

# ALLAHABAD HIGH COURT

Kishore Lal

Vs.

Balkishan

(Sulaiman, C.J.)

16.06.1932

## JUDGMENT

### **Sulaiman, C.J.**

1. This is an application for the transfer of a suit pending in the Court of the Munsif of Kasganj. A question arose whether the suit could be transferred to the Court of another Munsif in the same district and my learned brother entertaining a doubt as to the correctness of the ruling in *Ram Das v. Habib Ullah*<sup>1</sup> has referred the point of law to a Division Bench.

2. The question for consideration is whether the High Court or the District Judge, acting under Section 24, Civil Procedure Code has power to transfer a suit pending in one subordinate Court to another subordinate Court, which has pecuniary, but not territorial jurisdiction to try that suit. In one sense it might be said that the present question did not strictly arise in the case mentioned above, because the Bench came to the conclusion that the order of the District Judge directing a transfer of the case when he did not proceed suo motu, hut on an application made by a party was illegal and irregular inasmuch as no notice had been issued to the defendant The order could have been set aside on that ground alone. It however appears that the learned advocate for the applicant pressed the other question as well presumably because he did not want that the case should be transferred to the particular Munsif to whose Court it had been transferred. Bajpai, J., in whose judgment I concurred accordingly expressed; that view following a Patna case, namely *Jannat Hussain v. Ghulam Kutubuddin Ahmad*<sup>2</sup> and gave directions to the District Judge to bear that view in mind. It is therefore not possible to say that the last observation was altogether an., obiter dtctum.

3. Under Section 25, Act 14 of 1882, the High Court and the District Court were given power to transfer a suit pending in a subordinate Court to any other subordinate Court competent to try the same in respect of its nature and the amount, or value of its subject-matter.

4. These words have been slightly altered, and in their place we now have in Section 21 the words " competent to try or dispose of the same." Under the old section there could be no doubt that all that was required of the subordinate Court to which the case was to be

<sup>1</sup>[1931] 136 I.C. 384

<sup>2</sup> A.I.R. 1920 Pat. 29

transferred was that it should have pecuniary jurisdiction to try the suit. The deletion of those words from the new section may prima facie suggest that the competence of the Court now required may be either pecuniary or territorial. If the words were to be taken literally, it might be open to argument that the word "competency" includes both pecuniary and territorial jurisdiction. Although the change in the words in the section was not emphasized, this view was certainly expressed by the learned Chief Justice of the Parna High Court in the case of *Jannat Hussain v. Ghulam Katubuddin Ahmad*<sup>3</sup> He was of opinion that the word "competent" was very wide and included both kinds of jurisdiction. The head-note of the case did not show that the ether learned Judge had expressed some doubt as regards this view and had reserved his opinion. The unfortunate omission of the words which appeared in the old section have made the new section somewhat ambiguous, but on reconsideration I am satisfied that the words have been delete because they were considered redundant or unnecessary by the legislature. To hold that it is necessary that the Court to which the case is transferred must have territorial jurisdiction would make it impossible for a High Court to transfer a case pending in the Court of a District Judge to that of the District Judge of another district, for these District Judges would not have concurrent territorial jurisdiction. The section would therefore be nullified if the interpretation put upon is in the case of *Ram Das v. Habib Ullah*<sup>4</sup> were to be accepted. In order not to render the section useless, I am constrained to hold that one word "competent" must be taken to refer to pecuniary jurisdiction only.

5. Cases of concurrent jurisdiction where two Courts have both pecuniary and territorial jurisdiction to try a suit are dealt with in Section 22. The same words "competent to try the suit" occur in Section 11, Civil Procedure Code as also in Section 15. It is quite clear that for purposes of res judicata it is not necessary that the two Courts must have concurrent territorial jurisdiction which depends entirely on the subject-matter in dispute. The provision in Section 15 would point to the same conclusion. It may also be pointed out that a distinction has been drawn in the Code as regards territorial jurisdiction, and Section 21 provides that no objection as, to the place of suing shall be allowed, unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been a consequent failure of justice. On a reconsideration I am therefore of opinion that the observation made in the last portion of the judgment in Ram Das's case [1931] 136 I.C. 384 in which I concurred did not lay down the correct law.

**Kendall, J.**

6. I concur.

## **ORDER**

7. In our opinion it is open to the High Court or a District Judge to transfer a case pending in a subordinate Court to another Court which has pecuniary jurisdiction to try the suit

<sup>3</sup> A.I.R. 1920 Pat. 29

<sup>4</sup>[1931] 136 I.C. 384

although it may not at the moment possess territorial jurisdiction to try it. We accordingly direct that this case be laid before the learned judge who has referred it to this Bench, for disposal on the merits.

