

(1924) 11 CAL CK 0009

Calcutta High Court

Case No: None

Soroj Bashini Debi

APPELLANT

Vs

Girija Proshad Bhattacharjee

RESPONDENT

Date of Decision: Nov. 29, 1924

Acts Referred:

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

Citation: AIR 1926 Cal 326

Judgement

1. In this Rule we are invited to transfer a case pending in the Court of the Munsif at Kalna to the Court of the Subordinate Judge of Burdwan. The petitioner is a Hindu widow and her case is that the opposite party managed the properties which she and her co-widow inherited from their husband from the years 1320 to 1329. A suit was brought by the opposite party in the Munsif's Court at Kalna upon a hand-note alleged to have been executed by the petitioner in 1S25. The defence taken by the petitioner in the hand-note suit is that the opposite party was managing her property during the time the hand note is alleged to have been executed and that she had occasion to sign blank papers in the course of the litigations connected with the properties and that the opposite party got the hand-note fabricated in his favour. This suit was instituted by the opposite party in the Court of the Munsif at Kalna on the 27th November 1923 and the petitioner instituted her suit in the Subordinate Judge's Court at Burdwan on the 1st February 1924 for account from the opposite party for the period during which she alleges he was in management of her properties. The petitioner subsequently (sic) the District Judge of Burdwan of the suit at Kalna to the (sic) Subordinate Judge of (sic) that both the suits might (sic) together. The learned District (sic) refused that application, but has assigned no reason for doing so. We are asked to transfer the Kalna case to Burdwan on the ground that the same issue is to be tried in both the Courts, namely, whether the opposite party was in charge of the properties belonging to the petitioner; and if so, whether the opposite party had occasion in the course of such management to have

papers signed by the petitioner and to have fabricated the hand note on one of them.

2. A preliminary objection is taken to the hearing of this Rule on the ground that the learned District Judge having refused to act (sic) 24, Civil P.C., this Court will not in the exercise of its concurrent jurisdiction deal with the same question. This is urged on general principles, especially in matters criminal, that where two Courts have been given concurrent jurisdiction, and if one of them exercises that jurisdiction, the other ought not to exercise the same jurisdiction. This point came up for consideration in the case of Hari Nath v. Debendra Nath [1910] 11 CRI.L.J. 218. The learned Judges there held that even though the District Judge refused to exercise the power vested in him by law u/s 24, Civil P.C., this Court had jurisdiction to act under that section. Had we felt bound to investigate this point we would have tested the correctness of this view, but we think that we have general power of superintendence over all inferior Courts and our such powers are not limited by any course taken by the District Judge. We, therefore, propose to examine this case on its merits.

3. There is one issue common between the two cases, namely, whether the opposite party acted as agent of the petitioner. If we allow the two suits to be tried separately the issue as to the genuineness of the hand-note will have to be tried in both the suits. It is directly in issue in the hand-note suit before the Munsif and it will be directly in issue if the account suit is decided in the petitioner's favour; and it is held that the opposite party is accountable to the petitioner. It will, therefore, be convenient to both parties to have the Kalna suit transferred to Burdwan so that the evidence on this point may not have to be given twice over.

4. There is another view of the matter: if the Munsif decides against the petitioner, she has yet the right to reopen the matter before the Subordinate Judge in the account suit and the decision of the Munsif will not have the legal effect of a decision of a Court of equal jurisdiction. Taking all the circumstances into consideration we think that the suit pending in the Court of the Munsif at Kalna (being Suit No. 1099 of 1923) be transferred to the Court of the Subordinate Judge at Burdwan. But in order to avoid delay in the hearing of the suit brought by the opposite party against the petitioner at Kalna for an indefinite period and to the inconvenience of examining witnesses on the same point twice over we recommend that the learned Subordinate Judge will find it convenient to try both the suits together.

5. The Rule is made absolute. We make no order as to costs.