

IN THE HIGH COURT AT CALCUTTA
Extra-ordinary Original Civil Jurisdiction
ORIGINAL SIDE

Present :-

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

ALP No. 2 of 2025

MANI SQUARE LIMITED & ANR.
VS
SRI SUBHASH KUMAR & ORS.

For the Petitioners	:	Mr. P. Chidambaram, Sr. Adv. Mr. Joydip Kar, Sr. Adv. Mr. Deepak Chowdhury, Adv. Mr. Pranit Bag, Adv. Mr. P. Goyel, Adv. Ms. Rituparna Chatterjee, Adv. Mr. D. Shah, Adv. Mr. K. Chowdhury, Adv. Ms. Sadia Sultana, Adv. Ms. Megha Yadav, Adv.
For the Respondent Nos. 1 to 5	:	Mr. Dhruba Ghosh, Sr. Adv. Mr. Krishna Raj Thaker, Sr. Adv. Mr. Shuvasish Sengupta, Adv. Mr. Souvik Majumdar, Adv. Mr. Annapurba Banerjee, Adv. Ms. Ajeya Chowdhury, Adv.
Hearing concluded on	:	20.03.2025
Judgment on	:	27.03.2025

Shampa Dutt (Paul), J. :

1. Petitioners case:-

The petitioners seek transfer of two pending suits namely Title Suit No.4 of 2023 (T.S. Com No. 48 of 2023) pending before the Learned Commercial Court at Alipore and Title Suit No. 469 of 2023 pending before the Learned 4th Civil Judge (Senior Division) to the Hon'ble High Court at Calcutta for joint adjudication under Clause 13 of the Letters Patent Act, 1865, read with Sections 24 and 151 of the Code of Civil Procedure, 1908 on the grounds that:-

- a) Both suits pertain to the same immovable property situated at 195, Picnic Garden Road, Kolkata-700039.
- b) The petitioners claim ownership and seek recovery of possession and mesne profits, while the respondents are continuing in illegal possession and claim ownership by adverse possession.
- c) The respondents' earlier claim of thika tenancy under the West Bengal Thika Tenancy Act, 2001, was finally decided against the respondents herein by the Hon'ble Supreme Court on 27th July 2022, affirming the petitioners' ownership. Despite this, the respondents have filed frivolous proceedings, including Title Suit No. 469 of 2023, as a counterblast. **Given the overlapping issues, identical parties, and shared subject matter, the**

petitioners seek transfer to avoid conflicting decisions, streamline adjudication, and ensure speedy resolution.

- d) Joint trial is essential to prevent further abuse of process and uphold the interests of justice. Hence, this application.

2. The respondents contesting such prayer have raised the following objections:-

- i. That clause 13 of the Letters Patent Act, 1865 is not applicable in the present case.
- ii. That an application filed by the respondents herein under Order 7 Rule 10 CPC is pending in the Suit before the Commercial Court and has to be disposed of first.
- iii. One of the suits being a commercial suit and the other an Original (title) Suit cannot be heard and decided together for want of a court having Jurisdiction to try both these suits.
- iv. There is no ground made out for the transfer of proceedings as prayed for.

3. The petitioners along with a list of dates, have relied upon the Judgment of the Supreme Court in *Kalidas Roy & Ors. vs University of Calcutta & Ors.*, 1951 SCC OnLine Cal 170, (Para 12 & 13), wherein it has been held:-

“12.Objective tests:—

(1) That the case involves difficult points of English Law, (1880), Doucett v. Wise [1880] 1 All ER 1111 and Payne v. Administrator-General of Bengal [(1880) 14 All ER 1111].

(2) That the matters in dispute are mainly questions of law which can be tried more conveniently and better, in the High Court and there was very little evidence to go into.

Thakoor Kapilnauth Shahai Deo v. The Government [(1872) 10 B.L.R. 168] .

(3) That the matter involves construction of deeds of mortgage, assignments and deeds of further charge, all drawn in the English form. *Payne v. Administrator-General of Bengal* [(1880) 5 Cal 766] .

(4) Questions of difficulty arose in the suit, e.g., whether the bargain was unconscionable or extortionate.

Harendra Lal Roy v. Sarvamangala Devi [(1891) 24 Cal. 183] .

