

Dr. Rajnath vs L. Vidya Ram And Ors. on 20 July, 1953

Equivalent citations: AIR1953ALL772, AIR 1953 ALLAHABAD 772

ORDER

Agarwala, J.

1. This is an application for transfer of a suit pending in the Court of the Civil Judge, Agra to the Court competent to try it in Mainpuri. The parties belong to the same family. L. Vidya Ram, plaintiff-opposite party 1 filed the suit which has given rise to this application for partition of family property in the Court of the Civil Judge Agra. The applicant and the other two opposite parties, L. Kedar Nath and Srimati Attar Dei, are defendants to the suit. The property in dispute is situated partly in the district of Agra and partly in the district of Mainpuri. The issues in the case were framed on 21-2-1950. The applicant did not object to the suit proceeding in the Civil Judge's Court at Agra up to that time. Then six months later, i. e. on 30-8-1950 he made the present application to this Court for the transfer of the case on the ground that the suit could have been instituted at Mainpuri and it would be convenient to both parties that it be tried there.

The ground mentioned in the application is covered by Section 22, Civil P. C. The Section however lays down two conditions in which such an application may be made, first that the application should be made at the earliest possible opportunity and in any case at or before the settlement of issues and second that it should be made after notice to the other party. These conditions were not complied with by the applicant. Learned counsel for the applicant argues that his application is under Sections 23 and 24, Civil P. C. The argument has no force.

Section 23 merely lays down the forum in which applications under Section 22 are to be made. Although Section 22 is mentioned in Clause (1) of Section 23 only, Clauses (2) and (3) of that Section also refer to an application made under Section 22 and do not refer to an application made under Section 24. Section 23 is not an independent section. It is supplemental to Section 22. Section 24 is a general provision empowering the High Court or the District Court to transfer a case on the motion of any other party or on its own motion. The general power conferred by Section 24 is not to be applied where the case falls under Section 22. If Section 24 were to apply to the classes of cases covered by Section 22, it would not have been necessary for the Legislature to enact Section 22 at all. It is a general principle of interpretation of Statutes that where there is a special provision for a particular matter and there is also a general provision, the special provision should be applied. The application in the present case having been made on the ground which is covered by Section 22 falls under that Section and not under Section 24.

2. The provisions of Section 22 not having been complied with, the application is not maintainable and is dismissed with costs.

3. The stay order is discharged. The Court below shall proceed to decide the case without any delay.