

TRANSFER OF CASES FROM ONE COURT TO ANOTHER

¹R.M.Srinivas

¹ Saveetha School Of Law, Saveetha Institute Of Medical And Technical Sciences,
Saveetha University, Chennai- 77,Tamilnadu,India.

²Mrs. V.Udayavani

² Saveetha School Of Law, Saveetha Institute Of Medical And Technical Sciences,
Saveetha University, Chennai- 77,Tamilnadu,India.

¹srinivasmayakrishnan@gmail.com , ²udayavani.ssl@saveetha.com

ABSTRACT:

The judiciary had become paramount institution for identify of any legal dispute. The judiciary has playing a vital role keep an eye on the legislature and executive authorities under their control of arbitrary actions and to keep a check on their activities on which by any hidden interest. Justice can only be achieved if the court deals with both the parties present before it equally, impartially and even handedly ,hence though a plaintiff has a right to choose his own forum, with a view to administer justice fairly, impartially, and even-handely, a court may transfer a case from one court to some other court..Normally this right of the plaintiff cannot be curtailed ,controlled or curtailed ,controlled or interfered with. But the said right is controlled by the power vested in superior courts to transfer a case pending in one inferior court to another or to recall the case to itself for hearing and disposal.sec 22 to 25 enact the law as regards transfer and withdrawal of suits,appeals and other proceedings from one court to another.secs 22 and 23 enable a defendant to apply for transfer of a suit while sec 24 and 25 certain court to transfer any suit ,appeal or other proceeding either on an application made by any party or by the court suo moto.

KEYWORDS:

judiciary, fair redressal, jurisdiction, conclusion, ultravires, fair and equitable.

INTRODUCTION

The whole judiciary is seen with complete respect and with an full expectation that the judiciary will be very fair and it will be equitable justice to the person who comes before them or pleading before them for fair redressal of any complaint of grievance. The court should always follow a fair and equitable that parties should not only obtain fair justice but the justice should be given in such a way that a clear image should be made to each and everyone that justice is made under fair and equitable. The judiciary is the body to deliver justice and has always to maintain a very strict manner towards fairness in procedures and fairness. In order to save the good trust of the courts and the maintain high order of moral and fair standards between the members of judiciary the code of Criminal Procedure and the civil procedure code have reasonable Transfer of cases from one court to another. The grounds to transfer cases from one court to another court. The first and foremost intention of deliver justice or to conclude a matter is to public sentiment eventhough there are so many provisions regarding appeal. But such practices will be big and too pressure on the mechanism of judiciary and the judiciary will be more burdened with more pendency of cases and delayed justice to all parties who are approaching thought court which may consequently discover more burden and unrest about judicial procedures. So to resolve all such issues the statutes and law had already provides certain provisions regarding the transfer of cases from one court to another court .To study about scope and objective for transfer of cases The aim is to study about civil court to transfer cases about Competent Court to transfer case.To study about the grounds on which the cases can be transfers case which can be transferred and which transfer are not allowed .To study about scope and objective for transfer of cases.

RESEARCH METHODOLOGY:

Only secondary sources have been referred for this study .the primary sources includes interviews with people were not possible .secondary sources include include books related to

transfer of cases and research articles on transfer of case from one court to another .law websites and blogs have also been referred for the study.

:whether transfer of suit protect the interest of parties.

sec 22 of cpc,1908,sec 23 of cpc of 1908.

transfer of suit is based on convenience of parties

It protect the interest of parties.

OBJECTIVES:

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HYPOTHESIS:

Suit cannot be transferred to the another court for convenience for party

Transfer of suit is based on the balance of convenience for party.

SCOPE AND APPLICATION:([Website](#))

Neither sec 22 nor 23 applies to high courts in exercise of original civil jurisdiction. this section 22 and sec 23 do not apply to a case in which the question is whether a suit should be tried by a court subordinate to a high court to the original side of another court .A Family court exercising the jurisdiction referred in sec 7(1) of family court act ,1984 is a civil court and the high court has the jurisdiction to transfer cases from one family court to another .sec22 lays down two conditions in which an application for transfer 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 .this section is mandatory .an application for transfer Cannot be maintained after the settlement of issues .Essential condition are balance of convenience and desirability of having one adjudication of a particular controversy .In deciding balance of convenience the principle that plaintiff is arbiter litis is of no application in a situation where two different actions have been filed in two courts having the grounds on which the cases can be transferred jurisdiction because in each court plaintiff will be arbiter litis.

