



[2024:RJ-JD:27056]

RAJASTHAN HIGH COURT
**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Transfer Appl. No. 37/2024

1. Shri Jain Swetamwar Sangh Dhamotar, Dist. Pratapgarh Through its Manager Shri Parasmal Jain, Swetamwar Sangh, Dhamotar Dist. Pratapgarh (Raj.)
2. Surendra Dak S/o Shri Nathu Lal, Aged About 67 Years, R/o Near Jain Temple, Dhamotar, Dist. Pratapgarh.
3. Vimal Dak S/o Shri Sujanmal, Aged About 71 Years, R/o Near Jain Temple, Dhamotar, Dist. Pratapgarh.
4. Pawan Dak S/o Shri Vimal Dak, Aged About 40 Years, R/o Near Jain Temple, Dist. Pratapgarh.

----Petitioners

Versus

Gajendra Singh S/o Shri Dayal Singh, R/o Dhamotar Dist. Pratapgarh, At Present R/o House No. 17A, Shri Ram Banna Sa Vihar, Dhamotar House, Amba Mata Scheme, Udaipur.

----Respondent

For Petitioner(s) : Mr. SL Jain
For Respondent(s) : Mr. Avin Chhangani

HON'BLE MR. JUSTICE MANOJ KUMAR GARG**Judgment****REPORTABLE****Order Reserved on : 04/07/2024****Date of pronouncement: 22/07/2024**

The instant transfer application under Section 24 of the Code of Civil Procedure, has been filed by the petitioners against the order dated 02.02.2024, passed by the learned District Judge, Pratapgarh in Civil Misc. Case No.07/2024, whereby the learned Judge allowed the application of the respondent seeking transfer of Civil Suit No.34/2023, pending before the Court of Civil Judge,



Pratapgarh and transferred the said case to the Court of Senior Civil Judge, Chhoti Sadari.

The facts in brief are that respondent-plaintiff instituted a suit for permanent injunction in mandatory form against the petitioners-defendants with the averment that the petitioners-defendants encroached upon his land. Along with the suit, an application under Order 39 Rule 1 & 2 CPC was also filed seeking grant of injunction during the pendency of the suit. The petitioners-defendants filed a detailed reply to the injunction application. The learned Trial Court vide order dated 31.05.2023 dismissed the injunction application holding that the petitioners-defendants are in possession of the property in dispute. Being aggrieved by the order dated 31.05.2023, the respondent filed an appeal before lower appellate court, which was allowed in part directing the petitioners not to raise any new construction over the property in dispute. Subsequently, the respondent-plaintiff filed an application under Order 39 Rule 2A R/w Section 151 CPC with the averments that despite stay order dated 13.06.2023, the petitioners-defendants were raising constructions over the property in dispute. The petitioners-defendants filed a detailed reply to the said application.

When the matter was pending at the evidence stage, the respondent-plaintiff filed an application under Section 24 CPC seeking transfer of the civil suit No.34/2023, pending before the Court of Civil Judge, Pratapgarh to any other jurisdictional court, on the ground that the matter pertains to encroachments made by



Jain community and the said community has a great influence in Pratapgarh City and by using its influence, they can interfere in the judicial proceedings also. The petitioners-defendants denied the allegations raised in the transfer petition and prayed for its dismissal.

After hearing both the parties, the learned District Court vide order dated 02.02.2024 transferred the civil suit to the Court of Senior Civil Judge, Chhoti Sadari. Hence, this transfer petition on behalf of the petitioner-defendants challenging the order dated 02.02.2024.

Counsel for the petitioners-defendants submits that the order dated 02.02.2024 passed by the trial court transferring the suit to Chhoti Sadari is illegal, unjust, capricious and against the well settled cannons of law. Counsel submits that the application filed by the respondent under Order 39 Rule 1 & 2 CPC for granting injunction has already been dismissed, against which an appeal was preferred by the respondent before the District Judge, Pratapgarh, which was partly allowed directing the parties to maintain status quo in respect of the property in dispute. Against the order dated 06.07.2023, the petitioners and respondent have filed writ petitions before this Court, which are pending.

