

ALP/3/2020

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

SIPRA DAS AND ORS.

-VERSUS-

SRI SRI ISWAR NARAYAN SHALGRAM
JEW THAKUR AND SRI
RADHAGOBINDA JEW THAKUR AND
ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA DUTT (PAUL)

Date : 22nd January, 2026.

Appearance:

Mr. Aniruddha Mitra, Sr. Adv.

Mr. Shhilon Sengupta, Adv.

Mr. Sukanta Das, Adv.

.... for the petitioners.

Mr. Ranajit Chatterjee, Adv.

...for the respondent.

1. The present application under Clause 13 of the Letters Patent has been preferred praying for transfer of the proceedings in Title Suit No.125 of 1988 pending before the learned Civil Judge (Jr. Division), 1st Court, Katwa to this Hon'ble Court by exercising of the superintending power as conferred under Clause 13 of the Letters Patent.

2. The petitioners' predecessor filed Title Suit No.125 of 1988 praying for eviction of trespassers and recovery of possession against the defendants/opposite parties herein. In the said suit written statement has been filed.

3. The prayer for transfer in the present application has been made principally on the ground that the suit before the Trial Court is pending for last 24 years. Several civil revisions were preferred by the parties before the High Court, one of them being for expeditious disposal of the Title Suit. But even then, the suit could not be disposed of.

4. The next ground for transfer is based on convenience as the plaintiff/petitioner no.1 is a widow aged about 73 years old and stays in Kolkata. The 2nd plaintiff/petitioner resides permanently in USA and the 3rd plaintiff/petitioner resides permanently in Agra; the 4th plaintiff/petitioner stays in Kolkata and is a medical practitioner, aged about 62 years. The petitioners also apprehend that no justice will be done in their case as the environment at Katwa is hostile towards them and thus, preferred the present application.

5. Learned counsel for the petitioner has relied upon the following judgments:

a) 1926 SCC OnLine Cal 246 (Brojo Gopal Naik vs. Lakshmimoni Dassi & Ors.);

b) 1949 SCC OnLine Cal 155 (Baburam Agarwalla vs. Jamunadas Ramji & Co.) wherein the Hon'ble Supreme Court has held that:

"The words "purposes of justice" in cl. 13 of the Letters Patent, 1865, are advisedly general and wide so as not to fetter the discretion of the court in any way. To attempt to define these words would be to defeat the amplitude of the provision.

Personal violence to a litigant at a particular court or at a particular place of threat of such violence is a relevant consideration in exercising court's powers under cl. 13 of the Letters Patent.

Personal feeling or private emotion or individual temperament as such of a litigant **is not a proper consideration** for transfer of a suit under cl. 13 of the Letters Patent. It is only when there is a public sentiment in the locality in which the court is situated against the litigant then the resultant “feeling” of such a litigant produced by such public sentiment may be a ground for transfer.

Mohur Sing v. Ghuriba, (1870) 6 B.L.R. 495, and *In Re Kumar Rupendra Deb Ralkut v. Ashrumati Debi*, (1949) 53 C.W.N. 770, discussed and explained.

Balance of convenience is a question of fact. It is neither the convenience of the plaintiff alone nor of the defendant alone, but the balance of convenience of both. In determining the balance of convenience for the trial of a suit the court has to take into consideration:-

- (i) The convenience or inconvenience of the plaintiff and the right of the plaintiff to choose his own forum;*
- (ii) the convenience or inconvenience of the defendant;*
- (iii) the convenience or inconvenience of the witnesses required for a proper trial of the suit,*
- (iv) the convenience or inconvenience of a particular place of trial, having regard to the nature of evidence on the main points involved in suit and also having regard to the doctrine of forum conveniens; and*
- (v) nature of the issues in the suit”*

c) 1951 SCC OnLine Cal 170 (Kalidas Roy & Ors. Vs. University of Calcutta & Ors.).

6. The defendants/opposite parties have filed affidavit-in-opposition and have denied the case of the plaintiffs/petitioners herein. The specific case of the defendants/opposite parties against the prayer for transfer is that the delay in disposal of the suit is totally due to the conduct of the plaintiffs/petitioners and

neither the Court nor the defendants/opposite parties are responsible for such delay. It is further stated by the defendants/opposite parties herein that **the petitioners have taken more than 18 years to even substitute the legal heirs in place of a deceased party.** In between due to COVID pandemic, there was delay and the Court could not take up the case in spite of its best efforts. It is further submitted that the plaintiffs/petitioners have indulged in criminal activity and made attacks upon the defendants/opposite parties.

7. Heard learned counsels appearing for the parties, perused the materials on record.

8. The Hon'ble Supreme Court in the case of *Kalidas Roy & Ors. (supra)* has laid down :-

“12. Objective tests:—

(1) That the case involves difficult points of English Law, (1880), Doucett v. Wise [1880 1 Cal 766] and Payne v. Administrator-General of Bengal [(1880) 5 Cal 766].

(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 500 miles. 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. Dassi [(1886) 1 ??? ??? ???]. Nabinmoni

(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)].”

9. In the case of **Reeba Cherian vs George Jacob Vengal**, [reported in 2015 SCC OnLine Bom 1913, at para 11 it has been held that:

*“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 7 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.”

10. Thus, keeping in view the guidelines of the Hon’ble Supreme Court in cases for transfer, in the present case:-

- i) The balance of convenience and inconvenience of the parties and the witnesses in the suit before the trial Court is in favour of the title suit being tried and heard at Katwa.
- ii) Apprehension as **stated** by the plaintiffs/petitioners herein, is not sufficient to allow a prayer for transfer, in view of the materials in support of such apprehension.
- iii) Interest of justice, for a **“fair trial”** in the present case requires that the suit be tried at Katwa, as no prima facie ground has been made out to justify the transfer of the case from Katwa to this Hon’ble Court.

11. **In the present case**, admittedly, there has been a substantial delay in disposal of the suit but the said cause of delay cannot be attributed totally to the defendant or the circumstances prevailing at Katwa. The plaintiffs/ petitioners too

have played a role in the delay of the proceeding, which has to be disposed of expeditiously by the trial Court considering the long delay.

12. **ALP/3/2020 stands dismissed** with a direction to the trial Court to make all endeavour to dispose of the **Title Suit No.125 of 1988** pending before it for the last 24 years expeditiously, preferably within six months from the date of this order. **If deemed necessary, the trial Court is at liberty to fix day-to-day hearing of the Title Suit and ensure its disposal as directed.**

13. The plaintiff/petitioner no.4 is in a position to represent the plaintiffs and take necessary steps to ensure that the suit is disposed of expeditiously, as directed by this Court.

(SHAMPA DUTT (PAUL), J.)