

# ALLAHABAD HIGH COURT

Sarjudei

Vs.

Rampati Kunwari,

First Appeal No.166 of 1950, connected with First Appeals Nos.116 of 1950, 355 of 1950 and 66 of 1951. , against Decree of Civil J. Gorakhpur,

(M.C. Desai, C.J. and T. Ramabhadran, J.)

01.03.1950. 14.11.1961

## JUDGMENT

**M.C. Desai, C.J.**

1. In this and connected first Appeals, which are pending in this court since 1950 or 1951 and arise out of suits instituted in 1948 or thereabout, this Court has on its own motion issued a notice calling upon the parties to the appeals to show cause why they should not be transferred by it under Section 24, C.P.C. to the courts of the District Judges concerned for disposal. The subject-matter of appeal in each of the appeals is valued at more than Rs. 5,000/- and less than Rs. 10,000/-. The appeals were instituted in this court because under the Bengal, Agra and Assam Civil Courts Act, 1887, section 21(1)(b), as it was in force on the dates of the institution, they lay in this Court and not in the courts of the District Judges. With effect from 30-11-1954, section 21(1)(b) has been amended by the U.P. Civil Laws (Reforms and Amendment) Act (No. XXIV of 1954), vide serial No.4 of the Schedule, and the limit to the value of the original suit in which a decree appealable to the District Judge can be passed is raised from Rs. 5,000/- to Rs. 10,000/-. The consequence of the amendment is that now similar appeals would lie in the court of the District Judge. Section 3(1) of the Amendment Act provides that any amendment made by it will not affect the validity of anything already done or any right already acquired and that any proceeding instituted or commenced in any court prior to its commencement will, notwithstanding any amendment made by it, continue to be heard and decided by it. Sub-section (2) provides for the effect of an amendment made by it affecting the period of limitation prescribed for any appeal; it lays down that despite the amendment and despite the fact that the appeal will under the Amending Act "now lie in a different court", the old period of limitation applicable to it, if it has started to run before the commencement of the Act, will continue to be the period of limitation.

2. Section 24, C.P.C. is to the effect that the High Court of its own motion, and without notice to the parties, may at any stage transfer any appeal pending before it for trial or disposal "to any court subordinate to it and competent to try and dispose of the same", or "withdraw any suit, appeal pending in any court subordinate to it, and - (1) try or dispose of the same; or (2) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same."

3. Since under the U.P. Amending Act of 1954. District Judges are now competent to hear appeals like the instant one, this court thought of transferring some of them to the District Judges concerned for disposal, but, since the court's power to transfer them was a matter of controversy, this Court took the step of issuing notices to the parties before passing orders of transfer. Except for the appellant in the instant case, all parties are opposed to the transfer, Sri C.B. Mira for the appellant in the instant case informed the Court that he was instructed by his client not to oppose the transfer. We have had the advantage of hearing the arguments of Sri A.K. Kirty in the instant case and of Sri K.C. Saxena, Sri G.N. Kunzru, Sri D. Sanyal and Sri Jagdish Swarup in the connected cases. The burden of the arguments advanced before us was that the U.P. Amending Act has no retrospective effect and does not govern suits instituted before it came into force, that in those suits the parties acquired a right of appeal to the High Court from the civil Judge's decree and that as that right has not been taken away by the U.P. Amending Act, their appeals must be heard by this court and cannot be transferred to the District Judges. Numerous authorities were cited in support of the view that a party to a suit acquires, on the date of its institution, a right of appeal in accordance with the law in force on that date. We were referred to *Colonial Sugar Refining Company Limited v. Irving*<sup>1</sup>, *Delhi Cloth and General Mills Co. Ltd. v. Income-tax Commr., Delhi*<sup>2</sup>, *Cyril Austin Spencer v. M.H. Spencer*<sup>3</sup>, etc. The proposition that a right to an appeal is a right acquired on the date of the institution of the suit is too well established to require citation of authorities. Nobody disputes that in spite of the U.P. Amending Act the appeals were to be instituted in, and could be disposed of, by this Court. If they are sent to the District Judges concerned it is not on the ground that after the enforcement of the U.P. Amending Act this Court has lost jurisdiction to dispose of them, but by way of transfer by this Court to the District Judges under Section 24, C.P.C. The right of a litigant to an appeal is always subject to the right of the High Court to transfer it under section 24. The High Court has been given an overriding right to transfer a case to a competent court and when it exercises this power there arises absolutely no question of any party's right being affected thereby. The power of transfer has been given in supersession of the parties' right to have the case tried by a particular court; in other words, the right of the parties is subject to the High Court's power of transfer. It cannot be disputed that though the parties have a right of action in a court exercising territorial jurisdiction over a particular area, the High Court can transfer the case to another court though it does not possess territorial jurisdiction over that area. If the District Judges are competent to dispose of these appeals this court has the power under section 24 to transfer them to them, regardless of the question of the right of the parties to have them disposed of by this Court. The question, therefore, that should arise is whether the District Judges are competent to dispose them of or