Counsel further submits that the learned trial court has passed the order dated 02.02.2024 without looking into the false and vague allegations made in the transfer petition against a particular community of having influence on the judicial proceedings. The conduct of the respondent is nothing, but an



attempt to lower down the esteem of the judiciary and is contemptuous. Thus, it is prayed that the impugned order may be quashed and set aside. To buttress his contentions, counsel has relied upon the judgments, **Kulwinder Kaur alias Kulwinder Gurcharan Singh vs Kandi Friends Education Trust & Ors.** (2008 AIR SCW 748), **D.A.V. Boys Sr. Sec. School Etc. Etc. vs DAV College Managaing Committee** (2010 AIR SCW 6523), **Babu Lal vs Rajendra Kumar** reported in (2001) DNJ 564, **J. Kumaradasan Nair and Another vs Iric Sohan and Others** (2009) AIR (SC) 1333, **Darshan Singh vs Ghewarchand and Others** (1993) 2 ACC 69, **Abraham Thomas Puthooran vs Manju Abraham and Anr.** Decided on 23.09.2021, **Mahesh Prasad Sen vs Dhanulal Namdeo** decided on 23.11.2023.

Per contra, counsel for the respondent-plaintiff has filed reply to the transfer petition and raised preliminary objection that this transfer petition is not at all maintainable. Counsel submits that the transfer petition filed by the respondent-plaintiff under Section 24 CPC filed before the District Judge was allowed vide order dated 02.02.2024, therefore, the petitioners-defendants cannot file a transfer petition challenging the said order before this Court under Section 24 CPC. Instead, the petitioners-defendants ought to have preferred a writ petition under Article 227 of the Constitution of India, as the remedy under Section 24 CPC is not available to them. Thus, counsel has prayed for dismissal of the transfer petition. In support of his contentions, counsel has relied upon the judgments **Dr. Subramaniam Swamy vs Ramkrishna**



Hegde reported in (1990) AIR (SC) 113, **Jagdish Kumar vs The District Judge, Budaun and Others** (1998) 33 ALR 400.

In rejoinder regarding maintainability of the transfer petition, counsel for the petitioners-defendants has relied upon the judgment of this Court in the case of **Meeta Agarwal Vs. Hathroigari Grah Nirman Sehkar Samiti, Jaipur** [2022(4)DNJ (Raj.) 1515]. In the said judgment, while relying upon the catena of judgments, it was held that a petition u/s. 24 C.P.C. is maintainable before the High Court against the order of District Judge transferring a case under Section 24 CPC.

Heard learned counsel for the parties and perused the order impugned as well as gone through the material available on record and case laws cited by the counsel for the parties.

The present transfer petition under Section 24 CPC has been filed by the petitioners challenging the order dated 02.02.2024 passed by the District Judge, Pratapgarh by which the transfer petition filed by respondent herein under Section 24 CPC was allowed and the main suit was transferred from the court of Civil Judge (Junior Division), Pratapgarh to the court of Senior Civil Judge, Chhoti Sadri. The respondent has raised a preliminary objection which involves significant procedural question under CPC as to whether the jurisdiction of the High Court and the District Court under Section 24 of the Code is concurrent to the extent that after a decision of allowing such application by one Court, a second application to challenge that order is maintainable before the High Court under Section 24 of CPC?



In order to appreciate the rival contentions, it is useful to refer to Section 24 CPC which is reproduced here as under:

“24. General power of transfer and withdrawal.—

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and—

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,—

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) “proceeding” includes a proceeding for the execution of a decree or order.





(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it."

The provision contained under Section 24 CPC gives power to Superior courts i.e. the High Court or the District Court to withdraw any suit, appeal or other proceedings pending in any Court subordinate to it and either try and dispose of the same, or transfer the same for trial or disposal to any Court, subordinate to it and competent to try or dispose of the same but after a decision of allowing such application by one Court, a second application to challenge that order is maintainable before the High Court under Section 24 of CPC or not.