(5) Where the lower Court has dealt with a party with extreme harshness and great want of discretion and has been positively unfair to him showing a state of mind in the Judge which makes it impossible for him to deal with the case impartially and without prejudice.

Thakoor Kapilnauth Shahai Deo v. The Government [(1872) 10 B.L.R. 168] and *Rupendra Deb Raikut v. Asrumati Devi* [(1949) 58 C.W.N. 770. (780-81)] .

(6) That neither the Plaintiff nor the Defendants (one of whom was the Administrator of Bengal) resided at Hooghly, where the suit was filed, but all resided at Calcutta, the cause of action arose at Calcutta and all witnesses were at Calcutta.

Payne v. Administrator-General of Bengal [(1880) 5 Cal 766] .

(7) That it would be cheaper to try the suit at Calcutta.

Payne v. Administrator-General of Bengal [(1880) 5 Cal 766] .

(8) Defendant's witnesses lived in Calcutta, she had not the means to take them to Dinajpore where the suit was filed. Plaintiff also resided in Calcutta. All persons who knew of the transaction were residents of Calcutta or its neighbourhood.

Harendra Lal Roy v. Sarvamangala [(1891) 24 Cal. 183] .

The expenses already incurred by the Plaintiff was irrelevant, since if successful, he would realise the same from the Defendant.

(9) That there are prayers for injunction or receiver.

(10) The "kernel" of the case took place in Calcutta. Attorneys of this Court were necessary witnesses and would have to advise the parties, and watch the case. Day books would have to be produced. Records of this Court were to be produced. They were better produced here than taken up-

country. Likelihood of Counsel being engaged on both sides as the estate was a large one.

Brojogopal Nath v. Lakshimoni Dassi [54 Cal 607] .

That the Sheriff's Officer was a necessary witness and records of this Court will be required as evidence.

Baburam v. Jamunadas [54 C.W.N. 189 (195-95)] .

(11) If the parties were diligent, the delay in the hearing would be considerably minimised in this Court.

Brojogopal Nath v. Lakshimoni [54 Cal 607] .

(12) That the trial in the lower Court would be unsatisfactory. *Raja Ojooderam v. Sm. Nabinmoni Dassi* [(1886) 1 ??? ??? ???] .

(13) The balance of convenience in trying a suit in this Court and the lower Court is one of the matters to be considered.

Brojogopal Nath v. Lakshimoni Dassi [54 Cal 607] .

Expense and inconvenience by themselves are not enough unless they result in injustice.

In re: Norton's Settlement, Norton v. Norton [(1908) 1 Ch 471 (482)] .

(14) In order to justify a transfer It is as a rule necessary that something more should exist than a mere balance of convenience. The Court must be satisfied that the expenses or the difficulties in the trial in the mofussil Court would be so great that injustice would be done.

Sudhirendra Nath Mitter v. Arunendra Nath Mitter [68 C.W.N.??? 981] .

(15) Taking all facts into consideration the Court must come to the conclusion that the Plaintiff in commencing an action in a particular Court has not done so on account of any legitimate advantage which a trial in that Court would give him, but for purposes entirely foreign for that legitimate purpose, In such a case the Court not only has jurisdiction to transfer but it is the duty to transfer.

Sudhirendra Nath Mitter v. Arunendra Nath Mitter [68 C.W.N.??? 981] and *In re: Norton's Settlement, Norton v. Norton* [(1908) 1 Ch. 471 (482)] .

13. Subjective Tests:—

(1) Where the litigant feels that regard being had to the feeling in the district against him, he was not likely to have a fair trial.

Mohur Singh v. Ghureeba [1871, 15 W.R. (P.C.) 8] .

(2) *If the Court on a consideration of all the facts of the case comes to the conclusion that the applicant feels that he is not likely to have a fair trial in the Court from which he seeks to transfer it. In coming to a conclusion on this point, the question for consideration is what is the effect likely to be produced in the mind of the party and not in the mind of the Judge. It necessarily depends on the individual concerned, his temperament and feeling:*

Rupendra Deb Raikut v. Asrumati Devi

(3) *Where the Defendant is afraid of personal violence.*

Baburam v. Jamunadas [54 C.W.N. 189 (195-96)] .

