

Vijayaram Raj Maharaja Of Vizianagram vs Dr. Vijaya Anand Gajpati Raj Bahadur And ... on 5 May, 1953

Equivalent citations: AIR1953ALL750, AIR 1953 ALLAHABAD 750

ORDER

Brij Mohan Lall, J.

1. This is an application by a defendant under Sections 22 and 23(3), Civil P. C. for the transfer of a civil suit pending in the Court of the Civil Judge, Banaras, to the Court of the Subordinate Judge, Visakhapatnam, or to the original side of the Madras High Court.

2. Section 22, Civil P. C., runs as follows : "Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed."

3. It will thus appear that a condition precedent to the maintainability of an application under Section 22, C. P. C. is that a notice should be given by the applicant to the "other parties." The applicant had, before moving this application, served a notice on the plaintiff but has not to this day served notice on the other two persons, viz. Rani Vidyavati Devi and Rajkumar Vishweshwar, who are arrayed as opposite parties 2 and 3 respectively in this Court and who were co-defendants with the applicant in the Court below. The phrase "other parties" does not mean persons arrayed as opposite parties qua the applicant. It means all other persons impleaded as parties to the suit. Every one who is impleaded in the suit, whether as a plaintiff or as a defendant, is interested in the venue of the trial. If the case is to go to a different district or a different State, he may be vitally affected and his interest may suffer. It is, therefore, the intention of law that nobody should be permitted to move an application under Section 22, C. P. C. unless previous notice Of such intention is given to all other parties to the suit.

4. Since this preliminary requirement has not been complied with by the applicant, this application cannot be entertained. It is hereby rejected. Opposite party 1 shall get his costs from the applicant.