Transfer of suit([Website](#))

When a suit has been submitted by a plaintiff in particular civil court of his choice, there may be two choices available to that defendant who is dealing with that case: whether he has to file his written statement, that is accepting the jurisdiction of the court which has or to file application for transfer of the suit. Section 22 and 23 of Civil procedure code confers power to the civil court to transfer suits from one civil court to another civil court on the application of the defendant of the case. Section 22 is the substantive section which confers upon the civil court the power. Section 23 specifies the appropriate court for this purpose.

Following distinguishing features the Court has power to transfer suit :

This power is a limited power. It is applicable only in respect of the cases where more than one court is competent to entertain the suit and the plaintiff has filed the suit in one of such courts;

This power is not available when the plaintiff is suing on a contract which contains “Forum Shopping Clause” – conferring the jurisdiction in respect of adjudication of disputes arising out of the contract on a specified court. In this type of suits, the issue is not whether one particular court has jurisdiction or not, but rather the defendant could file the suit in the court in question , in view of the contractual clause;

The application u/s 22 of the CPC can be filed only by the defendant. If multiple defendants are there in the suit, then any one defendant can file application under the section;

The application has to be filed within a specified period of time. Section 22 specifies that such application has to be filed at the earliest possible opportunities and in all possible cases at or before settlement of issue. This provision is very important and is strictly adhered to. The Court cannot relax this by invoking his power u/s 151 of CPC;

The transfer order is an exercise of administrative power of the Court. This is based on the balance of convenience of the parties. As the matter has various connotations, the Courts are

very much circumspect on issuing such orders. Mere apprehension or only flimsy reasons are not sufficient to have such an order.

Competent Court to issue transfer order

Due to more importance on the justice delivery process, the court has power of transferring any suit from one court to another court is given to the higher courts according to judicial hierarchy. Section 23 of the CPC also made a classification of cases according to the transferor and transferee courts: the suit has to be transferred from one civil court to another civil court which lies under the same appellate court ;When the suit is transferred from one civil court to another civil court which has different appellate courts but is had to made within the same High Court; When the suit is transferred from one civil court to another civil court with the jurisdiction of different High Courts. In case of first method ,the petition for transfer has to be made to the appellate court to which both the civil courts are sub-ordinate to them; In case of second method, the petition for transfer has to be made before High Court under whose jurisdiction lies both the civil courts are sub-ordinate to them ;In case of third method the petition for transfer has to be made before High Court in whose jurisdiction the transferor civil court lies under them.

GROUNDS FOR TRANSFER:[\(Website \)](#)

The following are the grounds on which a case could be transferred from one court to another court.

To meet the conclusion of justice :- It is the almost duty of the judiciary to take all such method and measures to meet up the ends of justice and to deliver the judgment which should also send a good message and moral in the society that justice should not only done, it has to done with an manner that it appears that justice is done though it. The court is the most being trusted and being sacred institution. And every human being holds such a very high relative position and it has huge respect for court and its decisions for that cases. So all the courts have been regarded has extra moral obligation to keep the spirit of trust, fair justice and confidence alive within this machinery. This ground to meet the ends of justice have a vide connotations it could be easily understood that this authority would have high degrees of discretionary powers.

Which could be used in according to with the factual quantum to provide justice to all the subject to litigants. The factual matrix of every trail or suit wheather civil or criminal proceedings is quite more different so in order to ascertain any situation for dealing it may not ensure a fair trial or may even end up by irreparable loss to the interest of the parties. So therefore the court has power which vested with such discretionary authority of the court to determine such question regarding to the transfer of court.

As per the inquiry report or records of any superior presiding officer such as any Chief judicial magistrate or any sessions judge the trail would not be conducted by a particular magistrate or any other officer such a report shall also be consider to be a valid grounds for such transfer of a case from one court to another court.

