

(1905) 04 CAL CK 0001

Calcutta High Court

Case No: Appeal No. 547 of 1902

Bidyaamoyee, Debya
Chowdhrani

APPELLANT

Vs

Maharaja Surya Kant Acharya
Bahadur and others

RESPONDENT

Date of Decision: April 19, 1905

Judgement

1. This appeal is by the Plaintiff; and it arises out of a suit instituted by her for recovery of possession of certain lands said to be part of a bit Dharea Chuthel, appertaining to the Plaintiff's property Kushtia. According to the case of both the parties, the lands in suit have come out of a bil. The Plaintiff says it is Dharea Chuthel, the Defendant says it is Taratia or Kala bil belonging to him, as appertaining to his property, Taratia. The Plaintiff's case seems to have been that she was in possession of these lands through tenants until dispossessed in Anghran 1296 = November 1889 by the tenants of the Defendant. The Defendant, on the other hand, pleaded that the land belonged to him, that the Plaintiff's claim was barred by the law of limitation and that he had been in possession thereof adversely to the Plaintiff for more than twelve years.

2. The Amin who was in the first instance sent to the locality under orders of the Subordinate Judge found, on a comparison of the Thak and Survey maps, that a considerable portion of the lands in suit fell within the Plaintiff's property. The Plaintiff in support of her case produced certain Kabuliyats of the year 1278=1871 said to have been executed by certain tenants as referable to the lands in suit, but the Amin was unable to identify them with those described in the Kabuliyats. The Subordinate Judge, however, looking into the general boundaries and features of the lauds, was of opinion they were included within the kabuliyats HE thought at the same time that the Plaintiff was dispossessed not in 1889, as alleged in the plaint, but in 1886, and the suit having been brought within twelve years from that time, he gave the Plaintiff a decree for such of the lands as fell within the property according to the report of the Amin.

3. The Defendant appealed to the District Judge, and that officer heard the case on the 14th and 20th November 1899 and after the conclusion of the argument, reserved judgment. On the 21st November 1899, the Defendant-Appellant presented a petition to the District Judge asking that another Amin might be sent to the locality for a fresh local investigation; and the Judge made an order as prayed for, and directed, among other matters, that the lands referred to in the kabuliyats filed by the Plaintiff be shown on the map that he might prepare. It would, appear that, up to the 22nd May 1900, the Appellant had not deposited the Amin's fees; and the Judge, on that date, ordered that, if the fees be not paid within a week, the appeal would be dismissed. Subsequently the required fees were paid, and a local investigation was held. In the course of this Investigation, the Plaintiff's agent WAS called upon by the Amin to point out the lands covered by the kabuliyats but he was unable to do so saying that the Defendant had obliterated the boundary marks. However that may be, the Amin found that a portion of the lands in suit was covered by the Thak and Survey maps of the property belonging to the Plaintiff.

4. The Amin submitted his report on the 31st July 1900; but the matter was not taken up by the District Judge until the 10th January 1901, when he ordered that the case be transferred to the Additional District Judge for disposal.

5. The Additional Judge heard the appeal between the 11th and 19th January 1901, and on the last-mentioned day, reserved judgment; but the judgment was not delivered until the 6th December 1901, when it may be presumed he had very nearly forgotten all about the arguments in the case. He held that the Plaintiff's claim was barred by the law of limitation; and for reasons which in the view that we have adopted, and which we shall presently express, it is not necessary to discuss, he reversed the decree of the Sub-Judge and dismissed the suit entirely. The chief point that has been taken before us by the learned counsel for the Appellant is that the District Judge had no jurisdiction to transfer the case for trial to the Additional District Judge; at any rate, he could not do so at the stage he did, when he had full seizin of the case, and had already heard arguments on both sides.

6. Under sec. 25, C.C.P., the High Court or District Court may withdraw any suit, whether pending in a Court of first instance, or in a Court of Appeal, and try the suit itself or transfer it for trial to any other Subordinate Court competent to try it. This section, in terms, does not apply in the circumstances of this case.

7. Under the Bengal, N.W.P. Civil Courts Act (XII of 1887), it is provided that when the business pending before any District Judge requires the aid of an Additional Judge for its speedy disposal, the local Government may appoint such Additional Judges as may be requisite, and that "Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and in the discharge of these functions they shall exercise the same power as the District Judge."

8. The question here arises whether, when the District Judge is empowered to assign to an Additional Judge any of his "functions," he is authorised to transfer to such Additional Judge any particular case pending before him, more especially, a case which has been heard by him.