(4) *The temperament and feeling of an individual cannot be a ground of transfer. There must be public sentiment in the locality against the applicant, and the feeling must be produced by such fear. The Court must apprehend that such sentiment might engulf the trying Court and pervert witnesses. A mere subjective test is not enough. The objective test must also be applied.*

Baburam v. Jamunadas [54 C.W.N. 189 (195-96)].”

4. The Respondents have relied upon the following Judgments:-

a. *Reeba Cherian vs George Jacob Vengal, 2015 SCC OnLine*

Bom 1913, (Para 11).

“11. *The ambit of powers of the Court and the manner in which the Court should exercise the same, fell for consideration of the Apex Court in its decision in Kulwinder Kaur @ Kulwinder Gurcharan Singh v. Kandi Friends Education Trust reported in (2008) 3 SCC 659 : AIR 2008 SC 1333 while deciding appeal against an order refusing transfer. The Apex Court has held that, although discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for a Court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini grievances but something more substantial, more*

compelling, more imperiling, from the point of view of public justice and its attendant environment. The circumstances alleged by the applicant herein do not fall in that category. Therefore, the Miscellaneous Civil Application is dismissed.”

***b. Kulwinder Kaur alias Kulwinder Gurcharan Singh vs
Kandi Friends Education Trust & Ors., (2008) 3 SCC 659,
(Para 21, 22, 23, & 28).***

“21. *Having considered rival contentions of the parties and having gone through the proceedings of the case, we are of the view that the impugned order deserves to be set aside. So far as the power of transfer is concerned, Section 24 of the Code empowers a High Court or a District Court to transfer inter alia any suit, appeal or other proceeding pending before it or in any court subordinate to it to any other court for trial and disposal. The said provision confers comprehensive power on the court to transfer suits, appeals or other proceedings “at any stage” either on an application by any party or suo motu.*

22. *Although the discretionary power of transfer of cases cannot be imprisoned within a straitjacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection.*

23. *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.

28. *It was also urged that the plaintiff's side could not get favourable order on applications under Order 39 Rules 1 and 2 of the Code and, hence, it wanted to get the case transferred. In view of the assertion and retraction by the plaintiff and the defendants, in our considered opinion, the High Court ought to have applied its mind to those aspects and prima facie satisfied as to the grounds put forward by the plaintiff in the transfer application and ought to have passed an order one way or the other without entering into the controversy in the suit. Unfortunately, the High Court allowed the application observing that it would be “appropriate” to transfer the suit pending in the Court of Smt Asha Kondal, Civil Judge (Senior Division), Ropar to the Court of Shri Y.S. Rathore, Additional Civil Judge (Senior Division), Chandigarh. In our opinion, powers under Section 24 of the Code cannot be exercised ipse dixit in the manner in which it has been done. Only on that ground and without entering into larger issue, the appeal deserves to be allowed and is accordingly, allowed.”*

5. On hearing the learned Counsels for the parties at length and

considering the materials on record, the following is evident:-

- i. The commercial suit has been instituted by the petitioners against the respondents herein seeking eviction/recovery of possession and mesne profits.
- ii. The Respondents application under order 7 Rule 11 CPC challenging the maintainability of the commercial suit instituted

by the petitioners was rejected. The said judgment was upheld by the High Court and finally **affirmed by the Supreme Court.**

- iii. Admittedly the Respondents herein have filed an application under Order VII Rule 10 CPC being also the respondents in the suit before the Commercial Court, praying for return of plaint on the ground that the dispute between the parties is not a “Commercial dispute”, even though the said issue has already been decided finally by the Supreme Court.
- iv. The Respondents being initially inducted as a lessee claimed to be a thika tenant after the expiry of the lease and have now filed the subsequent suit (Title Suit) claiming title by way of adverse possession, having not being able to prove their claim of being thika tenants right upto **the Apex Court**, when it was decided finally on 27.07.2022.
- v. The lease in favour of the respondents in respect of the suit property herein expired on 30th November, 1993.
- vi. The petitioners suit has been registered as a commercial suit, wherein recovery of possession has been sought for on the basis of having acquired title by way of purchase, vide a registered deed of conveyance dated 10th September, 2007.

