

(1909) 07 CAL CK 0038**Calcutta High Court****Case No:** None

Hari Nath Biswas and Others

APPELLANT

Vs

Debendra Nath Biswas

RESPONDENT

Date of Decision: July 27, 1909**Judgement**

1. We are invited in this Rule to transfer a suit pending in the Court of the first Munsif of Krishnagar to the Court of the Subordinate Judge of the same place. The petitioner alleges that the suits arise out of transactions closely connected together and that the evidence both oral and documentary to be relied upon in the cases is exactly the same. Under these circumstances, it is obvious that the suits ought to be tried together.

2. It is argued, however, on behalf of the opposite party that this Court has no jurisdiction to make an order u/s 24 of the Code of 1908, because an application was made to the District Judge for the same purpose and was refused. The learned Vakil contends that u/s 24, the High Court and the District Court have concurrent jurisdiction and as the District Court has refused to exercise the jurisdiction vested in it, the jurisdiction vested in the High Court has been taken away. There is manifestly no foundation for this contention. Section 24, so far as the present point is concerned, is identical with Section 25 of the Code of 1882, and, under that section, this Court frequently exercised the power of transfer after an application for transfer made to the District Court had proved infructuous.

3. It is next contended that Section 24 has no application because the Court of the Munsif is not subordinate to this Court within the meaning of that section. It is suggested that a Court subordinate to the High Court must be a Court immediately subordinate to it and as the Court of the Munsif is subordinate to the District Court, it cannot be said to be subordinate to the High Court within the meaning of this section. We are not prepared to accept this argument as well-founded on principle, nor has any authority been cited in support of the proposition.

4. As a last resort, reliance has been placed on the decision of the Allahabad Court in the case of Muhammad Safdar Husen v. Puran Chand 20 A. 395 which, however, is clearly distinguishable. There the District Judge made an order for transfer of a suit from the file of the Subordinate Judge to his own file. Application was subsequently made to the High Court to transfer the case from the file of the District Judge. The High Court held, not that it had no power to order a transfer, but that, under the circumstances, it was not desirable that the order for transfer should be made.

5. The Rule will, therefore, be made absolute and the case transferred from the Court of the Munsif to the Court of the Subordinate Judge. We further direct that both the cases be heard as early as practicable, so that this order of transfer may not delay the hearing of either case.

6. The petitioner is entitled to his costs in this Court. We assess the hearing fee at two gold mohurs.