

ORIGINAL CIVIL.

Before Pearson J.

BROJO GOPAL NAIK

v.

LAKSHIMONI DASSI AND OTHERS.*

1926

Nov. 29.

*Transfer of Suit—High Court Letters Patent of 1865, clause 13—
Grounds of transfer—Balance of convenience.*

On an application for transfer of a civil suit to the High Court :—

Held, that the question of transfer "for purposes of justice", within the meaning of clause 13 of the Letters Patent, must be determined by reference to the circumstances of each case and that the balance of convenience, having regard to those circumstances, was one of the matters for consideration and that this was a fit case where the order should be made.

Rajah Ojooderam v. S. M. Nobinmoney Dossee (1) referred to.

APPLICATION.

This was an application under clause 13 of the Letters Patent and under sections 22, 23 and 24 of the Code of Civil Procedure, 1908, for the transfer to the High Court of a suit pending in the Court of the third Subordinate Judge of Hooghly. The suit was brought by an infant member of a family to set aside certain terms of settlement and the decree based thereupon, in a suit previously instituted in the High Court and also to set aside a certain deed of relinquishment executed by a purdanashin Hindu lady. The grounds upon which the transfer was asked for are set forth in the judgment of the Court and may be summarised as follows :—

(i) That all negotiations from which the settlement resulted and the settlement itself, took place in Calcutta.

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(ii) That all parties concerned, including the lady herself, were represented by attorneys of this Court in those negotiations.

(iii) That the lady herself was present in Calcutta and purported to give her assent to the terms in Calcutta and apparently, the only thing she did outside Calcutta was the actual signing of the deed of relinquishment.

(iv) That all the attesting witnesses to the deed of relinquishment were residents of Calcutta.

(v) That all persons who would be able to depose to the facts of the case were residents of Calcutta.

(vi) That the attorneys would have to be called to give evidence and be employed to watch, advise and instruct in the case, having regard to their knowledge, and to produce their day-books in Court.

(vii) That the question of what took place in Court when the terms of settlement were placed before the Court by counsel was material to be enquired into.

(viii) That a considerable portion, if not the bulk, of the properties involved in the suit was situate at Calcutta.

(ix) That having regard to the extent and value of the estate and the amount at stake, counsel would have to be engaged to conduct the case, wherever tried, and that the fees to be paid to them would be much higher if the suit were tried elsewhere than at Calcutta.

(x) That if the suit was transferred to the High Court, the delay in the hearing would be considerably minimised.

(xi) That all adult defendants and the guardians of the minor defendants habitually and ordinarily carried on business and the affairs of the estate in Calcutta.

(xii) That none of the defendants had got any ordinary place of residence in the town of Hooghly or near it and it would be extremely difficult and inconvenient for them to defend the suit in the Hooghly Court.

(xiii) That all previous litigation and proceedings in Court relating to the estate commencing from 1908 had taken place in the High Court and many of the records would be necessary for defence in the suit.

(xiv) That all relevant books of account, documents of title, papers and memorandum were in Calcutta.

(xv) That to the best of the applicant's knowledge none of the plaintiff's witnesses resided at Hooghly.

(xvi) That complicated questions of law and facts including the question of jurisdiction would arise in the suit and it would be for the benefit and convenience of all parties if the same were decided in this Court.

Mr. N. N. Sircar and *Mr. B. K. Ghose* for the applicant *Rash Behari Mondal*.

Sir Binod Mitter and *Mr. S. C. Mitter*, for *Sashi Bhusan Mondal* and others, supported the application. *The Advocate-General (Mr. B. L. Mitter)* and *Mr. A. P. Basu*, for *Sreemutty Lakshimoni Dassi* also supported the application.

Mr. S. N. Banerjee and *Mr. S. M. Bose*, for *Narottam Mondal* and others, also supported the application.

Mr. Langford James and *Mr. S. C. Bose*, for the plaintiff *Brojo Gopal Naik*, opposed the application.

Cur. adv. vult.

PEARSON J. This is an application for transfer to this Court of a suit pending in the Court of the Subordinate Judge at Hooghly. The application is on

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the part of the 4th defendant in that suit, one Rash Behary Mondal, and is supported by all the appearing defendants, but opposed by the plaintiff.

Ramdhone Khan and Rameswar Khan were two brothers possessed of considerable joint properties moveable and immoveable; the pedigree which is exhibited shows their descendants and their relationship. It appears that there was certain litigation in this Court concerning the joint estate. In 1914 Ramdhone's widow Lakshimoni filed a suit for partition in this Court as a result of which certain properties were allotted to her, the rest remaining joint. In 1919 a suit was instituted against Lakshimoni, also in this Court, for a declaration that certain transfers by her of Government securities were invalid, and for other reliefs. That suit never came to a hearing.