9. Sec. 10 of the Act provides for an event, such as death, resignation or removal of the District Judge or of his being incapacitated by illness or otherwise : and in such an event, the Additional Judge is authorised to take charge of the office of the District Judge, and to exercise any of the powers of the District Judge.

10. There are one or two other sections in the Act, which may be as well referred to in this connection; and they relate to the power of the District Judge to transfer proceedings and appeals to Subordinate Judges. They are secs. 11 and 22. Under the former section, the District Judge may transfer in certain events all or any of the proceedings pending in the Court of a Subordinate Judge, either to his own Court, or to the Court of any other Subordinate Judge. Under the other section the District Judge may transfer "any appeals" pending before him to a Subordinate Judge, and he may withdraw any appeal so transferred, try it himself or transfer it to some other Court under his control competent to dispose of it.

11. It will be observed that a District Judge has no inherent power to transfer a case either from his own file or from the file of an officer under his administrative control : the power must be one conferred by the Statutes. Under sec. 25, C.C.P., he is entitled to transfer a case pending in a Court subordinate to him to his own Court, but not to transfer a case pending in his own Court to some other Court subordinate to him. See *Sakharam v. Gangaram* ILR 13 Bom. 655 (1889). Then looking at the various sections of the Civil Courts Act, to which we have already referred, it does not appear that the District Judge, though he has the power to assign any of his "functions" to an Additional Judge, is entitled to transfer any particular case pending before him to that officer for disposal. He is authorised under sec. 21 of the Act to assign to the Additional Judge the "function" of receiving appeals. And he may perhaps assign to him the function of hearing any particular class of cases. But it is extremely doubtful whether he can transfer to him any particular case pending in his Court. It will be observed that, the power of the District Judge to transfer appeals to a Subordinate Judge stands upon a different footing from the power that he exercises when he assigns to an Additional Judge any of his own functions. But however that may be and without expressing any decisive opinion upon the question whether a District Judge has authority to transfer any particular appeal pending before him to an Additional Judge, we are of opinion that he cannot transfer a case which has been heard by him. In our judgment, there is no authority for him to do BO. If we were to deal with the matter under the old CPC (Act VIII of 1859) there could be no doubt upon the authorities that a District Judge had no power to transfer a case even to his own file after the evidence had been partially recorded by a Subordinate Court. See *Dumree Sahoo v. Jugdharee* 13 W.R. 398

(1870), *Abdool Hye v. Macrae* 23 W.R. 1 (1874), *Kishori Mohun v. Gul Mahomed* ILR 15 Cal 177 (1887). And the like rule, we think, applies under the new CPC and the Civil Courts Act in respect of an appeal which the District Judge has already heard, though it may be said in this case in part. The question of the right of transfer by a District Judge of a case partially heard by him was considered by the Madras High Court in the case of *Kumarasami Reddiar v. Subbaraya Reddiar* ILR 23 Mad. 814 (1899) under the Madras Civil Courts Act, which contains provisions somewhat similar to those in the Bengal and N.W.P. Civil Courts Act; and it was held that the District Judge had no power to transfer to a Subordinate Judge an appeal which had been partially heard by him. In this connection we might also refer to the case of *Sitaram v. Nauni Dulaiya* ILR 21 All. 230 (1899). There, a District Judge had transferred a case from the Court of the Subordinate Judge to his own Court; and against his decree an appeal having been preferred to the High Court, that Court remanded the suit under sec. 562, C.C.P., to the District Judge; but the latter transferred the case so remanded to the Subordinate Judge. And it was held that the District Judge had no power to transfer the suit but was bound to try it out himself. In the present case it will be borne in mind that after the District Judge had made an order upon the application of the Defendant, the Appellant before him, for local investigation by a second Amin, and when the Defendant failed to deposit the Amin's fees, he recorded an order to the effect that the appeal would be dismissed if the fees were not deposited within a given time--indicating clearly that, upon the materials that then stood before him, he was not prepared to disagree with the conclusion which had been arrived at by the Subordinate Judge, and that he should have to dismiss the appeal if further materials were not forthcoming. In this state of things we fail to see how the Judge, when the report was received from the second Amin appointed by him, could transfer the appeal to the Additional Judge. He was, we are of opinion, bound to consider the fresh materials that were afforded by the second Amin's investigation, and determine the appeal one way or the other.

12. In this view of the matter the order of transfer, and necessarily the judgment of the Additional Judge which followed upon such order of transfer were without jurisdiction, and should therefore be set aside. The result is that the judgment of the Additional Judge is set aside, and the case remanded to the District Judge for being heard and decided according to law. Costs will abide the result.