REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

ANITA KUSHWAHA V. PUSHAP SUDAN (2016)

BENCH: Mr. Justice T.S. Thakur (CJI), Mr. Justice F.M. Ibrahim Kalifulla & Mr. Justice A.M. Khanwilkar

DECIDED: July 19, 2016

RATIO DECIDENDI & PRECEDENTIAL CRUX:

Access to justice is a fundamental right under Article 21; Supreme Court has inherent power under Article 142 to transfer civil cases to ensure fair trial.

1. Factual Matrix & Background:

A transfer petition was filed by a wife seeking transfer of a matrimonial case from Jammu & Kashmir (where Section 25 CPC did not then apply) to a court in another State. The maintainability of the transfer petition was questioned for lack of express statutory power under the Code.

2. Substantive Legal Questions Framed:

Whether the Supreme Court has the power under Article 142 and Article 32 to transfer civil and matrimonial cases between States even in the absence of a specific statutory enabling clause.

3. Analysis & Ratio Decidendi:

The Supreme Court five-judge Constitution Bench held that 'access to justice' is a fundamental right guaranteed to all citizens under Article 14 and Article 21 of the Constitution. To make this right effective and ensure fair adjudication without physical danger or geographical impediments, the Supreme Court in exercise of its plenary powers under Article 142 can transfer matrimonial and civil disputes anywhere in India.

4. Principles Enunciated:

- 1. Access to justice is an essential component of life and liberty under Article 21.
- 2. Inherent powers under Article 142 can fill statutory gaps to prevent injustice.
- 3. The convenience and security of women litigants is a vital factor in matrimonial transfers.

5. Practical Litigation Implications:

- When seeking inter-state transfer of matrimonial cases where statutory provisions are challenged or complex, invoke Anita Kushwaha and Article 142 to secure relief.

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[SUPREME COURT BENCH]

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