In June 1920, a suit (No. 1172 of 1920) was filed in this Court by Narottam Mondal, (defendant No. 5 in this suit) against Lakshimoni Dassi, Haridasi and other members of the family to set aside a certain deed of relinquishment executed by Haridasi Dassi. Ultimately that suit was settled upon certain terms, which were gone into at some length before Mr. Justice Page, to satisfy the Court that they were for the benefit of the infant parties, after which a decree was passed in accordance with them. The terms embodied *inter alia* a relinquishment by Lakshimoni Dassi of her rights as a Hindu grandmother in the estate of Shamadas Khan, deceased. The decree was passed on the 26th February 1923, and the deed of relinquishment was executed by Lakshimoni on the following day, the 27th. The present suit is brought by an infant member of the family, born on the 21st June 1926, to set aside those terms of settlement, the decree based upon them, and the deed of relinquishment by Lakshimoni. The grounds set out in paragraph 17

of the plaint are her infirmity, want of mental capacity, the absence of independent legal advice and undue influence on the part of Haridas Mondal. Lakshimoni has filed an affidavit on the present application to the effect that she knew quite well what she was doing.

It is to be noted that all the negotiations from which the settlement resulted, and the settlement itself, took place in Calcutta. All the parties concerned, including Lakshimoni, were represented by attorneys of this Court in those negotiations, and they lasted from early in February onwards. Lakshimoni herself was in Calcutta and gave her assent to the terms in Calcutta and apparently the only thing she did at Mankundu, the family residence, was the actual signing of the deed of relinquishment. So that whether there may be witnesses of the locality (the plaintiff has not named one) who can give evidence in the plaintiff's favour as regards Lakshimoni's capacity about that time, the kernel of the case would appear to lie in the negotiations and circumstances surrounding the settlement, and the part taken by Lakshimoni and her advisers. It seems undoubted that the attorneys will have to be called, and be employed not merely in giving evidence, but to watch and advise in the case having regard to their knowledge. The attorney's day-book is a familiar enough production in these Courts, though not outside Calcutta. There is also the question of what took place in Court when the terms of settlement were placed before the Court by counsel.

As regards the properties belonging to the estate, the suit is valued at some 26½ lakhs. Mohipal Naik's affidavit says that the value of the properties in Calcutta is about 4 lakhs and of those outside Calcutta more than 2½ lakhs. At the time of the partition suit in 1914 when the properties were valued by the

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Commissioner, the Calcutta properties were estimated at Rs. 4,59,000, at Chandanagor Rs. 66,000, at Hooghly Rs. 12,000. There were zemindaries in the districts of Hooghly, Murshidabad, Nuddea and Bhagalpore valued at Rs. 5,50,000. And there were Government securities in Calcutta of about Rs. 5½ lakhs, and another 4 to 5 lakhs of out-standings on mortgages in Calcutta and the family business in Calcutta.

I do not think that the fact that previous litigation had already taken place in this Court is really material to the present application, except that if it is necessary to refer to the records they had better be referred to in this Court than be taken up country. Whichever Court heard the case, I take it the parties would have to take certified copies of such proceedings as they required. As regards expense, it would be surprising if counsel were not engaged where the estate is so large, and it is common knowledge that the fees would be much higher than if the suit were tried here. The expense of getting the witnesses to Calcutta is not disproportionately large as compared with Hooghly.

One point made in opposition is that Lakshimoni herself is not in a state to be examined except on commission at Mankundu, but as against that I have applicant's undertaking through his counsel that she will be brought to Calcutta for such examination. Another objection is made that the translation of account books would be expensive if the suit is heard here, but the applicant has similarly undertaken to bear the expense of that in regard to relevant entries should it become necessary. And as regards the expense of conducting a suit here, he has similarly agreed that in the event of the plaintiff succeeding, he may tax his costs against the applicant, irrespective of the restrictions of Ch. XXVI, r. 34 of the Rules,

I think, further, that if the suit is transferred here, the delay in the hearing may be considerably minimised, at any rate, if the parties are diligent.

It has been argued that no transfer should be made unless it is "for purposes of justice" within the meaning of clause 13 of the Letters Patent, that is, it must at least be shown that the trial will be unsatisfactory, if it is conducted at Hooghly. *See Rajah Ojooderam v. S. M. Nobinmoney Dossee*(1). But I take it that the question is to be determined by reference to the circumstances of each case, and that the balance of convenience, having regard to those circumstances, is one of the matters for consideration. Upon the whole, I think, that this is a case where the order ought to be made. Costs in the cause.

Attorneys for the applicant: *G. C. Chunder & Co.*

Attorneys for the plaintiff: *P. C. Mitter.*

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