

S/L 208
20.02.2023
Court No.652
SD

CO 2595 of 2022

Sankari Dey
Vs.
Malati Dey & Anr.

Mr. Supratik Shyamal
Mr. Sukumar Nayek
Ms. Somosreedebi Dutta

...for the Petitioner.

Mr. Gourab Ghosh

...for the Opposite Party No.1.

Mr. Alokesh Dalai

...for the Opposite Party No.2.

This is an application under Section 24 of the Code of Civil Procedure at the instance of the petitioner seeking transfer of Title Suit No.27 of 2020 from the Court of learned Civil Judge (Junior Division), 2nd Court, at Contai, Purba Medinipur to the Court of learned Civil Judge (Junior Division), Uluberia.

The petitioner contended that the petitioner was married with the opposite party no.2 in the year 1982 according to Hindu Marriage Act which is a negotiated marriage and the petitioner is the only legally married wife of the opposite party no.2. She further submits that due to said wedlock one female child was born on 28.7.1986 and a male child was born on 22.01.1985.

In support of her marriage, she has submitted a marriage certificate dated 27.12.2019 stating that registration of marriage was effected on 19.4.1978. Court has perused the same and returned to the learned counsel for the petitioner.

The petitioner further submits that Execution proceedings in connection with proceeding initiated by opposite party no.1 under Section 125 of the Code of Criminal Procedure are pending in the court of Contai at Purba Medinipur. The opposite party no.1 herein claiming herself as the first wife of the opposite party no.2 has filed the present suit for declaration that the opposite party no.1 is the only legally married wife of the opposite party no.2 impleading the present petitioner as defendant no.2 in that suit and the said suit is pending in the court of learned Civil Judge (Junior Division), 2nd Court, Contai, Purba Medinipur.

The petitioner states that she is aged about 60 years and suffering from various old age ailments and she is not in a position to attend the said proceeding at Contai, Purba Medinipur, as she is also suffering from knee problem which prevented her to travel long distance and she cannot stand for more than 10 minutes and she has none to accompany her.

Moreover, the petitioner is leading her livelihood in tremendous hardship and not in a position to attend the court at Contai, Purba Medinipur. Accordingly, she is facing immense hardship due to knee problem in order to travel more than 200 kms. in both ways from Mahestala, Kolkata to Contai, Purba Medinipur, which involves about four hours journey. Accordingly, she has sought for aforesaid transfer.

Learned counsel appearing on behalf of the opposite party no.1 has raised vehement objection and contended that the opposite party no.2 has admitted during cross-

examination in Misc. (P) Case No.5 of 2015 that it is a fact that he married for the second time after getting employment and that wife resides at Kolkata.

He further submits that petitioner has stated that she resides with opposite party no.2, then it is incorrect to say that she has none to accompany her in her way to Contai Court and as such, she is not at all helpless and has no ground to seek for aforesaid transfer, which is liable to be rejected.

In *Kwninder Kaur vs. Kandi Friends Education Trust and Others* reported in (2008) 3 SCC 659, the Apex Court has laid down certain broad proposition as to what may constitute a ground for transfer. There are balance of convenience or inconvenience to the plaintiff or the defendant or witnesses, convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit, issues raised by the parties, reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending, important questions of law involved on a considerable section of public interested in the litigation, “interest of justice” demanding for transfer of suit, appeal or other proceeding, etc.

Given the prevailing socio-economic paradigm in the Indian society generally it is the wife’s convenience which are looked at, while considering transfer. Here both petitioner and opposite party no.1 are claiming themselves as only wife of opposite party no.2. So the nature of suit

suggests that main contestant defendant as well as principal witness in the suit is opposite party no.2 herein.

Considering the facts and circumstance of the case and the nature of dispute involved in the present case convenience and inconvenience of both the parties in respect of place of trial, in terms of geographic location and transportation, I find that if the present suit is transferred to the court under the judgeship of the learned District Judge, Paschim Medinipur for trial, it will not cause much inconvenience to either of the parties.

In view of the above, learned District Judge, Purba Medinipur is hereby directed to withdraw the Title Suit No.27 of 2020 from the Court of learned Civil Judge (Junior Division), 2nd Court, Contai, Purba Medinipur and to transmit the case record to the Court of learned District Judge, Paschim Medinipur within a period of three weeks from the date of communication of the order, who in turn will transfer the suit to a competent court of Civil Judge (Junior Division) of Paschim Medinipur having pecuniary jurisdiction, to try the suit within a period of three weeks thereafter.

The transferee court shall give fresh notice intimating the next date of hearing upon both the parties before taking up further proceeding of the suit and the transferee court shall proceed with the suit at the stage where it reached till date.

Department is directed to send a copy of this order to the learned District Judge, Paschim Medinipur as well as the learned District Judge, Purba Medinipur immediately.

With these observations, C.O. 2595 of 2022 is disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)