

S/L 305
21.3.2023
Court No.652
SD

CO 3809 of 2022

Tutu Mohammad & Ors.
Vs.
Shabnam Roze Chowdhury & Anr.

Ms. Suchitra Saha
Mr. Chowdhury Faruk Ali
Ms. Sharmila Basu

...for the Petitioners.

Mr. A.K. Das
Mr. A.F.M. Shamim
Mr. Imran Karim
Mr. A. Chatterjee
Mr. P. Jain
Mr. Julekha Mollah

...for the Opposite Parties.

Affidavit of service filed by the petitioners in court today be kept with the record.

This is an application under Section 24 of the Code of Civil Procedure seeking transfer of Title Suit No.136 of 2022 from the Court of learned Civil Judge (Junior Division), 1st Court, Rampurhat to the Court of learned Civil Judge (Junior Division), City Civil Court at Calcutta.

The petitioners contended that the said suit was filed by the plaintiffs with an intention to grab the share of the defendants to which the petitioners legally entitled. The oral heba cannot be deduced in writing since as per the Transfer of Property Act applicable to any property above Rs.100/- cannot be transferred by way of mere affirmation by notary public and has to be registered upon payment of proper stamp duties.

The petitioners in support of the prayer for transfer have contended that for attending the above suit by the date

fixed by the court at Rampurhat and to file petition in the concerned court, the petitioners have to come all the way from Calcutta to Rampurhat covering more than 226 kms. which is not possible for the petitioners to do alone.

The petitioners submit that the tadbirkar is not willing to act as tadbirkar any more. Hence huge expenses are involved if the petitioner has to travel to Rampurhat Court by car to attend and the petitioner is practically facing serious hardship to contest the suit and to go to Rampurhat to hold physical conference with the learned advocates. The distance from City Civil Court to her present residence is less than 10 kms. and as such, she has sought for aforesaid transfer.

Learned counsel appearing on behalf of the opposite parties raised strong objection contending that in the City Civil Court there exists no court in the rank of Civil Judge (Junior Division) and that if the prayer for transfer is allowed then he will be deprived from one appellate court's jurisdiction. He further submits that the suit property situates within Birbhum district and all the principal defendants and the witnesses are residing within Murshidabad district and as such, there is no justification in making the said prayer for transfer. Accordingly, he has prayed for dismissal of the application under Section 24 of the Code of Civil Procedure. In this context, he has relied upon decisions reported in (1990) 1 SCC 4, (1979) 4 SCC 167 and AIR 2023 SC 986.

Having considered the aforesaid facts and circumstances of the case and on perusal of the plaint, it appears that suit property situates within the district of Birbhum and the principal defendants are residents of district of Murshidabad. It is also submitted that major witnesses are also from that district who may be called to prove or disprove the impugned transaction. Cause of action also arose within district Birbhum and the suit was also filed in the court of the lowest grade competent to try, i.e., Civil Judge (Junior Division). Accordingly, so far as place of suit is concerned, plaintiff has duly complied section 15 and section 16, more specifically section 16(d) read with section 15 of the Code of Civil Procedure. Even section 20 of the Code also have no application in this case. The mere convenience of one of the defendant or defendants may not be enough for the exercise of power under section 24 of the Code, unless it is shown that trial in the chosen forum will result in denial of justice. Plaintiff being dominus litis of the suit has chosen the forum as per statute and when statute has created specific jurisdiction of court to try such cases, I find no justification in transferring the suit to a court who has neither territorial nor pecuniary jurisdiction. Moreover, there are three more defendants in this case and everyone must not have similar inconveniences in conducting the suit at Rampurhat Court. As such, I do not find any substance in the aforesaid prayer for transfer.

With these observations, C.O. 3809 of 2022 is dismissed.

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.)