

Beni Shankar Sharma and Others

Vs

Surya Kant Sharma and Others

Transfer Petition (Civil) No. 46 of 1980

(A.C. Gupta, R.B. Misra JJ)

09.03.1981

ORDER

1. This is an application under Section 25 of the Code of Civil Procedure seeking transfer of title Suit No. 26 of 1980 (Surya Kant Sharma v. Beni Shankar Sharma) filed in the Court of Additional District Judge No. I, at Gauhati to an appropriate court in Calcutta. The suit is for declaration that the deed of family settlement executed on June 9, 1978 is void, for cancellation of the same and a fresh partition of the properties mentioned in the deed. The suit has been instituted by a minor who was aged about five years and five months when the suit was filed with his mother as next friend. It appears that the deed was signed by the minor's father and grandfather who have been impleaded as some of the defendants in the suit.

2. The reasons for seeking transfer of the suit as stated in the application are as follows : Petitioner 1 who is the Karta of the joint family of the petitioners is about 75 years old. The petitioners have no place of stay in Gauhati and it would be impossible for the petitioners who are all residents of Calcutta to defend the suit if it is tried in Gauhati. The deed of family settlement was executed and registered in Calcutta. Almost all who are likely to be witnesses in the suit live in Calcutta. The records relating to the properties in question were all maintained at Calcutta. It would be extremely difficult for the two attesting witnesses to the deed, one a practising advocate of the Calcutta High Court and the other a merchant of Calcutta, to find time to go to Gauhati to depose. On the other hand the respondents who have their place of business in Calcutta would have no difficulty if the suit were tried in Calcutta. According to the petitioners the suit was filed in Gauhati only with a view to preventing the petitioners from properly defending the suit in Gauhati. It is also alleged in the application for transfer that the respondents who in their counter affidavits filed in this Court oppose the transfer of the suit from Gauhati to Calcutta too in fact resides in Calcutta. From the addresses of the defendants (sic plaintiffs) as appearing from the cause title of the plaint this statement seems to be correct. However in their counter-affidavits these defendant-respondents (sic plaintiff-respondents) assert that they now live in Assam. Some documents have also been filed to show that the minor plaintiffs and his parents now live in Jorhat in Assam but these documents are not supported by an affidavit. It further appears from the list of properties mentioned in the schedules to the deed of family settlement which is sought to be cancelled that the bulk of the properties is situate in Calcutta.

3. Considering the facts and circumstances of the case we think that it would be expedient for the ends of justice to have the suit tried at Calcutta. Accordingly we direct that title Suit No. 26 of 1980 pending in the Court of the Additional District Judge No. 1, at Gauhati be transferred from the said court to the original side of the Calcutta High Court. The suit will proceed in the transferee court from the stage at which it was transferred to it. There will be no order as to costs.

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