The trial court consider it fit to be transferred from its purview or the determination of the trail which it has jurisdiction to try it may involve such substantial question of law. Determining substantial question of law far above its jurisdiction will be render the complete trail fruitless.

The court have a certain limited jurisdiction over the subject matter in which it deals with, if any dispute in which are limited or shared juridical issue the court trying the matter will have a full liberty to transfer the case to the another court which have competent jurisdiction to try it that matter will be decided conclusively so that the complete trail could not be failed because non complete jurisdiction and lack of justice.

Mutual controversy between the party and other judicial officer. There are possibility of corruption and bias is no stranger to the judicial fraternity. In such cases to avoid the failure of interest of the actual aggrieved party between the parties the court gives reasonable opportunity to the party in which it feels like that.

The judicial officer who is responsible for deciding the case being engaged or getting involved in the litigation by some or the other. In such case the litigant parties have full freedom to approach the authorities for avoiding any disadvantage of interest when capitalized of any characterized persons.

The judicial officer who is responsible for deciding the case may be made as witness. If any judicial person has been made as a witness to any cases this surfaces the end of the ability of that person to conduct the trial. Such actions may be considered as breach of ordinary prudence of fair trial and may impeach the interest of justice.

When the court or any judicial authority is working in ultravires to the principles of natural justice and fair manner, if any breach is committed such breach when reported to the authority and if continues to happen then the aggrieved party would be free to obtain shelter for preferring transfer of case.

Any kind of mutual disturbance or any unethical relationship between the councils or the judicial officer may also make an application of transfer of case from one court to another.

POWER OF CIVIL COURTS TO TRANSFER CASES

The civil procedure code, 1908 is a legislative body to decide the suit aspect and to decide the course to be received for trial. sec 15 of the C. P. C, 1908 gives that the each case should to be recorded in the lower court competent to try that issue. Due to this it maintain and prevent absurdity from jurisdiction with respect to case of claim and the place of filling it.

Power to transfer suits which may be instituted in more than one Court under sec 22

At the point when a trial is pending before any court and a similar jurisdiction is shared by numerous other territorial or other court the respondent who have their of the place of trial of the court may subsequent to moving an application to all the relevant parties of the enactment might be given with a chance to be heard and contend and afterward the court may decide the value of the case and order further guidelines. In civil suit when the case is for get a ownership of a property they have to file the case within their jurisdiction of the court under which the property or some other achievable of the defendant t are accessible.

To what court permission lies-

Sec 23 of C. P. C 1908 provides the provisional part used to practice this right hand how the application in regards to such transfer of case be made and to whom to be made and which with such applications. According to the statute the application might be preferred to any court which is quick better than the trial court or appellant court of that trial court. Subjected to following conditions

In case of the appellant court is similar:- when the suit is to be changed or transferred to any other court which have same court of appeal or under same subordination of the court such application to transfer would be preferred to appellant court which has jurisdiction

In case of the appellant courts are different: – when two courts of trial lies under various court of appellant jurisdiction. At that point the application would be wanted to the high court under which both the courts are subordinate to. The High court in the wake of watching the substance of the grievance would choose the application and arrange it off in like manner.

At the point when both the trial court are under various High courts:- For a situation where both the prosecutor parties guarantee under the court which have different High court purview. At that point such an application might be liked to the High court which has jurisdiction over the court in which the case was initialed firstly.

CONCLUSION:

Power of transfer must be exercised with due care, caution and circumspection and in the interests of justice .The court while deciding the question must bear in mind two conflicting interests (i)as a dominus litis the right of the plaintiff to choose his own forum and(ii) the power and duty of the court to assure a fair trial and proper dispensation of justice of the justice .the paramount consideration would be the requirement of the justice and if the ends of justice demand transfer of a case ,the court should not hesitate to act. At the same time ,mere inconvenience of the party or bare and vague allegations by an interested party about insecurity or even a threat to his life are not sufficient to transfer a case want to territorial jurisdiction of the

court to which the case is transferred though a relevant factor is not conclusive and will not be an impediment to the power of the court ordering the transfer .although discretionary power of transfer cannot be imprisoned within a straitjacket of any cast iron formula unanimously applicable to all situations ,it cannot be gainsaid that the power to transfer a case must be exercised with due care and caution.

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