

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Misc. Civil Application (Tr.) No.390/2021

Adishree Karle thr its Natural Guardian mother Rupali V Shenphad Karle and others

Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr. Tejas Deshpande, Adv. for appellants.
 Mr. A.J. Thakkar, Adv. for respondents.

CORAM : AVINASH G GHAROTE, J.
DATE : 09-12-2022

. The application seeks transfer of RCS No. 124/2020, a suit for partition and separate possession, filed by the applicant no.2, in respect of the properties in which her late husband is claimed to have a share, to the competent Court at Wardha, on the ground, that after the demise of the husband of the applicant no.2, his family members have driven away the applicants from the matrimonial house, as a result of which, she is forced to take shelter with her parents at Wardha. It is also contended, that the applicant no.2 is suffering from 100% permanent visual impairment in both the eyes, as per the disability certificate issued by the Disability Medical Board Wardha, dated 24/6/2013. It is thus submitted, that it is practically impossible for the applicant no.2 to travel to Chikhali from Wardha for the prosecution of the suit filed by her and therefore, a transfer is sought at Wardha, where she is residing with her parents.

2. In support of the transfer, Mr. Deshpande, learned Counsel for the applicants placed reliance upon the Full Bench judgments of the Hon'ble Apex Court in the case of **P. Madhavan Unni Vs. Jayapandia Nadar (AIR 73 Madras 2)** and **Church of South India Trust Association Vs Telugu Church Council (1996) 2 SCC 520**).

In the case of **Church of South India Trust Association** (supra), the Hon'ble Apex Court has considered the position 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 non 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] "

3. Learned Counsel for the respondents opposes the transfer contending that since the immovable property which is the subject matter of the suit is situated at Chikhali, where the suit has been instituted, any other Court would not have the territorial competence to try the suit, therefore, the transfer is impermissible as it would violate the requirement of Section 16 of the Civil Procedure Code (CPC). He places reliance upon the judgment of the Hon'ble Apex Court in **Syndicate Bank Vs. K. Gangadhar and others (AIR 1992 Karnataka 163)**, in support of his judgment.

4. The institution of a suit, in view of the language of Section 16 of the CPC has to be in the Court within the local limits of whose jurisdiction the property is situated, which in this case, is the court of Civil Judge Junior Division, Chikhali.

5. Section 24 of the CPC, is the general powers of the Court of transfer and withdrawal and Section 24(1)(a) permits the transfer of any suit, appeal or other proceedings pending before it for trial or disposal to any other Court subordinate to it and competent to try or dispose of the same. The expression “competent to try”, as occurring in Section 24 (1)(a) has been interpreted by the learned Full Bench of the Madras High Court, as it then was, to mean to have a reference to pecuniary jurisdiction

only, and rightly so, for the reason that if the competency of the Court, as occurring in Section 24 (1)(a) of the CPC is related to the territorial jurisdiction, the entire section would become redundant, inasmuch as, the Court, would not be empowered then, to transfer any suit or proceedings out of the territorial limits of the jurisdiction of the Court in which it was instituted. The provisions of Section 24 of the CPC are the general powers of transfer and withdrawal and therefore, must be held to have an overriding effect over the provisions of Section 16 of the CPC, to make the provisions of Section 24 workable and effective, which can only be done by relating to the competency of the Court as occurring in Section 24 (1)(a) to the pecuniary jurisdiction and not otherwise.

6. Learned Single Judge of this Court in **Sia Virendra Kamat Vs Virendra Damodhar Kamat (2021 SCC Online Bom 5397)** though in the context of a matrimonial dispute, has held as under :-

"13. Considering the object with which Section 24 is incorporated in CPC thereby empowering the High Court to order transfer of the proceedings within State/its jurisdiction, it cannot be said that this Court cannot exercise the jurisdiction for ordering the transfer of the matter from Court at Goa to Court at Bombay merely because the laws by which the proceedings are regulated has no applicability in Mumbai. It can be noticed that Section 24 carves out an exception to the territorial jurisdiction. The

convenience and hardship of wife in the matrimonial proceedings is of importance while considering the prayer for transfer.

14. If we refer to Section 22 of the Code of Civil Procedure, 1908 same empowers the Court to transfer proceedings which may be instituted in more than one Court. While exercising jurisdiction under Section 24, it has to be ensured that the Court to which the proceedings are ordered to be transferred has jurisdiction to try the said suit or proceedings."

7. It is also material to note that the judgment in the case of **Syndicate Bank** (supra) relied upon by Mr. Thakkar, learned Counsel for the respondents has been held in **Mabel Treeza Pinto Vs Francis Pinto (2005) 7 SCC 761**) to have not been correctly decided.

In the case of **Mabel Treeza Pinto** (supra), in paragraph 8, the Hon'ble Apex Court has held as under :

"8. The decision of the learned Single Judge of the Karnataka High Court in Syndicate Bank v. K. Gangadhar (AIR 1992 Kant 163 : 1992 (1) Kant LJ 497) which was based upon Section 24 of the Code of Civil Procedure, does not appear to be correctly decided. The High Court, therefore, erred in rejecting the application for transfer on the ground of its inability to transfer a proceeding from Mangalore to Bangalore.

8. This being the position and considering the

peculiar circumstances in the present matter of the applicant no.2, who is suffering from the disability of visual impairment in both the eyes, I do not see that Section 16 of the CPC would act as a bar in transferring the proceedings to the Court at Wardha entrusted with the pecuniary jurisdiction to entertain and try the suit.

9. Considering the above discussion, the application is allowed and RCS No 124/2020, pending on the file of the Civil Judge Junior Division, Chikhali, is hereby transferred to the Court of Civil Judge Junior Division, Wardha. The parties shall appear before the Civil Judge Junior Division, Wardha on 19-12-2022 and shall place a copy of the order before the learned Court to apprise him of the same.

10. The respondents shall appear before the Civil Judge Junior Division, Chikhali on 15-12-2022 and place a copy of this order before the learned Court to apprise it so as to enable him to transfer the record and proceedings to the Court of Civil Judge Junior Division, Wardha.

11. Application is allowed in the above terms. No costs.

JUDGE