

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.691 of 2022**

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Kundan Kumar @ Kundan Kumar Singh @ Kundan Singh S/o Hira Singh,
R/o Ward No. 08, Sanhauli, P.S. Chitragupta Nagar, District Khagaria.

... .. Petitioner/s

Versus

1. Rajeev Prasad, S/o Krishnanand Prasad, R/o Village and Post Sanhauli, P.S. Chitragupta Nagar, District Khagaria.
2. Mani Devi, W/o Balbhadra Singh, R/o Village Madhavpur, P.S. Parwatta, District Khagaria.
3. Ranjit Kumar, S/o Vishnudev Mandal, R/o Village and Post Sanhauli, P.S. Chitragupta Nagar, District Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harsh Singh, Advocate
For the Respondent/s : Mr. Rajesh Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

5 10-02-2023 Heard learned counsel for the parties.

2. This Application under Article 227 of the Constitution of India has been filed for setting aside the order dated 31.08.2022 passed in Miscellaneous Transfer Case No. 11/2022 by which the learned District Judge, Khagaria has rejected the Miscellaneous Application preferred by the Petitioner under Section 24 of C.P.C. for transfer of T.S. No. 22/2017 from the Court of Sub Judge 2, Khagaria.

3. The relevant facts in this case, in brief, are that plaintiff/respondent No.1 filed a suit bearing Title Suit No. 22 of 2017 in the Court of learned Munsif for declaration of his right, title and interest over the suit land. The petitioner, on his



application for impleadment under Order 1 Rule 10(2) C.P.C., was directed to be joined as defendant No. 3. The plaintiff filed an application for withdrawing the plaint and the petitioner also filed an application under Order 23 Rule 1 A and Order 1 Rule 10 read with Section 151 C.P.C. seeking his transposition as the plaintiff while arraigning the plaintiff as a defendant in the suit. The said applications are pending before the learned trial Court.

4. The claim of the petitioner is that he is the title holder of suit land and his family is in possession on the same. The allegation of the petitioner is that the suit is collusive and the learned trial court has not passed any order till date on the application of the petitioner for his transposition as plaintiff and the learned trial court has stated in open court that he would allow the application for withdrawing the plaint by plaintiff. The petitioner preferred an application under Section 24 C.P.C. vide Miscellaneous Transfer Case No. 11/2022 before the learned District Judge, Khagaria for transfer of T.S. No. 22/2017 from the Court of learned Sub-Judge-2, Khagaria on the ground of apprehension of biasness which has been rejected vide the impugned order dated 31.08.2022.

5. Learned counsel for the petitioner submits that the trial court has not passed any orders on applications filed by the



petitioner despite the same being pressed which gives reasonable apprehension of biasness of the Presiding Officer of the Court. He further submits that the learned District Judge, Khagaria without going into the merits of the transfer application rejected the said application vide the impugned order which is liable to be set aside.

6. On the other hand, learned counsel for the respondents submits that to delay the proceeding the petitioner filed the transfer petition on frivolous ground having no merit and the learned District Judge, Khagaria has passed the appropriate order which requires no interference by this Court in its supervisory jurisdiction.

7. Having heard the learned counsel for the petitioner and on perusal of the impugned order, it appears that earlier the trial court record was transferred from the Court of Sub-Judge-I, Khagaria on allegation petition and presently the suit is pending in the Court of Sub-Judge-II, Khagaria and there are only two Courts of Sub-Judge and the Presiding Officer of Sub-Judge is the same when the case record was transferred from that Court. The District Judge, Khagaria found no merit in the transfer petition and rejected the same.

8. Mere suspicion by the party that he will not get



justice would not justify transfer of case. There must be a reasonable apprehension to that effect. It appears that now-a-days it has become common feature to make allegation against the Presiding Judge of the Court. Introducing fanciful and imaginary allegation as grounds of transfer of the case should always be deprecated.

9. The mere observations of Presiding Officer of the Court while hearing a case does not mean that he has made up mind in a particular manner so as to justify an allegation of bias against such Presiding Officer and this would not justify transfer of case from one Court to another Court. A judge is not expected to remain silent and not express any opinion. There has to be effective discussion and effective attempt to clarify the misunderstanding or to get issues clear so that the issues can be settled or a just and proper decision can be arrived at. If in the process the Presiding Officer of the Court make a statement it should not be misunderstood as an expression of decision. The foundation of our judicial system is based on the independence and impartiality of the men having responsibility to impart justice that is Judicial Officers. If their confidence, impartiality and reputation is shaken, it is bound to affect the very independence of judiciary.



10. In the present case, I do not find any ground to transfer the suit from the Court concerned and the learned Court below rightly rejected the prayer to transfer the suit and this application has no merit and liable to be dismissed. I find no reason to interfere with the impugned order.

11. Accordingly, this Civil Miscellaneous Application is dismissed.

(Sunil Dutta Mishra, J)

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