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ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Civil Transfer Appln. No. S- 03 of 2013

Applicant : Khairuddin Malik
through Mr. Safdar Ali Ghouri, Advocate.

Respondent No.1 : Khawand Bux Suhriani,
through Mr. Ghulam Ali A. Samtio, Advocate.

Respondent No.2 : The State, through Mr. Ali Akbar Kalhoro,
State Counsel.

Date of Hearing: 08.08.2016
Date of Order: 08.08.2016

ORDER

Zafar Ahmed Rajput, J.- By means of this Civil Transfer Application under Section 24 of Civil Procedure Code, the applicant/defendant seeks retransfer of F.C Suit No.51/2007 (re. Khawand Bux v. Khairuddin and others) from the file of learned Senior Civil Judge, Kashmore to the Court of Senior Civil Judge, Kandhkot.

2. Briefly stated, facts of the case are that in the year 2007 the respondent No.1/plaintiff, namely, Khawand Bux filed F.C Suit No.51/2007 in the Court of Senior Civil Judge, Kandhkot for declaration, permanent injunction, specific performance of contract, ^{and} cancellation of sale deed and Khata of defendant No.1 in respect of agricultural land bearing survey No.243, 387, 388 and 389 (measuring 19-31 acres) situated in Deh Mehatar Taluka Kandhkot. In the month of April 2011, the respondent No.1/plaintiff filed amended plaint and issues were framed on 06.6.2011 and thereafter the case was fixed for evidence when respondent No.1/plaintiff filed a transfer application in the Court of District Judge, Kashmore @ Kandhkot which was allowed vide impugned order dated 04.5.2013 whereby the above mentioned suit was withdrawn from the file of

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learned Senior Civil Judge, Kandhkot and transferred to the Court of learned Senior Civil Judge, Kashmore for disposal on merits in accordance with law.

3. Mr. Safdar Ali Ghouri, learned Counsel for the applicant/defendant has submitted that the respondent No.1/plaintiff filed the transfer application before the learned District Judge, Kashmore at Kandhkot on the sole ground of apprehension of danger to his life at the hands of his enemies at Kandhkot and, thus, he was facing difficulties while attending the Court at Kandhkot but he failed to bring on record anything to establish his enmity with any person or persons in Kandhkot and the learned District Judge transferred the suit only at the whims of respondent No.1/plaintiff, therefore, this order is without any legal merits and; hence, liable to be set-aside and in consequence thereof the subject suit should be re-transferred from the file of learned Senior Civil Judge, Kashmore to the Court of Senior Civil Judge, Kandhkot. He has further submitted that the suit was at the stage of respondent No.1/plaintiff's evidence when it was withdrawn from the Court of Senior Civil Judge, Kandhkot and since then three years have passed but the respondent No.1/plaintiff has failed to conclude his evidence which fact is sufficient to establish that the respondent No.1/plaintiff with ill-will filed the application for transfer of subject suit just to linger on the case.

4. On the other hand, Mr Ghulam Ali A. Samtio, learned Counsel for respondent No.1 has opposed this civil transfer application on the ground that the respondent No.1/defendant No.2 had recorded his no objection for transfer of the case while the respondent/defendant No.3 did not file his objections so much so In-Charge District Attorney for official respondents also extended no objection for allowing of the transfer application before the learned District Judge. He has further maintained that the respondent No.1/plaintiff has enmity with his community members residing in Kandhkot town, therefore, he filed transfer application apprehending danger to his life in Kandhkot. He has also maintained

Samtio

that the respondent No.1/plaintiff is ready to conclude his evidence within one month hereof, as the trial before the learned Senior Civil Judge, Kashmir lingered on, as this civil transfer application was pending adjudication.

5. Heard learned Counsel for the parties and perused the material available on record.

6. It may be relevant to mention here that under Section 24 of Civil Procedure Code the District Courts and the High Court have been conferred with general powers to transfer, withdraw and re-transfer at any stage, the pending suit, appeal or other proceedings either *Suo Moto* or upon application by the party to the proceedings. However, the legislature in its wisdom, has not stated the grounds or cited the instances which can be made basis that seeking transfer of any case from one Court to another Court, unlike the provisions of Section 526, Cr.P.C, which includes specific grounds and provides for the instances which can be made basis for seeking transfer of criminal case from one Court to another Court. Thus Section 24 has conferred the discretion in the matter and transfer of suit, appeal and other proceedings on the District Judge as on the High Court. The discretion, however, is a judicial discretion and, therefore, it is required to be exercised with substantial reasons based on special facts of individual case.

7. In the instant case, the respondent No.1/plaintiff has taken sole ground of enmity with some of his community members residing in Kandhkot town which has not been specifically denied by the applicant/defendant in his counter-affidavit wherein he has mentioned that he would suffer irreparable loss if the suit is transferred to any other Court and that the respondent No.1/defendant No.1 wants to prolong the suit which is pending adjudication since 2007. It is not conceivable that if the suit has been transferred from one Court to another in what manner the applicant/defendant No.1 has suffered irreparable loss. So far the delay in conclusion of the suit is concerned, the learned counsel for respondent

Defendant

No.1/plaintiff has already contended that the matter could not be proceeded as the instant transfer application is pending and if the same is decided, he would conclude his evidence within one month.

8. For the foregoing facts and reasons, I do not find any merit in this civil transfer application, which is hereby dismissed with no order as to costs. However, learned trial Court is directed to proceed with the *lis* expeditiously and decide the same preferably within a period of four months hereof and such compliance report be submitted to this Court through Additional Registrar.

08/08/2016
Judge