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**(2010) 03 MP CK 0042**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** None

Tulsiram and Others

APPELLANT

Vs

Gambhir Singh and Others

RESPONDENT

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**Date of Decision:** March 31, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 24, 25

**Citation:** (2010) ILR (MP) 1987 : (2010) 4 MPHT 137

**Hon'ble Judges:** Piyush Mathur, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Piyush Mathur, J.

This Revision Petition has been preferred by the Petitioners on being aggrieved by the Order, passed by the District Judge, Gwalior in Civil Misc. Case No. 72/09 (Tulsiram and Ors. v. Gambhir Singh and Ors.) on Date 13.08.2009, whereby the application of the petitioners, preferred u/s 24 of Code of Civil Procedure, seeking Transfer of the Civil Suit No. 31-A/09 has been rejected on the ground that the two Suits are different in nature and are pending amongst different set of parties, which can not be tried together or in one Court.

2. I have heard Shri M.K. Gupta, Learned Counsel for the Petitioners and Shri R.S. Pawaiya, Learned Counsel for the Respondent No. (1) and I have perused the Order and documents annexed with the record of this case.

3. The Petitioners Tulsiram and Others have moved an application before the District Judge, Gwalior u/s 24 C.P.C. by demonstrating that the respondent Gambhir Singh had filed a Civil Suit No. 47-A/09 without impleading him as a party, although Tulsiram and Others have filed Civil Suit No. 31-A/2009 in relation to the same

property and for achieving uniformity of the Judgment it is required in the interest of justice to Transfer the Civil Suit No. 31-A/09 pending before the 3rd Civil Judge, Class-II, Gwalior to the 9th Additional District Judge, Gwalior, where the Civil Suit No. 47-A/09 is pending.

4. Shri M.K. Gupta, Learned Counsel for the Petitioners submits that the two Suits relate to the same property situated at Survey No. 88 at village Jodhpura and if two separate judgments are passed, then a very peculiar situation would arise, which may not meet the ends of justice. He referred to the judgment of this Court reported as 2000(1) MPWN 215 Gaya Prasad v. Kishorilal to demonstrate that when both the Suits relate to the same property wherein parties are also identical then the Suit should be tried together.

5. Shri R.S. Pawaiya, Learned Counsel for the Respondent No. 1 submits that the nature of the two Suits are quite different and the parties are also different, therefore neither the joint trial is required nor permissible in the eyes of law. He further submits that the applicant has no relationship with the deceased Kharga who was the original owner of the property and being a stranger to the property and the family, the petitioner has no right to secure Transfer of two Suits for conduction of a joint trial.

6. A perusal of the impugned Order passed by the District Judge reveals that the Civil Suit No. 47-A/09 has been instituted for securing the relief of declaration of specific performance of contract/agreement, wherein the respondent Gambhir Singh had entered into an agreement Dated 06.02.1990 for purchasing Survey No. 88 for a consideration of Rs. 65,000/-, whereas Civil Suit No. 31-A/09 is a Suit wherein the present petitioner Tulsiram has claimed himself to be a legal representative of the deceased Kharga and sought cancellation of the Order of mutation as also for recording his name and possession in the revenue record. The petitioner has also claimed restoration of possession of the property in the Suit.

7. The Trial Court while examining the nature of the two Suits has found that although the disputed property described in the two Suits is comprised in Survey No. 88, but the nature of the dispute and the parties to the Suit are different. It is a cardinal principle of law that unless the nature of the two Suits pending between identical set of parties are not similar then the two cases either diverse in nature or pending amongst different set of litigation could not be tried together merely on account of commonness of the Suit property. Therefore the judgment cited by the Counsel for Petitioners shall not help him.

8. The power of the Court to Transfer the Suit is certainly wide in terms of Section 24 of CPC which empowers the District Court and the High Court to Transfer the Suit or Appeal for their trial or disposal to any Court subordinate to it and competent to try and dispose of the same, but the Court exercise this power only in such circumstance where it become imperative for the Court to exercise the power for

meeting the ends of justice.

9. The Supreme Court has observed in a case reported as [Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and Others](#), that the power to Transfer a case must be exercised with due care, caution and circumspection. For ready reference relevant paragraph of this judgment are quoted herein below:

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.

10. Therefore while examining the nature of the two Suits and after giving anxious consideration to the rival submissions of the ligating parties and looking to the nature of the two Suits (as also the two different set of parties) and the dissimilar relief claimed in the two Suits, this Court do not find any jurisdictional error in the impugned Order passed by the District Judge, Gwalior, while rejecting the application preferred u/s 24 of the Code of Civil Procedure.

11. Consequently the Revision fails and is hereby dismissed. Needless to observe that the Interim Order passed on Date 16.12.2009 restraining the Courts below to proceed with the Trial, gets vacated upon dismissal of this Revision Petition.

A copy of this Order be transmitted to the District Judge, Gwalior.