

Pushpa Devi Saraf and another

Vs

Jai Narain Parasrampurua and others

Civil Appeal No. 1048 of 1992

(Kuldip Singh, B. P. Jeevan Reddy JJ)

03.03.1992

JUDGEMENT

B.P. JEEVAN REDDY, J.: -

1. This S. L. P. preferred against an order of the Allahabad High Court dismissing the application for transfer of a suit.

2. On 14-8-1991, this court made the following order in Civil Appeal No. 3167 of 1991:

"That suit being No. 537 of 1984 is pending in the court of VIIth Addl. District Judge and shall be taken up expeditiously for disposal. Trial shall begin in the month of October accordingly to the convenience of the court and it has to proceed day-to-day until it is over. The said court shall not handle any other matter until this suit is over excepting on occasions as and when on account of some unforeseen circumstances, the court is not in a position to continue with this dispute. In case the court where it is pending is not free, the suit may be transferred to a court where the District Judge feels that our directions can work out. The report of compliance shall be furnished to this court."

3. Accordingly, the learned VIIth Additional District Judge, Kanpur took up the suit and proceeded with it.

4. On 14-10-1991, the appellants herein, who are defendants in the said suit, moved an application for transfer of the suit to the court of learned District Judge or any other Judge. This application was moved before the learned District Judge, Kanpur. In the affidavit filed in support of the application, several allegations were made against Shri Virbhadra Singh, VIIth Additional District Judge, Kanpur impugning his fairness, independence and impartiality in the matter. The learned District Judge called for a report from the learned Judge. In his report, the VIIth Additional District Judge (Presiding Officer) denied the allegations made against him which, according to him, were made out of malice. He opined that the allegations do amount to contempt of court. Ultimately, he said, he has no objection to the transfer of the suit. The learned District Judge dismissed the application for transfer on 12-11-1991, whereupon the appellants/defendants move the Allahabad High Court. The learned single Judge who heard the transfer petition dismissed the same accepting the plaintiff/respondents' contention that in view of this court's order dated 14-8-1991, the High Court has no power to order the transfer from the court of VIIth Additional District Judge to any other court. The

present Special leave Petition is moved against the said order of the learned single Judge.

5. Leave granted. When a transfer petition is filed making such or similar allegations, the report if and when called for, should normally be confined to the allegations made against the impartiality or fairness of the Judge and not with respect to the correctness or otherwise of the orders passed by him. We are saying this because it appears that on the transfer petition being filed, the learned District Judge appears to have called-for a report from the Presiding Officer. In his report, the Presiding Officer not only denies the imputations made against him but also explains and justifies the orders passed by him. This he did evidently because in the transfer petition, the correctness of some of his orders was questioned. In our opinion, a Presiding Officer of a court should not be put to such an explanation, barring exceptional circumstances.

6. Having heard the counsel for both the parties, we are of the opinion that the allegations in the transfer petition are not sufficient and do not warrant an order of transfer. We are satisfied that the learned Presiding Officer was only trying to hear the case expeditiously in pursuance of the order of this court dated 14-8-1991.

7. We express no opinion on the question whether the allegations made in the transfer petition filed in the court of learned District Judge and in the petition filed in the High Court do amount to contempt of court or not. That question will arise only when and if any proceedings are taken in that behalf. That is not our province at this stage.

8. We also express no opinion on the correctness or otherwise of the orders passed by the learned Presiding Officer complained of in the transfer petition.

9. We, however, feel that the learned Presiding Officer has been unduly affected by the allegations levelled against him, as would be evident from his report. In this view of the matter, we are inclined to think that in the interest of the learned Presiding Officer himself, the suit may be sent to another court. We, accordingly, request the learned District Judge, Kanpur to transfer the said suit (Suit No. 537 of 1984 on the file of VIth Additional District Judge, Kanpur) to such other Additional District Judge, as he may designate in this behalf. Such transferee-court shall proceed with the suit expeditiously as directed by this court in its order dated 14-8-1991 quoted hereinabove.

10. The appeal is allowed accordingly. No costs.      Appeal allowed.

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