justice will be best served if the suit is transferred to any competent Court situated in Balasore town. In support of her case, she relied upon a decision in the case of ***Deepika Maharana Vs. Prasanna***

Maharana @ Prasanna Kumar Maharana, reported in 94 (2002)

CLT 168 in which it is held as under:

“....The Code of Civil Procedure has, therefore, vested a discretionary power on the High Court to transfer the case from one court to another, if that is considered expedient to meet the ends of justice. Thus, the paramount consideration while dealing with a petition under Section 24 of the Code of Civil Procedure must be to see that justice according to law is done. If for achieving that objective the transfer of a case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff.”

- 4.1. She further relied upon the case of **Dr. Subramaniam Swamy Vs. Ramakrishna Hegde**, reported in AIR 1990 SC 113, wherein the Hon'ble Supreme Court held as under:-

“....If the ends of justice so demand, the case may be transferred under this provision notwithstanding the right of dominus litis to choose the forum and considerations of plaintiff's convenience, etc., cannot eclipse the requirement of justice. Justice must be done at all costs, if necessary by the transfer of the case from one Court to another.....”

- 4.2. She also relied upon voluminous documents to show that she has been constantly deprived of her legal right. It is her submission that even though Opposite Party No.1 is a lady, but she has sufficient means and persons to support her both physically and financially. The Petitioner is a destitute lady. Unless the suit is transferred to any competent Court situated at Balasore town, she will not be in a position to contest the suit filed to establish her legal right over the property.
5. Mr. Rath, learned counsel by filing counter affidavit on behalf of Opposite Party No.1, refuted the submission made by the

Petitioner. It is his submission that the petition under Section 24 CPC has been filed to drag the litigation and to harass the Opposite Party No.1. He further submitted that on an application made by the Petitioner before learned District Judge, Mayurbhanj at Baripada, the suit was once transferred from Additional Senior Civil Judge, Baripada vide order dated 13th November, 2020 to the Court of learned Senior Civil Judge (LR), Baripada. He refuted the submission that the Opposite Parties entered into the house of the Petitioner on 17th August, 2020. The FIR stated to have been lodged (Annexure-2) does not whisper a single allegation against the Opposite Party No.1. It is his contention that the Petitioner is being represented by her learned counsel, who is diligently taking step on her behalf. Hence, she is not required to attend the Court on each date of posting of the suit. She need not also come to Court to lead evidence as she could be examined by deputing a Commissioner at the cost of Opposite Party No.1. Inconvenience, if any, of the Petitioner cannot entitle her to seek for transfer of the suit to her place of convenience by putting others in inconvenience. The Petitioner of her own choice filed the suit, i.e., CS No.97 of 2015 at Baripada. She has also filed different proceedings at Baripada and is pursuing the same diligently. Thus, the suit should not be transferred to suit the convenience of the Petitioner putting other Defendants/Opposite Parties including the Defendant /Opposite Party No.1 into inconvenience, who is also a lady. Property in question situates at Baripada and the Defendants are residing at Baripada.

5.1 Mr. Rath, learned counsel for the Opposite Parties also made elaborate submission as to how the Opposite Party No.1 acquired title over the property. It is his submission that the order of *status quo* passed in IA No.17 of 2015 was challenged in FAO No.17 of 2015. In that view of the matter, the mutation case, i.e., Mutation Case No.1732 of 2014 filed by Opposite Party No.1 was dropped. However, the Opposite Party No.1 again applied for mutation of the suit land in her name in Mutation Case No.2442 of 2019 and the Tahasildar, Baripada following due procedure of law has directed to mutate the land in her name. Accordingly, ROR has already been published in the name of Opposite Party No.1 (Annexure-H/1 to the counter). However, the said order passed by Tahasildar, Baripada was assailed by Opposite Party No.3, namely, Sunil Kumar Sarangi in Mutation Appeal No.21 of 2020 after lapse of period of limitation. The Appellate Authority, without considering the issue of limitation, allowed the appeal and directed to correct the ROR accordingly. Assailing the said order, Opposite Party No.1 filed W.P.(C) No.34692 of 2020, which was disposed of vide order dated 11th December, 2020 with the following observation:-

“In course of hearing, Mr. Rath, learned counsel for the petitioner submits that the petitioner has a statutory remedy under Section 32 of the Orissa Survey & Settlement Act, 1958 (for short ‘the Act’) to assail the said order. Hence, he prays for withdrawal of the writ petition seeking liberty to assail the impugned order before the revisional authority under Section 32 of the Act.

Granting such liberty, this writ petition is disposed of as withdrawn.

However, it is directed that the impugned order shall be kept in abeyance for a period of fifteen days, in order to enable Mr. Rath, learned counsel for the petitioner to file the revision”.

