

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

CTA no. 5/2010
CMA no. 3/2010

Date of order: 23.11.2012

Kiran Pandita amd ors v. State of J&K and ors

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice

Appearing counsel:

For the Petitioner(s) Mr. Sumir Pandita, Advocate.

For the respondent(s) Mr. P. N. Goja, Advocate.

i) Whether to be reported in
Press, Journal/Media : Yes/No
ii/ Whether to be reported in
Digest/ Journal : Yes/No

M. M. Kumar, CJ

1. This is an application preferred by Mrs. Kiran Pandita, Veenu Koul and Reeta Koul daughters of late Jai Krishan Pandita for transfer of civil suit titled Kiran Pandita and ors v. State and ors from the court of learned Sub Judge (C.J.M) Anantnag to any court of competent jurisdiction at Jammu.

2. The petitioners were originally residents of Village Khalhar, Chinigund and Vessoo of Tehsil Dooru District Anantnag in Kashmir Valley respectively. They migrated and are presently residing at Jammu. However, without their knowledge their brothers, Ashok Kumar and Ramesh Kumar-respondent nos. 4 and 5 respectively have sold the whole property belonging to late Shri Jai Krishan Pandita to

respondent nos. 6 and 7, namely, Abdul Majid Tantray and Ghulam Hassan Tantray. They have filed civil suit titled as Kiran Pandita and ors v. State and ors in the Court of learned Sub Judge (C.J.M) Jammu which was not entertained and they were asked to present the suit in the court of competent jurisdiction i.e. Sub Judge (C.J.M) Anantnag.

3. The petitioners allege that there are threats to the petitioners by respondent nos. 6 and 7 and also to their counsel. It has also been stated in paragraph no. 6 that official respondent nos. 1 to 3 are available at Jammu and respondent nos. 4 and 5 have also been residing at Jammu. Another ground raised is that Cr. Transfer Application no. 5/2005 was allowed and the case from the Court of Judicial Magistrate 1st Class Pampore was transferred to the Court of Judicial Magistrate 1st Class Jammu. A copy of the order dated 31.01.2006 has been placed on the record.

4. Respondent nos. 4 and 5 in their objections have supported the case of the petitioners. In the preliminary objections they have stated that they have no objection if the suit is transferred to any court of competent jurisdiction at Jammu. However, there is opposition to the prayer by respondent nos. 6 and 7 who have filed their separate objections. They have denied that any threats were made to the

petitioners either on phone or directly or indirectly, or to their counsel. Another submission made is that near about 3000 educated young men of the minority community have been employed within the Valley who have joined their duties and this year Baba Amarnath Shrine attracted more than 5 lac pilgrims of the different parts of the country.

5. I have heard the learned counsel for the parties. The petitioners are females and they have initiated proceedings for claiming their right in the property of their father which is alleged to have been sold by respondent nos. 4 and 5 to respondent nos. 6 and 7. What would be the effect of sale in view of the provisions of Jammu and Kashmir Migrant Immoveable property (Preservation, Protection and Restraint on Distress Sales) Act, 1997 is an issue for the civil court to decide. However, the petitioners, being females, would be placed in adverse circumstances to prosecute their rights in the civil suit at a place which is approximately 250 Kilometer from their residence. It is true that the cause of action has arisen at Anantnag where the property is situated but it is also true that the petitioners would be able to prosecute their suit much better in the Courts at Jammu particularly when respondent nos. 1 to 5 are available at Jammu.

6. As a sequel to the above discussion, this petition succeeds. The proceedings in case titled Kiran Pandita and ors v. State of J&K and ors pending in the court of Sub Judge (C.J.M) Anantnag, are ordered to be transferred to the Court of competent jurisdiction at Jammu. Parties are directed to appear before Principal District Judge, Jammu on 17.12.2012, who shall assign the case to a court of competent jurisdiction at Jammu.

(M. M. Kumar)
Chief Justice

JAAMU:
16.11.2012
Anil Raina, Secy.