

Smt. Sushma Vs. Vikramaditya

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Court : Allahabad

Decided On : Mar-11-1987

Reported in : AIR1988All44

Judge : R.R. Misra, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 25

Appeal No. : Transfer Appln. No. 15 of 1987

Appellant : Smt. Sushma

Respondent : Vikramaditya

Advocate for Def. : V.K.S. Choudhary and ;Yatindra Singh, Adv.

Advocate for Pet/Ap. : B.D. Mandhyan, Adv.

Judgement :

ORDER

R.R. Misra, J.

1. The applicant in the present case is the married wife of Sri Vikramaditya, opposite party in the present transfer application. She filed an original Suit No. 577 of 1986 in the Court of Civil Judge at Allahabad praying for a relief of perpetual injunction that the defendant husband may be restrained from marrying one Km.

Asha of Gorakhpur or any other woman till the subsistence of wedlock of the plaintiff with the aforesaid defendant. It is alleged in the transfer application that after the marriage, the applicant accompanied her husband to Bahraich and discharged her marital obligations there. It is, further alleged that in the month of April, 1985, the husband of the applicant underwent a surgical operation at Lucknow. From Lucknow the applicant went to attend funeral of her maternal grandmother at Faizabad she had gone there along with her father-in-law. Thereafter the father-in-law came back and she came back along with her parents to Allahabad. The opposite party did not care to take her back to Bahraich and intended to contract a second marriage with the aforesaid Km. Asha. Consequently, the aforementioned Suit No. 577 of 1986 was filed in the Court of Civil Judge at Allahabad and an interim injunction was granted by the said Court which is still continuing. Under the injunction order the husband has been restrained from marrying again. It is further averred that as a counterblast, the husband has filed a suit for divorce being Matrimonial Petition No. 1 of 1987, in the Court of Civil Judge, Bahraich and the same is still pending. This petition was filed on the ground that the lady is insane and had an unsound mind on the date of marriage and she has all along suffered from mental disorder and is incapable of discharging her marital obligations.

2. The applicant thereafter has filed the present transfer application in this court, which was admitted on 30-1-1987 and under an interim order further proceeding in the aforesaid Matrimonial Petition No. 1 of 1987 pending before the Civil Judge, Bahraich was stayed. The husband has now put in appearance on behalf of the opposite party. At the time of the final hearing of the present transfer application Sri V. K. S. Chaudhary, learned counsel appearing for the opposite party husband, has raised a preliminary objection regarding the maintainability of the present transfer application here at Allahabad The objection raised is that the matrimonial petition is pending at Bahraich. The said district lies within the jurisdiction of Lucknow Bench and, therefore, in view of the decision of the Supreme Court in the case of Nasiruddin v. State Transport Appellate Tribunal : [1976]1SCR505 an application for transfer of that case from Bahraich is not maintainable at Allahabad, Sri B. D. Mandhyan, learned counsel appearing for the applicant, does not dispute the proposition laid down in the aforesaid case by the Supreme Court but his

contention is that the ratio of the aforesaid case shall be applicable in respect of such cases where the cause of action exclusively lies in the areas relating to Lucknow Bench. The contention of Sri Mandhyan further is that in the present case since the marriage had taken place at Allahabad, therefore, a part of cause of action also lies at Allahabad and the present application is maintainable on the aforesaid doctrine of part of cause of action. The said contention of Sri Mandhyan does not bear any scrutiny inasmuch as Sri Mandhyan has not been able to show from the record that the husband admits that the marriage in question had taken place at Allahabad. Admittedly, in Suit No. 577 of 1986 no written statement has yet been filed. In the copy of the counter-affidavit filed by the husband in the injunction matter in Original Suit No. 577 of 1986 also there is no such admission on behalf of the husband that the marriage in question had taken place at Allahabad. The applicant has not filed a copy of the injunction application filed by her in Original Suit No. 577 of 1986. Hence, in my opinion, the record of the present case does not establish that the marriage in question had taken place at Allahabad. Even copy of the Matrimonial Petition No. 1 of 1987 filed in this Court also does not say so. At any rate, in my opinion, even 'if the applicant could have established that the marriage in question had taken place at Allahabad and part of cause of action for the suit was available at Allahabad, yet the fact remains that the said suit was, in fact, filed in the Court at Bahraich and is still pending there. In my opinion it is a settled law that when it is the choice of the plaintiff to file a suit for a relief in either of the two courts, it is for him to make the choice and once he exercised the option and files a suit, this question regarding the availability of cause of action at other place comes to an end and loses its importance. After the option has been exercised by the plaintiff it cannot be said that there is still some more cause of action that survives to the plaintiff. In this view of the matter also, to my mind, the contention raised by Sri Mandhyan regarding the availability of part of cause of action at Allahabad has got no substance and is unfounded. This contention, therefore, fails and I have to proceed on the basis that in regard to the suit for divorce, the suit has been filed at Bahraich and the said suit cannot be filed and pursued now in any other Court.

