

S/L 147
09.02.2023
Court No.652
SD

CO 2283 of 2021

Sumitra Rana & Ors.
Vs.
Srimatya Biva Rana & Ors.

Mr. Malay Bhattacharyya
Mr. S. Ghosh

...for the Petitioners.

Mr. Nilanjan Bhattacharjee
Mr. Abhilash Chatterjee
Mr. Saikat Dey

...for the Opposite Parties.

This is an application under Section 24 of the Code of Civil Procedure at the instance of the petitioners seeking transfer of Title Suit No.418 of 2021 along with all connected applications from the Court of learned Civil Judge (Senior Division), 3rd Court, Midnapore to any competent Court at Bishnupur, Bankura.

The petitioners contended that the petitioner no.1 was married to one Ashit Rana and they are blessed with two children who are minor. Unfortunately, on May 30, 2019 her husband died leaving behind herself and the two children as legal heirs. Petitioners submit that after the death of said Ashit Rana, the opposite parties, all of a sudden filed the aforesaid suit for partition in the court at Midnapore.

The petitioners further contended that from the schedule of the suit property to the plaint it appears that majority of the properties situate within the jurisdiction of Bishnupur Court. The petitioners further submit that the petitioner no.1 is alone and she has to take care of her two

school going child. She is a helpless lady and in order to maintain her family, she has to run a battery shop at her house.

Petitioners further submit that the opposite party no.1/plaintiff no.1 and opposite party no.4/plaintiff no.4 are permanent resident of Bishnupur which is reflected from the cause title of the plaint. She further submits that it is problematic for the petitioner to attend the said proceeding at Paschim Midnapore along with her minor children. In order to reach the court at Midnapore, the petitioner has to travel from her house to Bishnupur bus stand and therefrom she has to catch bus for Midnapore which takes 1½ hour and after reaching Midnapore bus stand, she has to reach Midnapore court by local transportation. Considering the aforesaid inconveniences faced by the petitioner no.1, she has sought for aforesaid transfer.

Learned counsel appearing on behalf of the opposite parties raised objection against aforesaid prayer contending that the plaintiff no.1/petitioner no.1 is an aged lady and from the averment of the plaint, it would appear that immediate after the death of said Ashit Rana, defendant no.1 along with her minor children left her matrimonial home and started severe oppressing behaviour upon plaintiff no.1 and 4 by her henchmen and in consequence, the plaintiff no.1 compelled to take shelter at the house of plaintiff no.2 at the Midnapore town and presently she is residing therein.

He further contended that the matter is so grave that the plaintiffs are very much afraid to stay at Bishnupur and

as such, if the aforesaid prayer for transfer is allowed, it would be prejudicial for their interest. He further submits that the quantum of land is not a determining factor for ascertainment of court's jurisdiction. Admittedly, the suit property situates within the jurisdiction of both Midnapore Court as well as within the jurisdiction of Bishnupur Court. Accordingly, he has prayed for dismissal of the aforesaid application.

Considered submissions made by both the parties.

In ***Kulwinder Kaur vs. Kandi Friends Education Trust & Ors.*** reported in **(2008) 3 SCC 659**, Apex Court has reiterated certain broad proposition as to what may constitute a ground for transfer in paragraph 23 of the judgment which runs as follow:-

“Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by courts. They 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 or a considerable section of public interested in the litigation; “interest of justice” demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the court feels that the plaintiff or the defendant is not likely to have a “fair trial” in the court from which he seeks to transfer a case, it is not only the power, but the duty of the court to make such order.”

On perusal of the schedule of plaint, it appears that the permanent address of plaintiff no.1 as well as plaintiff no.4 is at Bishnupur. On the contrary, as submitted by the

petitioner no.1 she is presently earning her livelihood from a battery shop at her house at Bishnupur and furthermore she has to look after two minor children.

As plaintiff no.4 admittedly resides at Bishnupur, on behalf of all the plaintiffs he can very well continue to proceed with the said partition suit in the event such prayer for transfer is allowed but in the event prayer for transfer is disallowed, the inconveniences likely to be faced by a woman going to another place for pursuing a suit for partition would be much more than the inconveniences that are likely to be faced by the plaintiff nos.2, 3 residing at Midnapore.

In view of the above, considering the balance of convenience and inconvenience to the parties, issues raised by the parties and that the plaintiff no.4 on behalf of all the plaintiffs can very well proceed with the suit in the event other plaintiffs failed to attend Bishnupur Court and that the petitioner is bringing up two minor children and engaged herself in a shop at her house at Bishnupur, the prayer made by the petitioner is allowed.

Accordingly, learned District Judge, Paschim Midnapore is hereby directed to withdraw the Title Suit No.418 of 2021 from the Court of learned Civil Judge (Senior Division), 3rd Court, Midnapore and to transmit the case record to the Court of learned District Judge, Bankura within a period of three weeks from the date of communication of the order, who in turn will transfer the same to the Court of learned Civil Judge, Bishnupur having jurisdiction to try the suit.

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.

The transferee court is requested to make every endeavour for expeditious disposal of the suit and to conclude the entire proceeding preferably within a period of one year from the date of communication of the order.

Department is directed to send a copy of this order to the learned District Judge, Paschim Midnapore as well as the learned District Judge, Bankura.

With these observations, C.O. 2283 of 2021 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.)