- 5.2 He further submits that due to pendency of the suit filed by the Petitioner, Opposite Party No.1, who has valid title over the property in question, is being deprived to enjoy the same independently. He therefore submits that the TRP(C) as laid down, is not maintainable and is liable to be dismissed.
- 5.3 In support of his case, Mr. Rath placed reliance upon a decision in the case of **Dr. Brajabandhu Mishra Vs. Dr. Gopikrushna Panda**, reported in 2014 SCC OnLine Ori 121, this Court observed as follows:-

“6. In the case of Benudhar Swain v. Nilamani Swain, 2005 (II) OLR - 509, transfer of case under Section 24 of the C.P.C was sought for from the Court of Civil Judge (Sr. Division), Puri to the Court of Civil Judge (Sr. Division), Angul on the ground that bulk of properties are situated at Angul and the petitioners being old retired persons, it is inconvenient on their part to travel to Puri and contest the lis. This Court relying on Om Prakash Agarwala's case (supra) negated the prayer for transfer on the ground that only to suit the convenience of a party, the other party should not be put to inconvenience. It was further held that the Court, while considering a petition for transfer, should always keep in mind that the plaintiff has the choice of his forum so long as the suit is not subject to the defect of want of local jurisdiction. Regarding inability of a party to travel to the Court for adducing his evidence, this Court further held that such a person can be examined on Commission, if so required”.

6. Heard learned counsel for the parties; perused the materials on record including the case laws cited.
7. Admittedly CS No.97 of 2015 is pending for adjudication in the Court of learned Senior Civil Judge (LR), Baripada. The suit has been filed for title and consequential relief. It also appears that an order of *status quo* has been passed in the said suit in IA No.17 of 2015, which is in force till today. Learned counsel for the

Petitioner, however, submitted that during continuance of the order of *status quo*, the Opposite Party No.1, taking advantage of her (Petitioner's) absence at Baripada, entered upon the suit land on 17th August, 2020 and caused damage to the building by breaking open the main gate and subsequently they demolished the house. The said allegation was, however, refuted by Mr. Rath, learned counsel for the Opposite Party No.1. It is also alleged that a FIR was also lodged. It is also not disputed that before demolition of the house, the Petitioner was staying in the said residential house (suit property) along with her widowed mother and children. After death of her mother also she was staying in that house alone, as her son is serving at Dehradun. From the above, it is however not clear as to how the suit house was demolished during subsistence of order of *status quo*. That is of course, a matter to be considered by the learned trial Court, if an application to that effect is filed. But the fact remains that the residential house of the Petitioner has already been demolished and it is not disputed that the Petitioner is staying at Balasore in her cousin's house. The allegation and counter-allegation makes it amply clear that there is a serious dispute with regard to title over the property between the siblings including the present Petitioner. It also appears from the case record that the Petitioner had in recent past pursued matters in different Courts and authorities at Baripada, but the fact remains that the Petitioner could not have raised those disputes and/or lodged FIR at any place other than Baripada in view of the nature of allegations/disputes involved therein. There is no material on record to show that the Petitioner has any residential accommodation at Baripada. Fact

remains that she is a destitute lady and is residing at Balasore with her cousin. There is also allegation that she is receiving constant threat from the side of Defendant No.1 and her henchmen. That is of course, the matter of investigation by a competent authority.

8. As discussed earlier, law is well-settled that a suit/proceeding cannot be transferred on the ground of inconvenience to a party putting the other into inconvenience. In the instant case also, the Petitioner by choice has filed the suit at Baripada, but at that juncture the Petitioner might not have any idea about her being homeless. It is also apparent that the Defendants/Opposite Parties have their respective residence at Baripada save and except the Petitioner.

8.1. In view of ratio in the case of ***Dr. Subramaniam Swamy (supra)*** there remains no iota of doubt that Section 24 CPC is a discretionary relief. Court while granting/refusing such relief must exercise its discretion judicially keeping abreast the facts and circumstances of the case. A suit can be transferred if it is imperative for the ends of justice. Mr. Rath, learned counsel for the Opposite Party Nos. 1 and 2 in course of his argument submitted that Opposite Party No.1 is also a lady and it will be difficult on her part to go to Balasore and contest the suit, in the event the suit is transferred. This submission although sounds reasonable, but in the instant case, there is no allegation of threat on Opposite Party No.1 by the Petitioner save and except the allegation that the Petitioner has filed the litigation to harass Opposite Party No.1. Threat of life and limb, although a matter of investigation, is a ground for consideration, while exercising discretion under Section 24 CPC. In the instant case, the

residential house (suit house) in which the Petitioner was residing was demolished apparently during subsistence of order of *status quo* and thereby making the Petitioner homeless at Baripada. Adding to it, the Petitioner is a destitute lady. Thus, in my considered opinion, the inconvenience will be more for the Petitioner, if the suit is not transferred to Balasore. In the facts and circumstances of the case, the ratio of ***Dr. Brajabandhu Mishra (supra)*** has no application to the case at hand. The contention of Mr. Rath, learned counsel for Opposite Party No.1 that the Petitioner could be examined by deputing a Commissioner is also equally applicable to Opposite Party No.1, if the suit is transferred to any competent Court at Balasore.

9. In view of the above, this Court feels that it is a fit case where the judicial discretion should be exercised to transfer the suit from Baripada to a competent Court at Balasore town, which would meet the ends of justice. Accordingly, the TRP(C) is allowed. CS No.97 of 2015 is hereby directed to be transferred to a competent Court at Balasore town to be determined by learned District Judge, Balasore.
10. In the event an application is filed by the Petitioner within a period of fifteen days hence along with certified copy of the impugned order, learned District Judge, Balasore shall do well to consider the same and consign the case record to a competent Court for adjudication.

Urgent certified copy of the order shall be granted on proper application.

(KRUSHNA RAM MOHAPATRA)

JUDGE