

Babu Lal Vs. Rajendra Kumar

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Court : Rajasthan

Decided On : May-04-2001

Reported in : 2001(4)WLN129

Judge : Shiv Kumar Sharma, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 10 and 24

Appeal No. : S.B. Civil Misc. Transfer Petition No. 7 of 2001

Appellant : Babu Lal

Respondent : Rajendra Kumar

Advocate for Def. : Mr. N.K. Maloo

Advocate for Pet/Ap. : N.K. Maloo, Adv.

Disposition : Petition dismissed

Judgement :

Sharma, J.

1. This is a petition seeking transfer of a civil suit No. 22/1997 pending in the Court of learned Civil Judge (Senior Division) Jhalawar. In order to understand the nature of the petition it is necessary to mention some introductory facts. Those facts as recited in the petition are as under:

(i) The plaintiff non-petitioner Rajendra Kumar (for short the plaintiff) instituted a suit on Dec. 17, 1997 for eviction bearing No. 22/1997 for eviction of the premises in question and arrears of rent against the defendant petitioner Babulal (for short the defendant) in the court of Civil Judge (Senior Division) Jhalawar. The plaintiff averred in the plaint that the defendant is a tenant in the premises @ of Rs. 2500/- per month and committed default in making payment of rent.

(ii) On March 3, 1998 Mohan Lal and others who are near relatives of defendant, filed a suit (bearing No. 4/98) for declaration and cancellation of sale deeds and rent note against the plaintiff and the defendant in the court of District Judge Jhalawar with the averments that the property in question was purchased by Nand Lal, the father of the defendant by registered sale deed date November 22, 1939 and Mohan Lal and other members of joint family inherited the said property belonging to Nand Lal. Thus the defendant had no right to sell the property to the plaintiff and the sale deed and rent note respectively executed by the defendant on March 2, 1996 and April 24, 1996 Were null and void.

(iii) An application for slaying the suit for eviction till the decision of suit for declaration purported to have been filed under Section 19 CPC had already been dismissed. Thereafter the defendant moved application before the learned District Judge Jhalawar seeking transfer of suit for ejectment from the court of Civil Judge (Senior Division) to the Court of District Judge Jhalawar. Learned District Judge dismissed the application on March 24, 2000.

2. In my considered opinion, an order passed by the District Judge under Section 24 CPC is a decision of a 'case' within the meaning of Section 115 CPC and is open to revision. Patna High Court in Dasrath Prasad Singh and anr. v. Baijnath Prasad Singh (1), indicated that an order refusing to transfer a case is open to revision where having been passed on an erroneous view of the law if amounts to a refusal by the court to exercise the jurisdiction vested in it by law. But in Sheo Nandan Lal v. Mangal Chand (2), learned Single Judge of Patna High Court observed that even though the District Judge has refused to exercise the power vested in him by law under Section 24 CPC, the High Court has jurisdiction to act under this section. Besides the High Court has the general power of

superintendence over all inferior courts and this power is not limited by any course taken by the District Judge. I therefore propose to examine this matter on its merits.

3. Mr. N.K. Maloo, learned counsel for the defendant canvassed that the result of the suit for ejectment must necessarily depends on the decision of the suit for declaration and cancellation of sale deed and rent note. Therefore in order to avoid the conflicting judgments it will be necessary in the interest of justice that both the suits should be consolidated and tried together. Reliance is placed on B.S. Jayashree v. Ashoka R. Kamble (3), Mrs. Leela Palavi v. J.R. Manjunath (4), VamanVasudeo v. Raghunath Ganesh (5), Saroj Bashin v. Girija Prashad (6), and Bishamber Dayal Sharma v. Ram Pratap Sharma (7), decided by the Hon'ble Supreme Court on 2.5.1983). The ratio of all these judicial pronouncements is that two suits raising same issues, if instituted in two different courts may be ordered to be tried together.

4. It is well settled that invoking powers under Section 24 CPC is discretionary and should be exercised by the courts with extreme care and caution. It is always for the court to find out from the facts of each case whether any reasonable ground is made out for transfer. Where the totality of the facts and circumstances and looking at the overall view of the nature of the case and convenience of the parties it would be Just and reasonable to direct transfer of the suit to the other court, the suit may be transferred to other court under Section 24 CPC.

5. Keeping in view the aforequoted principles I deem it necessary to recapitulate the salient features of the instant matter which are as follows-

(i) Defendant Babulal executed sale deed in favour of the plaintiff Rajendra Kumar on March 2, 1996. It appears that defendant Babulal started residing thereafter in the house in question as tenant and executed a Rent Note on April 24, 1996 in favour of plaintiff Rajendra Kumar.

(ii) Plaintiff Rajendra Kumar instituted suit for eviction against defendant Babulal on December 17, 1997 in the court of Civil Judge Senior Division) Jhalawar.

(iii) Mohan Lal and other family members thereafter filed a suit for cancellation of sale deed and Rent Note in the Court of District Judge Jhalawar on March, 3, 1998 against the defendant Babu Lal and plaintiff Rajendra Kumar.

(iv) Defendant Babulal made attempt to seek the order staying the suit for eviction by filing application under Section 10 CPC but could get success.

(v) Mohan Lal and other family members who have filed the suit for cancellation of sale deed and Rent Note are, admittedly not the party in the suit for eviction.

(vi) Mohan Lal and other family members did not seek transfer of suit for eviction but it was defendant Babulal who made application before the District Judge and in this court also defendant Babulal has made prayer to transfer the suit for eviction instituted against him by plaintiff Rajendra Kumar.

(vii) Defendant Babulal who executed sale deed and Rent note and became tenant of plaintiff Rajendra Kumar now wants transfer of suit for ejectment in order to consolidate it with another suit instituted by the strangers who are not the parties in the suit for eviction.

6. The question for consideration before me is whether the plaintiff Rajendra Kumar who is entitled to file his suit in a Court of his choice which has jurisdiction to try it can be compelled to go to another court?

The Division Bench of Bombay High Court in Vaman Vasudeo v. Raghunath Ganesh (supra) in some what similar situation observed that if a party chooses to compel his opponent to go to another court, the court has to see that the person against whom the order is to be made is not prejudiced.

7. I have considered the matter from all angles and I am of the view that it would not be just and reasonable to transfer the suit for eviction pending in the court of Civil Judge (Senior Division). If transfer is made it would cause inconvenience to plaintiff Rajendra Kumar. He would loose his one right of appeal and it would cause prejudice to him. The defendant Babulal who himself is defendant alongwith Rajendra Kumar before the District Judge, cannot be permitted to plead the cause of the strangers Mohan Lal and others, in the garb of consolidation of two suits in

respect of one property. I do not want to express my opinion in regard to intention of defendant Babulal behind filing the transfer petition, as it may affect the adjudication of civil suits but from over all view of the facts and circumstances I do not find it a fit case to issue any direction under Section 24 CPC. I am unable to persuade myself to agree with the submissions advanced before me by Mr. N.K. Maloo, learned counsel.

8. The petition being devoid of merit stands dismissed.

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