not. Since the right vested in this Court to transfer the appeals is in supersession of the right of the parties to have the appeals disposed of by this Court, it follows that the question of competency of the District Judges is to be determined without any regard to the right of the parties. The competency is to be seen, not with reference to the particular jurisdictional facts

<sup>1</sup>1905 AC 369

<sup>3</sup>1955 All LJ 307

<sup>2</sup>AIR 1927 PC 242

involved in the appeals, but generally with reference to their nature. It may be that these appeals are within the jurisdiction of this Court, but if in their general nature they are also within the jurisdiction of District Judges they must be held to be competent to dispose them of. After the enforcement of the U.P. Amending Act, appeals of this nature are within the jurisdiction of District Judges. They have been given jurisdiction to dispose of them, and they must be held to be competent to dispose them of though certain appeals, on account of their arising not of suits instituted before its enforcement, cannot be entertained by them. A court can be said to be competent to dispose of a suit although, on account of certain circumstances in it, it has no jurisdiction to try it; if it would have jurisdiction to try it in other circumstances it is competent. The District Judges would have jurisdiction to dispose of the appeals if the suits, out of which they arise had been instituted after the enforcement of the U.P. Amending Act. The argument that if the appeals are transferred to them the parties would be deprived of their right to have them heard by this court does not appeal to me at all. Even if it be conceded that the right that vests in a litigant on the date of the institution of the suit is that of appealing from the adverse decision in it to a particular court, that right has been already taken away by the provisions of Section 24, C.P.C. which confer power upon this court to transfer it to another court. Ordinarily only one court has jurisdiction to try a particular case, and, when this Court is given the power to transfer it to another court, provided it is competent, it necessarily means that it is transferred to a court, even though it had otherwise no jurisdiction to dispose of it. Vested rights are not immune from destruction; they can be taken away by the legislature. Section 24, C.P.C. has already taken away the vested right to have a particular case heard by a particular court. So long as the provisions of Section 24 are constitutional the argument that they take away vested rights is one that cannot be entertained by this Court.

4. It is irrelevant to consider whether the U.P. Amending Act has been given a retrospective effect or not; as we said earlier, if we send the appeals to the District Judges it is not on the ground that the Act has retrospective effect and deprives us of our jurisdiction to hear them. We do not rely upon the provisions of the U.P. Amending Act in support of our power to send the appeals to the District Judges; we rely solely upon the provisions of Section 24, C.P.C. It is enough that the U.P. Amending Act contains no provision taking away our power to transfer the appeals under Section 24, C.P.C., or no provision laying down that the District Judges are not competent to hear appeals arising out of suits instituted prior to its enforcement. There is nothing in the provisions of Section 3 of the Act to render the District Judges incompetent to hear them. Sub-section (1) reserves rights acquired prior to the enforcement, but, as we have explained

