

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 14.02.2022
Pronounced on: 25.02.2022

TrP (C) No. 14/2021
CM No. 2854/2021

Tirath Ram and others

.....Appellant(s)/Petitioner(s)

Through: Mr. J. P. Gandhi, Advocate.

Vs

Seeta Devi

..... Respondent(s)

Through: Mr. Bodh Raj Sharma, Advocate.

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGEMENT

1. The petitioners, who are the defendants in the suit, titled, "*Seeta Devi Vs Tirath Ram and others*" pending before the court of learned Munsiff, Judicial Magistrate, Gool (hereinafter to be referred as the trial court) have filed the present petition seeking transfer of the said suit from the court of Munsiff, Judicial Magistrate, Gool to any other court of competent jurisdiction at Ramban on the following grounds:

- (i) That the petitioners are residents of village Famrote, Tehsil Gool, District Ramban and in the year 1998 due to militancy, the petitioners migrated from the said village. The respondent is the real sister of the petitioners and as the petitioners are not having good relations with the husband of the respondent, so he has got the said suit for partition filed through his wife i.e. respondent herein, with regard to the land measuring 27 Kanal 4 Marlas comprising Khasra

No. 162, situated at Village Nihar, Famrote, Tehsil Gool, District Ramban. It is further stated that the distance between their respective place of residence and the court, where the said suit is sub-judice, is 180 kilometres. The petitioner Nos. 1,2 and 4 are residing in village Gangi, Lander Panchari, Udhampur and from Village Gangi Lander to reach the trial court, all the three petitioners mentioned above have to travel on feet for 6 kilometres, which take not less than two hours to reach Lander Panchari from where the petitioner Nos. 1, 2 and 4 have to board a bus for Udhampur and after reaching Udhampur, they have to take another bus for going to Ramban and from Ramban another bus is required to be changed to attend the proceedings before the learned trial court and as such they have to travel a distance of 180 kilometres for attending the proceedings before the trial court. Likewise, petitioner No. 3 has to travel 5 kilometres on feet from his village Duthan up to Pathan from where he has to take a bus to reach Gool. The distance of Pathan to Gool is not less than 95 kilometres and it takes not less than 4 hours to reach by bus from Pathan to Gool. It is also stated that the respondent is residing at Sangaldhan and distance between Gool and Sangaldhan is 20 kilometres and it takes about 1 hour to reach the learned trial court. It is further stated if the suit is transferred from Munsiff court Gool to any other court of competent jurisdiction at Ramban, there will be no inconvenience as the distance between Sangaldhan to Ramban is 40 kilometres and the bus takes about 2 hours to reach from Sangaldhan to Ramban.

2. Response stands filed by the respondent in which it is stated that the present application has been filed to pressurise and cause inconvenience to the respondent by compelling her to travel from Gool to Ramban to contest the case. It is further stated that the respondent being a lady and is suffering from different ailments is not capable of travelling from Gool to Ramban to contest the case and petitioners being aware of the said facts have filed the present application to cause inconvenience to the respondent. It is also stated in the response that the distance from Panchari to Gandari is approximately 10 kilometres and the distance mentioned by the petitioners in the petition is totally false and there is a road from Sedu Nalah to Gool and the distance from Panchari to Sedu Nalah is 10 minutes by foot. It is further stated that so far as petitioner No. 3 is concerned, he has to travel no distance on foot at all as in the village Duthan, motor car facilities are available. It is also stated that the respondent is a poor lady having no source of income whereas all the petitioners are well settled.
3. Mr. J. P. Gandhi, learned counsel appearing on behalf of petitioners vehemently argued that for the purpose of securing ends of justice, the suit is required to be transferred to court of competent jurisdiction at District Ramban because it is very inconvenient for the petitioners to attend the proceedings at Gool. Mr. Gandhi, placed much reliance upon the judgment of Apex Court in **Dr. Subramaniam Swamy vs Ram Ramkrishna Hegde reported in 1990AIR (SC) 113.**
4. Mr. Bodhraj Sharma, learned counsel appearing on behalf of respondents submitted that the petitioners have wrongly mentioned the distance as they

have not mentioned in their petition about the alternative route that is also available and further it is not possible for the respondent to attend the proceedings all alone at Ramban.

5. Heard and perused the record.
6. The perusal of the response filed by the respondent reveals that the respondent has given the different version of the distance between the place where the court is located and the residences of the petitioner No: 1,2 and 4. The petitioner has not filed any rejoinder to the said assertion of the petitioners. Be that as it may, the only ground on which the petitioners are seeking transfer of the suit from Munsiff, Gool to a court of competent jurisdiction at District Ramban is with regard to distance the petitioners have to travel for attending the proceedings. In **Indian Overseas Bank v. Chemical Construction Co., (1979) 4 SCC 358** Apex Court has observed as under:

16. The principle governing the general power of transfer and withdrawal under Section 24 of the Code is that the plaintiff is the dominus litis and, as such, entitled to institute his suit in any forum which the law allows him. The court should not lightly change that forum and compel him to go to another court, with consequent increase in inconvenience and expense of prosecuting his suit. A mere balance of convenience in favour of proceedings in another court, albeit a material consideration, may not always be a sure criterion justifying transfer.

7. It needs to be noted that mere convenience of the parties or one of them may be one of the criteria for transferring the suit from one court to another but it can hardly be the sole factor for transferring the proceedings. The respondent is a lady and her contention, taking in to consideration her rural background that it is not possible for her to travel alone, cannot be brushed aside. The petitioners are four in number,

proceedings being civil in nature and further all the petitioners are not required to attend the proceedings before the trial court on a particular day and as such they can devise mechanism amongst themselves for attending the proceedings at Gool. On the contrary, the respondent is a lady residing at Village Sangaldhan and she too has to travel a certain distance to attend the proceedings at the court and it would certainly be inconvenient for her also in case the suit is transferred to court of competent jurisdiction at District Headquarters Ramban.

8. Except the distance between their respective residences from the trial court, the petitioners have not been able to demonstrate any other reason that they will not be able to defend the suit properly before the court of learned Munsiff, Gool. In Dr. Subramaniam Swamy vs Ram Ramkrishna Hegde, the judgment on which Mr Gandhi placed much reliance is of no help to the petitioners as in the said case the suit was transferred from Bombay High Court to City Civil Court Bangalore as the respondent therein was having residence in Bangalore and further most of the documentary evidence and majority of the witnesses were available in Bangalore and likely reluctance of witnesses to travel to Bombay was also considered. No such ground exists in the instant case.
9. Viewed thus, there is no merit in the present petition and as such is dismissed.

(RAJNESH OSWAL)
JUDGE

Jammu
25 .02.2022
Sahil Padha

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No