

Parshotamdas Chunilal Shah Vs Bhagubhai Nathubhai

Court: Bombay High Court

Date of Decision: Nov. 25, 1931

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 24(4)

Citation: AIR 1932 Bom 486 : (1932) 34 BOMLR 931 : (1932) ILR (Bom) 387

Hon'ble Judges: Nanavati, J; Baker, J

Bench: Division Bench

Judgement

Baker, J.

This is an application for transfer of a suit from the Small Cause Court, Ahmedabad, to the Second Class Subordinate Judge's

Court on the ground that there is already a suit between the same parties pending in the Subordinate Judge's Court in which the same questions

are involved. The application, which is u/s 24, Civil Procedure Code, raises a point of law, on which there is no ruling of this Court, though there is

one of the Madras High Court. The point is that the suit in the Small Cause Court is for Rs. 900 odd, whereas the Small Cause Court powers of

the Second Class Subordinate Judge extend only to Rs. 300, and hence it is contended that the transfer must be to a Court competent to try the

suit, and as under Clause (4) Section 24 the suit must be tried as a Small Cause suit, and the Subordinate Judge's Small Cause Court powers do

not extend to the value of the suit, the transfer is incompetent, as the Local Government alone has power to confer jurisdiction under the Provincial

Small Cause Courts Act. This is the view accepted by a single Judge of the Madras High Court in *Murugesu Mudaliar v. Venkata Kesavalu*

Chetty (1929) 66 M.L.J. 649.

2. The expression ""competent "" to try it must refer to the pecuniary jurisdiction of the Court; e. g, it would not be within the powers of the High

Court to transfer a suit over Rs. 5,000 to a Second Class Subordinate Judge whose powers extend only to suits of the value of Rs. 5000 or less. I

do not think any question of territorial jurisdiction can arise, as it is within the power of the High Court acting u/s 24 to transfer a suit from one

district to another. The difficulty arises from Sub-section (4) of the section, which if the view adopted by the Madras High Court is followed, does

not seem to have much point. It is now held by all High Courts, though at one time this Court took a different view, that the words ""Court of Small

Causes"" in Sub-section (4) of Section 24 makes no distinction between a regular Court of Small Causes and a Court of the Subordinate Judge

invested with Small Cause Court jurisdiction, as nearly all Subordinate Judges are. There is no direct ruling on the point beyond the Madras High

Court ruling already referred to, though similar cases have frequently arisen, but no objection seems to have been taken on this score. In Sukha v.

Raghunath Das ILR (1916) All. 214 a suit of Small Cause Court nature instituted in the Court of a Subordinate Judge invested with the powers of

a Judge of Small Cause Court was transferred to the Court of a Munsif not possessing the powers of a Small Cause Court, and was tried by him

and a decree passed therein. It was held that no appeal lay from the Munsifs decree, and it is remarked (p. 219):-

...the provisions of Section 24, Sub-section (4) of the CPC do mean something. On any interpolation, they do mean at least this, that if a suit is

pending in a court constituted under the provisions of the Small Cause Courts Act of 1887, the District Court has power to transfer that suit to

another court which is neither a Court constituted under that Act, nor a court invested with the jurisdiction of a Court of Small Causes, and that the

court to which the case is transferred will then be deemed, by virtue of the order of transfer, to be a Court of Small Causes for the purpose of that

particular suit.

3. Those remarks are by way of dissent from certain remarks in Dulal Chandra Deb v. Ram Narain Deb ILR (1904) Cal. 1057 which has

however been subsequently dissented from in Madhusudan v. Behari (1918) 27 C. L.J.461; see also Badal Chandra Porhel v. Srikrishna De Nag

ILR (1928) Cal. 588 where a suit for Rs. 870 instituted in the Court of Small Causes at Sealdah having jurisdiction up to Rs. 1,000 was

transferred by consent of parties to the Munsif at Alipore having Small Cause Court powers up to Rs. 250, to be tried along with a suit for rent

between the same parties pending before him, It was held that the decision of the Munsif was that of a Small Cause Court and was not appealable.

