

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA
AT BHUBANESWAR.**

Tr. P (C) No.44 of 2014.

Smt. Shakuntala Jena, aged about 59 years,
W/o. Shree Hadibandhu Jena of Village/P.O./P.S. –
Badagada, Bhubaneswar - 751 018, District - Khurda.
... **Petitioner.**

-Versus-

1. Rabindranath Mallik, aged about 58 years,
S/o. Raghunath Mallick.
2. Smt. Basanti Mallik, aged about 53 years,
W/o. Rabindranath Mallik.
Sl. Nos.1 & 2 are of permanent Village - Gelpur,
P.O. – Baradia, P.S./Dist. – Jagatsinghpur.
3. Himansu Sekhar Jena, aged about 41 years,
S/o. Shree Hadibandhu Jena.
4. Shree Hadibandhu Jena, aged about 70 years,
S/o. Late Pranakrushna Jena.
Sl. Nos.3 & 4 are of Village/P.O./P.S. – Badagada,
Bhubaneswar, District - Khurda.
5. Gadadhar Sabat, aged about 58 years,
S/o. Laxmidhar Sabat, At/P.O. – Khadish,
P.S. – Gop, District - Puri.
6. Hara Prasad Prusty, aged about 55 years,
S/o. Harekrushna Prusty, At - Plot No.634/1715,
8th Lane, Aerodrum Area, P.O./P.S. – Airfield,
Bhubaneswar, District - Khurda.
7. Smrutiranjana Das, aged about 50 years,
S/o. Late Sudhakar Das, At - Nachuni,
P.O. – Pagarapada, P.S. – Rajkanika,

District - Kendrapara.

8. Satyanarayan Padhi, aged about 52 years,
S/o. Biswanath Padhi, At - Pagarpada,
P.O./P.S. - Berhampur, District - Ganjam.
9. Santilata Patel, aged about 58 years,
W/o. Bibhuti Bhusan Patel, At - Plot No.6,
Tower-II, Shree Nivas Complex, At - Plot No.4782/83,
B.J.B. Nagar, Bhubaneswar, District - Khurda.
10. Smt. Nabita Mohanty, aged about 59 years,
W/o. Natabar Mohanty, At - Village/P.O./P.S. -
Jagatsinghpur. At present : Plot No.531, Jagamara,
Bhubaneswar, District - Khurda.
11. Rakesh Kumar Patra, aged about 43 years,
S/o. Ramakrushna Patra, Village - Bangatipada,
P.O. - Bhawanipatna, District - Kendrapara.
At present : At - Plot No.531, P.O./P.S. - Khandagiri,
District - Khurda.
12. Smt. Sukanti Panigrahi, aged about 54 years,
W/o. Shree Muralidhar Panigrahi.
13. Tusarakanti Panigrahi, aged about 44 years,
W/o. Shree Muralidhar Panigrahi.
Both Sl. Nos.12 & 13 are of Village - Olomba,
P.O. - Rugum, P.S. - Badagada, District - Ganjam.

... **Opp. Parties.**

Counsel :

For Petitioner	--	Shri S.S. Jena & Associates.
For O.P. Nos.5, 12 & 13	--	Shri B. Baug & Associates.
For other O.Ps.	--	None.

Date of argument : 03.12.2014.

Date of order : 05.12.2014.

No.13, Dated 05.12.2014.

O R D E R

This is an application under section 24 read with section 151 of the Code of Civil Procedure for transfer of C.S. No.546 of 2003 from the Court of 1st Addl. Civil Judge (Sr. Division), Bhubaneswar to any other Court on the grounds stated therein. Petitioner is the plaintiff and opposite parties are the defendants before the Court below.

2. Supporting the petition, learned counsel appearing for the petitioner submitted that the learned 1st Addl. Civil Judge (Sr. Division), Bhubaneswar without following cardinal principles of law is imposing cost and going ahead for disposal of the suit without disposing of many petitions filed by the petitioner. He further submitted that the petitioner has no faith on the learned Court below to get justice. He thus prayed to transfer the case to any other Court having concurrent jurisdiction.

