

SUPREME COURT OF INDIA

D.A.V.Boys Sr.Sec.School

Vs.

D.A.V. College Managing Committee

Transfer Petition (Civil) Nos. 1233-1237 of 2008

(P. Sathasivam and Anil R. Dave JJ.)

23.07.2010

JUDGEMENT

P.Sathasivam, J.

1. The petitioners in Transfer Petition (Civil) Nos. 1233- 1237 of 2008 and 243-244 of 2009 are schools run by the Tamil Nadu Arya Samaj Education Society (in short "the Society") which is registered under the Societies 1 Registration Act, 1860. According to the petitioners, the Society was registered on 02.01.1975 and has been running and managing schools for the last more than 30 years. The schools are being run under a specific system of education propounded by "Swami Dayanand Saraswati" known as "Dayanand Anglo Vedic" system (in short "DAV"). The petitioners have been using the expression "DAV" with its schools for the last more than 30 years.

“The respondent-Committee is running about 700 educational institutions. On 16.01.2005, the respondent- Committee has obtained a trademark registration in respect of the letters "DAV" and "Dayanand Anglo Vedic"

under Class 41 which is a service mark. On 04.08.2008, the respondent-Committee issued a notice to the petitioners of "cease and desist", namely, the petitioners should not use the words "DAV" for its schools. On 25.08.2008, the petitioners through their advocate replied to the said notice informing that the schools are being run by the Society for the last 38 years with the words "DAV".

The respondent-Committee filed four suits under Section 134 of the Trade Marks Act, 1999 before the District Court, Tis Hazari, Delhi against various schools run by the Society at Chennai individually without making the Society as a party.”

2. Transfer Petition (Civil) No. 667 of 2009 is filed by another petitioner from Chennai alleging that it is running and managing a school using the expression "DAV" for more than 24 years. It also raised similar plea seeking transfer of suit No.417 of 2008 titled DAV

College Managing Committee vs. Dayanand Anglo Vedic School pending in Tis Hazari Court, Delhi to the original side jurisdiction of the High Court of Madras.

3. Opposing the transfer petitions, the respondent- Committee which has filed suits at Delhi has highlighted that it is a duly registered society with the Registrar of Societies under the Societies Registration Act, XXI of 1860. Dayanand Anglo Vedic College Trust and Management Society is a charitable Educational Society founded by a few good people and followers of His Holiness Swami Dayanand Saraswati to spread his teachings and Principals of Arya Samaj including Mahatma Hasraj and Master Sewaram. At present, they are managing about 700 educational institutions throughout India. The defendant which is a school situated in Chennai in the State of Tamil Nadu without the consent and approval of the plaintiff dishonestly and with mala fide intention to earn goodwill and reputation of the plaintiff-society, started running an educational institution under the name and style DAV by infringing the registered trade mark and passing off the copy right of the plaintiff-society by using its acronym DAV in the similar/deceptively similar manner as of the plaintiff.

4. Heard Mr. Mukul Rohatgi, learned senior counsel for the petitioners in T.P. (C) Nos. 1233-1237 of 2008 and 243-244 of 2009, Ms. Gladys Daniel, learned counsel for petitioner in T.P. (C) No. 667 of 2009 and Mr. Ranjit Kumar, learned senior counsel for the respondent- Committee.

5. The petitioners have filed these petitions praying to transfer the suits filed by the respondent-Committee pending before Tis Hazari Courts, Delhi to the City Civil Court, Chennai, Tamil Nadu on the following grounds:

“(i) That no cause of action has arisen at Delhi;

(ii) That the petitioners do not have any school at Delhi;

(iii) That there are large number of students studying in these schools who have been made defendants by the Committee in the suits filed at Delhi and all of them are in Chennai;

(iv) The Secretary of the Society since the very inception, Mr. S. Jaidev, who is of the age of 84 years and being very old, it is difficult for him to come to Delhi.

(v) Most of the witnesses to be examined on the side of the petitioners/defendants are in Tamil Nadu and they are conversant with the language of Tamil only. Likewise most of the documents are in Tamil and it is difficult to mark the same in the proceedings at Delhi.

(vi) The petitioner in Transfer Petition No. 667 of 2009 also contended that the person who is managing the affairs of their society is aged about 71 years and it is difficult for him to attend the hearing at Delhi.”

6. The respondent-Committee, while denying all the claims of the petitioners, highlighted that in view of the fact that about 700 institutions have been spread all over India if the suits filed at Delhi are transferred to Chennai as claimed, there is likelihood of similar petitions by others particularly from other States and as on date 50 other suits are pending in different States. It is also stated that the President who is running the Trust at Delhi is aged about 95 years. It is also contended that considering the relief prayed for and the suits having been filed under Section 134 of the Trade Marks Act, 1999 on the jurisdiction point the Court at Delhi alone is competent to try the same. The allegation relating to inconvenience due to language is applicable to the respondent also and prayed for dismissal of all the transfer petitions.

7. In order to appreciate the rival contentions, it is useful to refer Section 25 of the Civil Procedure Code which gives power to this Court to transfer suits etc. which reads thus:

“25. Power of Supreme Court to transfer suits, etc. - (1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.”