earlier, if the right of the parties to the appeals is affected, it is not on account of our enforcing any provision of it but on account of our exercising our power under Section 24, C.P.C. What is meant by sub-section (1) is that a right already acquired must not be deemed to have been taken away by any provision of the U.P. Amending Act and not that it must not be deemed to be taken away by any other provision such as that contained in Section 24, C.P.C. The second limb of the sub-section does not make it obligatory upon this Court to hear appeals, regardless of all circumstances and regardless of all our powers under other provisions; it does not prevent our exercising the power of transfer conferred by Section 24. The operative part of sub-section (2) deals with the running of the period of limitation, a matter which does not concern us. The words "notwithstanding the fact that the suit or appeal would now lie in a different court" show that the legislature intended that the provision in the U.P. Amending Act changing the forum of a suit or appeal will be given retrospective effect. It expressly deals with a cause of action that accrued before the enforcement of the Act (unless the cause of action had accrued the period of limitation for it would not have begun to run). Thus sub-section (2) gives retrospective effect at least to those provisions of the Amending Act which deal with periods of limitation. Sri G.N. Kunzru contended that if this be the interpretation of section 3, there would arise a conflict between the provisions of sub-secs. (i) and (2) and that those of sub-section (2) would be unenforceable. We do not think that there is any conflict at all. Any right already acquired may mean any right already acquired which may be enforced in some court, and not necessarily any right already acquired which may be enforced in a particular court. The right referred to in subsection (1) is a right which can be enforced in a court or on the basis of which a relief may be sought from a court. A change of forum may not amount to affecting the right already acquired and if so, there will be no conflict. The second limb of sub-section (1) deals with a proceeding already instituted or commenced whereas sub-section (2) deals with a proceeding to be instituted after the commencement of the Act, and there cannot arise any question of conflict between provisions dealing with entirely different subject-matters. The interpretation that we place upon the provisions of the U.P. Amending Act is in consonance with the declared objects and reasons of it. It is said in the Statement of Objects and Reasons that

"in order to reduce the volume of work in the High Court and to ensure quicker disposal of appeals, the Bengal, Agra and Assam Civil Courts Act, 1887, is proposed to be amended so that appeals in cases from Rs. 5,000/- to Rs. 10,000/- in valuation may be heard by District Judges."

The object behind the amendment under consideration was to give relief to the High Court, and the relief was required instantaneously. The volume of work in the High Court would not be reduced if all the appeals filed in it were to be heard by it. Appeals from suits instituted after the commencement of the Act would take considerable time to be filed. If they would take two years to file, the High Court would not get any relief for two years if it had no power to transfer appeals already filed. The obvious intention behind the particular amendment was to make the District Judges competent to hear the appeals so that they could be sent to them, if not

on the ground that they could be heard only by them now at least in exercise of the power of transfer conferred by Section 24, C.P.C.

5. Sri G.N. Kunzru contended that as District Judges were not competent to hear these appeals prior to November, 30, 1954, they are not competent within the meaning of Section 24, C.P.C., and the appeals cannot be transferred to them. The view advanced by him was that, if competency arises subsequent to the institution of a case, it is not competency within the meaning of Section 24. The provision that the High Court can transfer a case to a competent court means only this that the court must be competent at the time when the transfer is ordered and not that it must have been competent for sometime previously or that it was competent to hear it when it was instituted. There is no warrant for restricting the power of the High Court in this manner. Had the legislature intended that the transferee court should have been competent to hear the case on the date on which it was instituted it would have used different language in Section 24. Sri Kunzru referred us to *Janardan Reddy v. State*<sup>4</sup>, and *Janardan Reddy v. State of Hyderabad*<sup>5</sup>, but neither of them deals with the question of competency of a court. The former contains the decision that an appeal under Article 136 cannot be preferred from a judgment passed by the Hyderabad High Court before the Constitution came into force, because it was then not a court in the territory of India, and the latter contains the decision that the Supreme Court cannot issue a writ to quash an order passed before the Constitution came into force. These are decisions relating to finality of an order or giving retrospective effect to an Act and not to competency of a court.