3. Learned counsel appearing for opposite party Nos.5, 12 & 13 submitted that the petitioner in order to avoid the order of the Hon'ble High Court directing to dispose of C.S. No.546 of 2003 by the end of December, 2014 has come to this Court to cause delay in the trial in the said suit. He submitted that there is no truth behind the allegations made by

the petitioner and prayed to reject the petition.

4. I have heard both parties and perused the petition, the entire lower Court record and other materials on record. Before considering the petition filed under section 24 of the CPC, it is necessary to circumspect what should be the course to determine the allegations made so as to reach a conclusion for transfer of the suit. In this regard, I humbly rely upon the decision of our Hon'ble High Court in the case of ***Bennatt Coleman & Co. Ltd. and others*** Vs. ***Sri Janaki Ballav Patnaik and another*** reported in **1987 (I) OLR-244**, where Their Lordships following the decision of the Hon'ble Apex Court reported in **AIR 1974 S.C. 2192 (*Samsher Singh* Vs. *State of Punjab and another*)** have been pleased to observe at para-6 that :

“There should be reasonable grounds to justify a plea of apprehension in the mind of a party to a judicial proceeding about the fairness of a Judge. Fanciful ideas, imaginary suspicions or capricious belief cannot be equated with reasonable apprehension. It must also be kept in mind that nothing should be done by this Court lightly nor should an undue observation be made which may tarnish the fair image of the subordinate Judiciary which, besides being under the administrative and disciplinary jurisdiction of the High Court, is also in its care and custody”.

With due respect to the said decisions, I find the points as emerged from the above decisions of the Hon'ble

Apex Court and the Hon'ble High Court have to be adhered to.

5. On going through the entire lower Court record, it appears that the petitioner has been filing a good number of petitions under different provisions of the C.P.C., whether they are relevant or not are to be found out by the learned Court below. In most of the interim petitions, the present petitioner is taking time. At times, cost has been imposed on the petitioner for taking too much adjournments. Most of the petitions are filed under section 151 of the C.P.C. seeking to recall the orders passed in the suit or in the interim applications. Despite all such multiple interim applications, the suit has proceeded. It is also found that recently the Hon'ble High Court in their order passed in C.M.P. No.207 of 2014 have been pleased to direct the learned lower Court to dispose of the suit by the end of December, 2014 after giving opportunity to the parties if there is no legal impediment. It has been brought to the notice of the Court that I.A. Nos.26 of 2006, 25 of 2007, 50 of 2008, 12 of 2013, 30 of 2013 & 227 of 2014 are all filed by the petitioner and the same are pending for hearing. At the same time, on the last occasion on 13.11.2014, the petitioner filed a petition to recall the order previously passed and that petition was rejected. On going

through the record, I am of the impression that the petitioner has been dragging the suit, either asking for time in the suit or by filing repeated interim applications, so that the same will be stalled from hearing. So, the allegation that the trial in the suit is in progress without disposing of the interim applications is a fanciful submission advanced to protract the litigation. There is nothing found from the record that the learned Court below has any bias or any undue attention to the judicial proceeding. On the other hand, further delay in the trial will circumvent the order of the Hon'ble High Court directing to dispose of the suit within the time frame. Before disposal of the suit, the learned Court below will afford reasonable opportunity to both sides, take care of the interim applications and dispose of the same so that the fanciful apprehension raised in the mind of the petitioner can be eliminated. However, there is no legal ground subsisting to interfere with the proceeding or to transfer the suit to any other Court. It is expected that both parties will co-operate for early disposal of the suit, which is of the year 2003, within the specified time as directed by the Hon'ble Court. Hence ordered :

O R D E R

The petition filed under section 24 of the Code of

Civil Procedure stands dismissed against the opposite parties without cost.

It is directed that the learned Court below will hear the suit on day-to-day basis and dispose of the same by the end of December, 2014 as directed by the Hon'ble High Court. Send back the LCR immediately to the learned Court below.

**District Judge, Khurda
at Bhubaneswar.**

05.12.2014.

Dictated & Corrected.

**District Judge, Khurda
at Bhubaneswar.**

05.12.2014.