

A SHIV KUMARI DEVENDRA OJHA

v.

RAMAJOR SHITLA PRASAD OJHA AND ORS.

JANUARY 13, 1997

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Code of Civil Procedure, 1908 : Section 25.*

C *Supreme Court—Power to transfer cases—Succession application pending before Civil Judge, Valsad—Petition filed by petitioner for transfer to Civil Judge in Pratapgarh District—Ground that petitioner being a lady was unable to travel and also would face difficulty in meeting the expenditure—Respondents ready to bear her expenditure for travel and stay—Held in such circumstances there was no justification for transferring the matter—Direction issued to respondents to pay Rs. 750 to petitioner on each occasion—Liberty to petitioner to file application for financial assistance from respondents for engaging counsel at Valsad.*

D

CIVIL ORIGINAL JURISDICTION : Transfer Petition (C) No. 281 of 1996.

E (Under Article 139A(1)/(2) of the Constitution of India)

Ms. Asha Jain Madan for the Petitioner.

R.D. Upadhyay for the Respondents.

F The following Order of the Court was delivered :

G The petitioner has filed this petition for transfer of proceedings, viz., Succession Application No. 43/95 along with Misc. Application No. 23/96 titled *Ramajor Shitla Prasad Ojha & Ors. v. Shiv Kumari Devendra Ojha*, pending in the Court of Civil Judge, Senior Division, Valsad, Gujarat to the competent court of Civil Judge at Sadar District Pratapgarh in Uttar Pradesh. We had adjourned the matter by our Order dated December 9, 1996 to find out whether the suit was still pending or stood disposed of. It is reported that the matter is still pending and the Civil Judge, Senior Division in yet to take up the matter. Learned counsel for the Petitioner H has stated that the Petitioner being a lady is unable to travel from Uttar

Pradesh to Valsad in Gujarat and it is a really a great difficulty for her to meet the expenditure in that behalf. Shri Upadhyay, learned counsel appearing for the respondents has agreed to bear the expenditure for her travel and stay whenever she attends court. Under the circumstances, we do not find that there is any justification for transferring the matter to Pratapgarh, U.P. Whenever the petitioner goes to the Court, the respondents would pay Rs. 750 (Rupees seven hundred and fifty only) on each occasion to the petitioner and the amount would be paid to her in advance. The petitioner would intimate the Civil Judge, Senior Division who would direct the respondents to pay the amount to the petitioner. A B

It is next contended that the petitioner had to engage her counsel from Surat since no advocate would be available at Valsad where the suit is pending. We think that the apprehension of the petitioner is not correct. The petitioner is at liberty to engage counsel at Valsad and the counsel would give his best to the petitioner in defending her case. If the petitioner requires any financial assistance from the respondents, it would be open to her to file an application in the Court of Civil Judge, Senior Division, Valsad for this purpose and the same would be ordered by the Civil Judge. Learned Civil Judge is directed to dispose of the application for restoration immediately and would simultaneously take up the main matter and dispose of the same expeditiously. C D

The transfer petition is accordingly disposed of. E

T.N.A.

Petition disposed of.