6. So, in both the suits the issue to be decided is regarding the right, title and interest in respect of the same suit property and between the same parties. Though the Respondents in their suit

have added Respondents No. 6 to 12, **the predecessors in title** in respect of the suit property, **they are not the contesting defendants.**

7. The petitioners in their commercial suit claim title by way of ownership on the basis of the conveyance deed, which has been sought to be declared null and void in the subsequent title suit filed by the respondents herein.
8. **The final outcome in the two suits will effect both the parties here in and thus making out a prima facie case for adjudication by the same court, not only to avoid possible conflicting decisions but also for the convenience of the parties on both sides, relating to common witnesses, same documents to be proved while deciding the same issues, similar in all respect to adjudicate the similar reliefs prayed for by the plaintiffs in both suits, which are inter connected.**
9. Delay is also one of the grounds praying for transfer (Para 16(k)), which has been prima facie substantiated by the petitioners herein, that several extensions of interim order has been granted by the Commercial Court but the suit has not taken up for hearing, even though there is no 'stay' of proceedings.
10. **No prejudice shall be suffered by the Respondents herein, who instead of pursuing two suits before two forums would be able to pursue their relief before one court, making the balance of**

convenience and inconvenience tilt in favour of both parties herein, in case of such transfer.

- 11. For a title suit to be transferred to a Commercial Court there must exists a “commercial dispute” in the said suit.**
- 12.** That a Commercial Suit is to be heard only by a Commercial Court having jurisdiction has been laid down in the Commercial Court, Act (Section 15).
- 13.** It has been decided finally in the petitioners’ suit before the commercial court that the issue there in, is a “commercial dispute”.
- 14.** As such as it is seen that **the “issue” in both the suits are same,** between the same parties in respect of the same property, **the issue in the Title Suit** filed by the respondents herein, **will also qualify as a “commercial dispute”** and thus can be heard by the Commercial Court along with the petitioners Commercial Suit.
- 15.** The Bombay High Court in ***Technotrde Impex India Pvt. Ltd. Vs State of Maharashtra on 1st Sept, 2021 (2021 SCC OnLine Bom 10497)*** transferred a Civil Suit to the High Court at Bombay to be heard with Commercial Suit, as the Commercial suit was already pending before the High Court.
- 16.** Now, the prayer of the petitioners for transfer of both the suits to the High Court is to be considered.

17. Respondents have objected to the said prayer on the ground, that in that case, they would lose a forum, which would cause prejudice to them.
18. Looking a bit into history of the dispute in this case, it appears that, that the Respondents herein have travelled to the highest Court of the country twice, once to claim their right as thika tenants and next with the issue that the petitioners suit does not involve a commercial dispute.
19. In both the occasions they have been unsuccessful.
20. When the petitioners filed their suit praying for eviction/recovery of the suit property, the Respondents have filed a Title Suit claiming their title by way of adverse possession.
21. More than 17 (seventeen) years have passed since the petitioners have purchased the suit property.
22. The Commercial Court at Alipore has been unable to hear the Suit since its filing and has kept the suit pending, on several occasions only extending the interim order.
23. **Accordingly Title Suit No. 469 of 2023 pending in the file of the learned Civil Judge (Senior Division) 4th Court, Alipore is hereby withdrawn and transferred to the Court/file of the Commercial Court at Alipore, 24 Parganas (S).**
24. Keeping in mind all the factors as stated and above all, for the purpose of justice, the Commercial Court at Alipore is directed to hear

- the Commercial Suit being No. 48 of 2023 along with Title Suit No. 469 of 2023 transferred from the Court of learned 4th Civil Judge (Senior Division) at Alipore, by making all endeavour to conduct day to day hearing, without granting unnecessary adjournments, and dispose of **the two suits to be heard analogously**, preferably within a period of six months from the date of transfer of records as directed.
- 25.** The Learned District Judge, at Alipore is directed to ensure the transfer of records in Title Suit No. 469 of 2023 from the court of learned 4th Civil Judge (Senior Division) at Alipore to the Commercial Court at Alipore **within 15 days from the date of this order.**
- 26.** Let a copy of this order be sent to the learned District Judge, 24 Parganas (S) at Alipore, learned 4th Civil Judge, (Senior Division) at Alipore and the learned Commercial Court at Alipore at once.
- 27. ALP No. 2 of 2025 stands disposed of.**
- 28.** All connected application, if any, stands disposed of.
- 29.** Interim order, if any, stands vacated.
- 30.** Parties to act on server copy of this order.
- 31.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]