8. Transfer of suits under Sections 24 and 25 have been considered by this Court in various decisions. In *Maneka Sanjay Gandhi v. Rani Jethmalani*¹, , this Court stated: (SCC p. 169, para 2) "2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the 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. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case." (Emphasis supplied)

9. Similarly in *Subramaniam Swamy (Dr.) V. Ramakrishna Hegde*², dealing with power of this Court to transfer a case under Section 25 of the Code, A.M. Ahmadi, J. (as His Lordship then was) stated: (SCC p. 9, para 8)

“8. Under the old section the State Government was empowered to transfer a suit, appeal or other proceeding pending in the High Court of that State to any other High Court on receipt of a report from the Judge trying or hearing the suit that there existed reasonable grounds for such transfer provided that the State Government of the State in which the other High Court had its principal seat consented to the transfer.

The present Section 25 confers the power of transfer on the Supreme Court and is of wider amplitude. Under the present provision the Supreme Court is empowered at any

stage to transfer any suit, appeal or other proceeding from a High Court or other civil court in one State to a High Court or other civil court of another State if it is satisfied that such an order is expedient for the ends of justice. The cardinal principle for the exercise of power under this section is that the ends of justice demand the transfer of the suit, appeal or other proceeding. The question of expediency would depend on the facts and circumstances of each case but the paramount consideration for the exercise of power must be to meet the ends of justice. It is true that if more than one court has jurisdiction under the Code to try the suit, the plaintiff as dominus litis has a right to choose the court and the defendant cannot demand that the suit be tried in any particular court convenient to him. The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Cases are not unknown where a party seeking justice chooses a forum most inconvenient to the adversary with a view to depriving that party of a fair trial. Parliament has, therefore, invested this Court with the discretion to transfer the case from one court to another if that is considered expedient to meet the ends of justice. Words of wide amplitude--for the ends of justice--have been advisedly used to leave the matter to the discretion of the Apex Court as it is not possible to conceive of all situations requiring or justifying the exercise of power. But the paramount consideration must be to see that justice according to law is done; if for achieving that objective the transfer of the case is imperative, there should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner's plea for the transfer of the case must be tested on this touchstone.”

(Emphasis supplied)

10. In *Kulwinder Kaur alias Kulwinder Gurcharan Singh vs. Kandi Friends Education Trust and Others*³, this Court considered various tests to be applied in respect of transfer of suits under Sections 24 and 25 of the Code and in para 23 observed thus:

“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.”

11. Section 25 of the Code itself makes it clear that if any application is made for transfer, after notice to the parties, if the Court is satisfied that an order of transfer is expedient for the ends of justice necessary direction may be issued for transfer of any suit, appeal or other proceedings from a High Court or other Civil Court in one State to another High Court or other Civil Court in any other State. In order to maintain fair trial, this Court can exercise this power and transfer the proceedings to an appropriate Court. The mere convenience of the parties may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Further illustrations are, balance of convenience or inconvenience to the plaintiff or the defendant or witnesses and reasonable apprehension in the mind of the litigant that he might not get justice in the Court in which suit is pending. The above-mentioned instances are only illustrative in nature. In the interest of justice and to adherence of fair trial, this Court exercises its discretion and order transfer in a suit or appeal or other proceedings.

12. In the light of the above principles, let us consider the claim of the parties. We have already referred to the fact that the respondent-Committee has instituted various suits at Delhi under Section 134 of the Trade Marks Act impleading the petitioners herein as defendants. The respondent has also pointed out that more than 50 suits have been pending all over India. Though the petitioners have raised the problem of distance, language and age of the President/Secretary of their respective Trust, we are of the view that same hurdles are applicable to the respondent also if their suits are being transferred outside Delhi. It is true that the petitioners who are defendants in order to defend their case necessarily have to spend sometime at Delhi. However, in view of the amendment made in the Code of Civil Procedure in respect of recording evidence and of the fact that Delhi being a Capital of this country and the petitioners who are running educational institutions have to visit this place for their official work, we are satisfied that balance of convenience and all other attended circumstances are not in favour of the petitioners transferring the suit to their place. As rightly pointed out by learned senior counsel for the respondent, if the request of the petitioners are acceded to, taking note of the fact that their institutions numbering more than 700 have been spread over India and 50 other suits are pending in various places, it would be more difficult for the respondent/plaintiff to continue with their suits and in that event their sufferings would be more than the inconvenience to be caused by the petitioners/defendants.

13. We are also satisfied that it would be far more practical and in the best interest of the parties that the proceedings are conducted in Delhi. Further, if the petitioners' claim is accepted, it would open floodgates for similarly placed persons infringing registered trade marks to approach this Court to transfer their suits to the locations convenient to themselves all over India and defeat the purpose of Section 134 of the Trade Marks Act which confers a jurisdiction with respect to a registered trade mark. Since the issue relating to jurisdiction particularly whether Court at Delhi has jurisdiction or not is to be decided by the Trial Court, we are not expressing anything on the merits of their claims.

14. In the light of what has been stated above, we do not find any valid ground for transfer of the suits as claimed by the petitioners. Consequently, all the transfer petitions are dismissed. However, we make it clear that we have not expressed anything on the merits of either parties and it is for them to plead and establish their respective case.

No order as to costs.

¹(1979) 4 SCC 167

²(1990) 1 SCC 4

³(2008) 3 SCC 659