
**JAYASINGHE
VS
DASSANAYAKE AND ANOTHER**

COURT OF APPEAL,
WIJEYARATNE, J.
CA TR-1696/2003
DC RATNAPURA 16977/D
MAY 20, 2005

Civil Procedure Code, Section 10- Judicature Act Section 46-Transfer of a case-Apprehending threat to life-Is it a ground for transfer ?

HELD:

- (1) Section 10 of the Civil Procedure Code as well as Section 46 of the Judicature Act empowers the Court of Appeal to transfer a case from one Court to another "whenever it appears..... (d) that it is expedient on any other ground".
- (2) If a person apprehends threat to his life by reason of attending any particular Court, he is for all purposes deterred from seeking justice from such Court as of his right.
- (3) It is expedient on such ground to transfer the present action to some other Court-which the plaintiff-petitioner would attend with confidence and without fear of life to seek justice on the causes pleaded.

APPLICATION for a transfer of case from District Court of Ratnapura.

*J. C. Boange for petitioner,
Ananda Panagoda for 1st respondent,
U. Gunasekera for 2nd defendant-respondent.*

Cur. adv. vult.

September 8, 2005

WIJEYARATNE, J.

The Petitioner instituted Divorce action in the District Court of Ratnapura against the 1st and 2nd defendant-respondents, seeking dissolution of his marriage to the 1st defendant-respondent on grounds set out in the plaint. Whilst the action is proceeding the plaintiff-petitioner made the present application seeking an order of transfer of the case to any other District Court from the District Court of Ratnapura. The application was made not on ground that a fair and impartial trial cannot be had in the District Court of Ratnapura but on ground that visiting District Court of Ratnapura entails threat to his life from the 2nd defendant-respondent who is described as a Police Officer attached to Ministerial Security Division.

The 1st and 2nd defendant-respondents objected to the application while denying several allegations contained in the application. Their respective objections are based on the footing that the Plaintiff-petitioner failed to establish that the Court is biased or that a fair and impartial trial cannot be had in that Court. The application however is not on such basis but on the apprehension on the part of the plaintiff-petitioner that he runs the risk of his life if he is to appear before the District Court of Ratnapura. He has annexed exhibits marked P1 to P11 in support of such allegations. Upon a perusal of the same, it is clear that even if they may not establish a charge against the 2nd defendant-respondent, the Petitioner has reasons for his apprehension of fear of life.

Section 10 of the Civil Procedure Code as well as section 46 of the Judicature Act empowers this Court to transfer a case from one Court to another.

"Whenever it appears....."

(d) that it is expedient on any other ground."

It is necessary thus to examine whether it is expedient to transfer the present action on the basis that the Plaintiff-Petitioner apprehends

a threat to his life when visiting District Court of Ratnapura. As referred to above documents attached shows his apprehension is not without reasons. In the recent past there had been several instances where parties attending Court on a fixed date at a particular time have become easy target of murder. In such a scenario, if a person apprehends threat to his life by reason of attending any particular Court, he is for all purposes deterred from seeking justice from such Court as of his right. In my view it is expedient on such ground to transfer the present action to some other Court which the Plaintiff-Petitioner would attend with confidence and without fear of life to seek justice on the causes pleaded.

Accordingly I allow the application for transfer and order that the Divorce action which is the subject of this transfer application be transferred to the District Court of Avissawella. The District judge of Avissawella is directed to proceed with such action according to law with notice to the parties, upon the record of the same being transferred to his Court.

Application allowed.

Case transferred to the District Court of Avissawella.
