

(1993) 12 AHC CK 0012

Allahabad High Court

Case No: Civil Miscellaneous Transfer Application No. 78 of 1989

Bhakti Sharma (Udenia)

APPELLANT

Vs

Mahendra Kumar Udenia

RESPONDENT

Date of Decision: Dec. 16, 1993

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 22, 23, 24

Citation: (1994) 2 DMC 166

Hon'ble Judges: S.K. Verma, J

Bench: Single Bench

Advocate: Munish Gupta, for the Appellant; Nemo, for the Respondent

Final Decision: Allowed

Judgement

S.K. Verma, J.

This application has been filed for transfer of Suit No. 124 of 1988 (Mahendra Kumar Udenia v. Smt. Bhakti Sharma pending in the Family Court, Jhansi either to the Family Court, Gwalior or Guna (M.P.).

2. The petitioner is the wife and the opposite party is the husband. They were married on 22nd June, 1988 according to petitioner. Then, after expiry of one and a half months of the marriage, the opposite party filed original Suit No. 124 of 1988 u/s 12(1)(c) of the Hindu Marriage Act in the District Court at Jhansi on 19.8.1988 for declaration of marriage of the applicant with the opposite party as a nullity on the ground that the applicant was suffering from Leucoderma. The applicant moved an application u/s 24 of the Hindu Marriage Act for intertim maintenance and expenses for contesting the suit. Meanwhile since the Family Court was established in Jhansi the suit stood transferred to that Court from the Court of District Judge, Jhansi. According to the applicant the provisions of Section 19 of the Hindu Marriage Act conferred the jurisdiction of entertaining a suit for dissolution of marriage to the District Court within the limits of whose ordinary civil jurisdiction marriage was

solemnised or the respondent at the time of presentation of the application resides or the parties to marriage last resided together. Hence it has been argued that according to the allegations in the suit itself as the marriage was solemnized in Gwalior within the jurisdiction of District Court, Gwalior (M.P.), the suit could be filed at Gwalior. Hence the Courts at Gwalior have also jurisdiction to entertain the suit. The applicant is residing at present in Guna (M.P.) since the time when the suit was presented. Thus, Guna District Court has also jurisdiction to entertain the suit. The District Courts of Jhansi, Guna and Gwalior have concurrent jurisdiction to entertain the suit. According to the applicant Gwalior is only 100 Kilometers from Jhansi and it would be convenient for both the parties to contest the suit there. The applicant is dependent on her father who has nominal income. She cannot bear the expenses to travelling from Guna to Jhansi which is about 200 Kilometers from Jhansi. It has further been alleged that apart from inconvenience the opposite party has threatened to kill the applicant not only outside Jhansi Courts but even in presence of the Family Court Judge, hence she apprehends that she will be murdered and, therefore, she cannot pursue the case at Jhansi. With these allegations the present application has been moved.

3. In the counter affidavit these allegations have been denied. It has further been alleged that the transfer application has been moved to delay the proceedings and to harass the opposite party. In fact, the opposite party never threatened the applicant. On the contrary it was the applicant who threatened the opposite party through one R.R. Purohit and Dr. Virendra to put the life on the opposite party in danger. The opposite party, therefore, I lodged a First Information Report against those persons.

4. The first issue raised in this transfer application was whether this High Court has power to transfer the proceedings from Jhansi to Gwalior where the Courts are subordinate to a different High Court. In this respect a Division Bench decision of Punjab and Haryana High Court in [State Bank of India Vs. Sakow Industries Faridabad \(Pvt.\) Ltd., New Delhi](#), has been referred. In this decision it was found that the High Court could order transfer of the case in exercise of its powers u/s 23(3) C.P.C. read with Section 151 C.P.C. in peculiar circumstances of a particular case to prevent abuse the process of the Court. In that case the proceedings pending in Ballabgarh Court in Punjab were transferred to Calcutta. A similar view was taken in [Jagatguru Shri Shankaracharya Jyotish Peethadhiswar Shri Swami Swaroopanand Saraswati Vs. Ramji Tripathi and Others](#), and it was held that the High Court can transfer a suit pending in a Subordinate Court to a Court Subordinate to another High Court. It was further held that where a suit is sought to be transferred to a Court subordinate to another Court, . the application for transfer has to be made in the High Court within whose jurisdiction the suit is pending. In the present case itself on a reference made by a Single Judge of this Court, the matter went up before a Division Bench. The decision of the Division Bench is reported in Munnalal v. State of U.P. AIR 1990 All 761. In the aforesaid decision of the Division Bench, it has been

found that the Family Court is a Civil Court when it exercises powers and jurisdiction relating to matters referred to in Explanation Sub-section (1) of Section 7 of the Family Courts Act, 1984 and, as such, the High Court has jurisdiction to transfer the cases from one Family Court to another under Sections 22, 23 and 24 of the Civil Procedure Code.

5. So far as the grounds of transfer are concerned it is clear that the Gwalior Court has jurisdiction to entertain the suit pending in the Jhansi Court because the marriage between the parties was solemnised there. The Family Court at Jhansi has sent his comments in this matter and the learned Judge has reported that so far as the contents of paragraph 13 of the affidavit filed in support of the application are concerned there is some ring of truth about the apprehensions in the mind of Smt. Bhakti Sharma regarding danger to her life because on 2.5.1989 itself in the presence of the Court concerned the opposite party, namely Mahendra Kumar Udenia issued a threat to kill the applicant while proceedings were going on inside the retiring room of the Presiding Judge. This report itself is sufficient ground to support the contention of the application that she has danger to her life if the proceedings continued in Jhansi Court. The applicant has requested for transfer of the case either to Guna or to Gwalior but it appears that Guna is about 200 Kilometers from Jhansi where as Gwalior is 100 Kilometers from Jhansi. It would therefore, be more convenient for both the parties to contest the suit, at Family Court, Gwalior.

6. In view of the above discussion, the transfer application is allowed. Original Suit No. 124 of 1988 pending in the Family Court, Jhansi is directed to be transferred to the District Court, Gwalior for disposal in accordance with law. The Family Court Jhansi will, forthwith, transfer the record and proceedings inclusive of pending interim applications including the application u/s 24 of the Hindu Marriage Act to the District Court, Gwalior for disposal in accordance with law. There is no order as to costs.