6. A number of other authorities were cited before us, but none of them deals with the exact question that we are considering, namely, that of competency of courts. The decision in *Vaithilingam v. Kaliaperumal*<sup>6</sup>, turned upon the language used in an order conferring jurisdiction upon a court; the court was granted jurisdiction only in respect of suits instituted after 1915 and consequently was held to be incompetent to hear an application for review of a judgment passed in a suit instituted in 1915. In *Dhoribhai v. Pragdasji*<sup>7</sup>, a suit under Section 92 C.P.C. was held in its very nature non-transferable, Section 24, C.P.C. was held to be not applicable to it regardless of the question of competency of the transferee court. In *Sadar Ali v. Doliluddin*<sup>8</sup>, and *Vasudeva Samiar In re*, AIR 1929 Madras 381 (SB) it was held that the amendment in the letters patent which took away the absolute right of appeal to a Division Bench from a single Judge's judgment and gave a right of appeal only with special leave of the single Judge, did not apply to cases instituted before the amendment. Again these decisions deal with the question of retrospective effect or of vested right and not of competency. The same is the case with *Om Prakash v. Moti Lal*<sup>9</sup>, The decision in *Saghir Ahmad v. State of U.P.*<sup>10</sup>, that amendment to the Constitution subsequent to the enactment of an unconstitutional statute will not revive it is of no assistance in the present case. *State of U.P. v. Mohammad Nooh*<sup>11</sup>, is an authority only for the proposition that no writ will lie against an order passed before the Constitution came into force.

7. A judgment in a first appeal passed by a Judge of this Court is appealable under cl.10 of the

Letters Patent to a Bench and the appeal will lie on questions of fact and law both. If the first appeal is transferred to a District Judge and is disposed of by him, there will lie to a single Judge of this Court a second appeal but only on questions of law. But this will be the result of the transfer of the appeal under Section 24, C.P.C. and the power of transfer is not made dependent upon maintenance of rights vested in litigants. If an order of transfer is valid otherwise, it will not become invalid merely because it affects vested rights of parties. The question of vested rights arises only when one has to consider whether a new law or an amendment in existing law should be given retrospective effect or not.

<sup>4</sup>1950 SCR 940    <sup>6</sup>AIR 1918 Mad 100    <sup>8</sup>AIR 1928 Cal 640 (FB)    <sup>10</sup>(1955) 1 SCR 707

<sup>5</sup>1951 SCR 344    <sup>7</sup>AIR 1935 Bom 172    <sup>9</sup>1958 All LJ 210: AIR 1958 All 409 (FB)    <sup>11</sup>1958 SCR 595

8. Sri A.K. Kirty invoked the provisions of Article 54 of the Constitution, but we fail to see how either Section 24, C.P.C. or the U.P. Amending Act violates the guarantee of equality before the law.

9. We do not accept the argument of Sri Jagdish Swarup that Section 24 applies to miscellaneous suits such as those under the Copyright Act, the Patents Act and the Divorce Act and not to first appeals from decrees of civil Judges. He could not point to any words in section 24 which would have the effect of restricting its scope in the manner suggested. "Transfer any suit, appeal or other proceeding" are words wide enough to include first appeals from decrees.

10. We therefore, hold that the District Judges are competent to hear the appeals and that we have jurisdiction to transfer them to them.

11. Lastly, it was urged by Sri Jagdish Swarup that even though we may have power to transfer these appeals, we should not transfer them. He contended that the parties to the appeals have engaged counsel here and some of them have undergone the expenditure of getting the record translated and printed and there is no cause why the High Court should get relief at the cost of District Judges. But against these matters we should also consider whether the appeals will not be disposed of more expeditiously by District Judges and the valuation. The present Appeal is valued at Rs. 6,000/- i.e. only a little more than the maximum valuation for an appeal to be filed in the District Judge's Court under the old law, and is not likely to be disposed of by this court in less time than the District Judge would take in disposing of it. We consider it fit to be transferred.

12. We, therefore, order under Section 24, C.P.C. that this appeal be transferred to the District Judge, Gorakhpur, for disposal.

Order accordingly.