In the case of Jagdish Kumar vs. The District Judge, Budaun and others Reported in (1998) 33 ALR 400, while dealing with the aforesaid question, the Allahabad High Court has observed under :

"22. Now turning to the second point it may be observed that Section 24 of the Code has used an expression which clearly indicates that the power is concurrent to both the District Judge and the High Court. Inasmuch as it has used the expression that "High Court or the District Court may (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same, or (b) withdraw any suit, appeal or other proceeding pending in any court subordinate, to it, and (i) try or





dispose or the same; or (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or (iii) retransfer the same for trial or disposal to the court from which it was withdrawn".

23. The jurisdiction conferred under Section 24 of the Code is concurrent does not conceive of any scope of doubt. But whether the concurrent jurisdiction means that both the jurisdiction can be availed together or one after the other. The concurrence means both the courts having jurisdiction, the parties are free to approach one or the other. Whenever concurrent jurisdiction has been conferred on the High Court and the District Court, it is provided that if one of the forum is approached, the party would be precluded from approaching the other forum. Inasmuch as in the West Bengal amendment of Section 115 of the Code by which Section 115-A has been Inserted. Under the said provisions both High Court and District Court have been empowered to entertain an application under Section 115 of the Code. Under sub-sections (3) and (4) thereof it has been provided that if either of the court is approached, no further revision shall be entertained between the same parties either by the High Court or the District Court as the case may be. Similar provision has also been incorporated in Section 397 of the Cr. P.C. where in sub-section (3) similar exclusion of jurisdiction by the High Court or Sessions Court having concurrent jurisdiction has been provided. In the absence of specific prohibition or exclusion of jurisdiction, Section 24 of the Code cannot be interpreted to mean that the jurisdiction of the one court is to the exclusion of the other. But a situation may arise where the High Court having been unsuccessfully approached, a party may approach to





the District Court thereafter. If such a situation is permitted, It would work out a judicial anarchy. After having unsuccessful before the District Court, a party may approach the High Court. Such position is in conformity with the system of judicial hierarchy. If the party approaches the High Court then it cannot come back to the District Court. Such an interpretation would not be in conformity with the judicial system of hierarchy.

24. But in case a party seeking transfer, is unsuccessful in the District Court whether he is precluded from challenging the said order. The answer would be available by resorting to Article 227 of the Constitution. Therefore, it cannot be said that he is precluded from challenging such an order if sufficient ground is made out for invoking such jurisdiction, Similarly if an applicant before the High Court succeeds, the aggrieved party cannot avail the concurrent jurisdiction of the District Judge thereafter on the same analogy due to which successful candidate is so prevented. The Jurisdiction may not be mutually excluded but once the High Court is approached, jurisdiction of the District Court is excluded.

26. Thus the out-come of the above discussion indicates that when an application for transfer before the District Court fails, the party applying may approach the concurrent jurisdiction of the High Court under the same provision but the party opposing though may apply for retransfer before the District Judge but cannot challenge the said order under Section 115 of the Code though, however, on the principle on which Article 227 of the Constitution can be exercised he may invoke the power of





superintendence conferred upon the High Court by the Constitution under Article 227 of the Constitution thereof."

In the case of ***Shivpal Singh and Others vs Dafedar***

Singh and Others (2022 152 AILR 886), the Hon'ble Allahabad High Court referred the questions to a Larger Bench and the Larger Bench vide order dated 16.12.2022, answered those questions in the following manner :-

(i) The question is answered in the affirmative and it is held that an order passed by the District Judge under Section 24 CPC is revisable under Section 115 CPC as applicable in the State of U.P.