3. The other submission made by Sri Chaudhary is that the theory regarding the cause of action may be relevant in regard to the regular suits or petitions filed as

such by the parties but the same is not available in regard to a transfer application which in itself is a distinct proceeding.

4. This leads me to examine the true nature of a transfer application vis-a-vis original suit or proceeding filed by the parties. In the case of *Basheshwar Nath Bhatnagar v. State* : AIR1954 All28 , the view taken by this Court is that it is the jurisdiction of the original matter that determines the jurisdiction of the Bench in the transfer matter. Therefore, such a transfer application in regard to a case pending at Bahraich will also be one arising within the jurisdiction of Lucknow Bench. It will not be out of place here to mention that the suit of the lady at Allahabad is only for an injunction and no relief relating to matrimony between the parties is involved in the same. A similar situation had arisen in the case of *Hola Ram v. State* : AIR1950 All485 . This Court has held on this aspect as follows : --

'.....The present application is for transfer of a case pending before a subordinate court at Lucknow. It is, therefore, a case arising in such an area in Avadh the jurisdiction and power for dealing with which is in the Bench of this Court sitting at Lucknow. The mere fact that the applicant wants the transfer of the case to Allahabad makes no difference, as the present transfer application is a case arising in such an area in Avadh the jurisdiction of which is for the time being vested in the Bench at Lucknow. I am, therefore, of the opinion that that the present application should be filed before the Bench of this Court at Lucknow and it will be in the power of that Bench, if it so decides, to transfer the case from a subordinate court in Lucknow to a subordinate court at Allahabad.'

5. Clarifying the nature of a transfer application, a Division Bench of this Court has in the case of *Nem Chand v. The State* : AIR1953 All99 held as follows : -

'....The transfer application is a case by itself and that transfer application has certainly arisen out of proceedings going on at Lucknow, so that it is a case arising in such area in Avadh as is within the jurisdiction of the Lucknow Bench according to the directions of the Chief Justice under the provisions of that proviso. There can, therefore, be no doubt at all that the Bench at Lucknow has powers to pass orders on this application for transfer. We may mention that the view which we are taking today was also taken by a learned single Judge sitting at Allahabad in *Hola*

Ram v. State : AIR1950 All485 '.

6. In view of the above discussions, to my mind, the present transfer application is maintainable only at Lucknow and not at Allahabad.

7. Sri Mandhyan relies upon the ratio of a Full Bench decision of this Court in the case of Nirmal Dass Khaturia v. The State Transport (Appellate) Tribunal, U.P., Lucknow : AIR1972 All200 and submits that in case it is found that the present transfer application is not maintainable here at Allahabad then the same is not liable to be rejected but is to be transferred for passing necessary orders at Lucknow. This submission is sought to be controverted by Sri Chaudhary on the ground that the ratio of the aforesaid Full Bench decision has been overruled directly by the Supreme Court in the aforesaid case of Nasiruddin : [1976]1SCR505 (supra). I have gone through both the aforesaid cases and, in my opinion, the Supreme Court in the case of Nasiruddin (supra) has not overruled this part of the judgment of the Full Bench and the ratio of the aforesaid Full Bench case on this aspect of the matter still holds good. Under the facts and the circumstances, as are prevalent in this case, the present transfer application can be heard and decided only at Lucknow.

8. As a result of the aforesaid discussions, the consequence that follows' is that the present transfer application cannot be decided at Allahabad and will have to be transmitted for decision to Lucknow Bench. Office is directed to transmit the records of this case for decision to Lucknow Bench accordingly.

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