(ii) The question stands answered in the negative and it is held that another application under Section 24 CPC by the same applicant based on the same cause of action would not be maintainable before this Court without challenging the order passed by the District Judge, on the application disposed of by the District Judge under Section 24 CPC through a revision under Section 115 CPC. Normally, the order of the District Judge passed on an application under Section 24 CPC being revisable, the constitutional remedy under Article 227, though not barred, may not be invoked on the sound principle of the availability of an equally efficacious statutory alternative remedy under Section 115 CPC.

(iii) The question is answered by holding that the law laid down by this Court in Sunita Devi's case (supra) and Indian Oil Corporation's case (supra) lay down the law correctly on the subject-matter in issue and the decision in Jagdish Kumar's case (supra) and Amit Kumar Pachauri's (supra) do not lay down the correct law.





5. In view of judgment passed by this Court in Babu Singh's case (supra), in our view, the questions referred by the learned Single Judge, to be considered by a Larger Bench, stands answered."

In **Indian Oil Corporation Ltd. Vs Ram Swaroop Bajaj**

(Deceased) reported in 2016 4 ADJ 724, the Hon'ble Allahabad High Court has observed as under:

"6. From perusal of the aforesaid provisions, it is apparently clear that no power has been conferred on the High Court to set aside the order passed by the District Court on an application under Section 24 of C.P.C."

Thus, in the light of aforesaid judicial precedents, this Court is of the opinion that the jurisdiction of the District Court and the High Court is concurrent under section 24 of the Code, so when a petition for transfer before the District Court fails, the party applying may approach the concurrent jurisdiction of the High Court, under the same provision but the party opposing would be precluded from approaching the High Court under section 24 of the C.P.C. to challenge the order passed by District Court.

So far as the judgment cited by the learned counsel for the petitioner in the case of Babu Lal (Supra) is concerned, in the said case, the co-ordinate Bench of this Court held that against the dismissal of transfer application, the party applying may approach the concurrent jurisdiction of the High Court, which is not the case in hand. In the case of Kulvinder Kaur (Supra), the Hon'ble Supreme Court held that wrong mentioning of a provision of law is



not sufficient to take away jurisdiction of a Court, if it is otherwise vested in it. In the present case, the party opposing the transfer order has again approached the High Court under section 24 of the C.P.C which does not involve the point of jurisdiction but that of procedural remedy. In the case of Darshan Singh (Supra), the Division Bench of this Court while agreeing to the decision rendered in Dushyant Kumar & Ors Vs. Rajasthan State Road Transport Corporation held that Claims Tribunal under the Motor Vehicles Act being Civil Court was amenable to revisional jurisdiction of the High Court under Section 115 CPC and that the Tribunal was a court subordinate to the High Court. Learned counsel for the petitioners relied upon the decision in the case of Meeta Agarwal (supra) in which the learned Single Judge while referring judgment of Andhra Pradesh High Court held that a petition under Section 24 CPC is maintainable even without an order of dismissal of such petition by the District Court being questioned either under Section 115 CPC or under Article 227 of the Constitution of India. However, the Larger Bench of the Allahabad High Court in the case of Shivpal Singh (Supra) held that the order of the District Judge passed on an application under Section 24 CPC being revisable, the constitutional remedy under Article 227, though not barred, may not be invoked on the sound principle of the availability of an equally efficacious statutory alternative remedy under Section 115 CPC. In the case of Babu Singh (Supra), the Hon'ble Court held that the order of the District Judge passed on an application under Section 24 CPC being revisable, the constitutional remedy under Article 227, through





not barred, may not be invoked on the sound principle of the availability of an equally efficacious statutory remedy under Section 115 CPC.

For the reasons indicated hereinabove, this court is of the opinion that if the petitioner is aggrieved by the order passed by District Judge, it cannot further invoke the jurisdiction of this Court under Section 24 CPC to undo the District Judge's order. Accordingly, the present transfer petition stands dismissed with liberty to the petitioners to seek appropriate statutory remedy under the law.

Stay application and any other pending applications also dismissed.

(MANOJ KUMAR GARG),J

121-BJSH/-