The point before us now did not however arise in that suit, as although the Munsif who had pecuniary jurisdiction to try the suit was not vested with

Small Cause Court powers up to the requisite amount, the parties had the transfer made by consent. With respect, it seems to me that the view

taken by the Madras High Court is likely to lead to inconvenience, because the Small Cause Court powers conferred on regular Subordinate

Judges" Courts are in most oases restricted to a maximum of Rs. 500, and if in cases of a Small Cause Court nature the competence of the Court

to which it is proposed to transfer the case is to depend on the extent to which it has been invested with Small Cause Court powers it would very

frequently be impossible to transfer a case from the regular Small Cause Court, whose jurisdiction extends to Rs. 1,000 or more, to any other

Subordinate Judge's Court, which is exactly what is contended here. I do not think any Subordinate Judge in this Presidency has Small Cause

Court powers over Rs. 500. Consequently, if the argument of the opponent is correct, no Small Cause suit over Rs. 500 could be transferred to a

regular Court. This obviously very materially limits the operation of Section 24, and in the absence of clear words in the section, I should not be

disposed to take that view. I am not impressed by the argument that to hold otherwise would be to usurp the functions of the Local Government.

This is not a case of conferring jurisdiction to try all or any cases of a Small Cause Court nature, but one case only, a power which seems to me to

follow from the provisions of Sub-section (4) of Section 24, That Sub-section is widely expressed, and lays down that any case transferred from a

Court of Small Causes shall be tried as a Small Cause suit by the Court to which it is transferred, and makes no reference to the Court to which

the case is so transferred being invested with Small Cause powers up to any particular extent or indeed with Small Cause Court powers at all, and

it is exactly that point which the Sub-section seems designed to meet. If it had been intended by the Legislature to make any such limitation, it could

certainly have said so. The terms of the section appear rather to be intended to confer the powers of a Small Cause Court upon the trying Court

for that particular case irrespective of the powers with which the Court is invested. In the circumstances, with respect, I am not prepared to follow

the view of the Madras High Court, and I am of opinion that Sub-section (4) of Section 24 gives the power to transfer a suit from a Small Cause

Court to a regular Court irrespective of the Small Cause powers of the Court to which the suit is transferred. I may add that any other

interpretation would make Sub-section (4) unmeaning, as if the suit were within the limit of the Small Cause Court powers of the Court to which it

is transferred, that Court would presumably be obliged under the ordinary law to try it as a Small Cause suit irrespective of Section 24, Sub-

section (4). The present case is only likely to arise where there is a regular Small Cause Court in existence. I am therefore of opinion that this Court

has power to make the transfer, and that provided the suit to be transferred is within the limits of the pecuniary jurisdiction of the Court to which

the transfer is to be made, the extent of its Small Cause powers does not matter, as jurisdiction to try the case as a Small Cause is conferred by

Sub-section (4) of Section 24.

4. On the merits there is little to be said. It appears that the plaintiff in the Small Cause suit is the defendant in the regular suit, and one of the

defendants in the Small Cause suit is the plaintiff in the regular suit. Whether the two suits relate to the same transaction is a matter of evidence

which would more appropriately be considered by the trying Judge, but I am of opinion that the two suits would be more conveniently tried by the

same Judge, who would be the best person to decide how far the issues are common to the two suits. Apart from this, if the two suits are tried by

different Courts, and the contention of the applicants is correct, there is a possibility of contrary findings on the same issues between the same

parties which is always a source of embarrassment. I am therefore of opinion that the suit should be transferred, and the rule made absolute with

costs.

Nanavati, J.

5. I agree, Section 24, Sub-section (4), of the CPC is clearly intended to enable the transfer of a suit from a Court of Small Causes to one which is

not such a Court. It follows therefore that it is intended to remove the bar laid down in Section 16 of the Provincial Small Causes Courts Act of

1887. That section enacts that a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local

limits etc. It does not deprive the regular Courts of their jurisdiction but merely directs them not to try "Small Cause suit." (I use this short phrase to

indicate a suit cognizable by a Court of Small Causes). They still remain triable by the regular Courts if the prohibition in Section 16 can be got

over. The argument that u/s 24 (1)(a) and (6), Civil Procedure Code, the Court to which a suit is transferred must be competent to try or dispose

of the same, and that by reason of Section 16 of the Provincial Small Causes Courts Act regular Courts are not competent to try "Small Cause

suits" is not in my opinion correct. The jurisdiction of a Subordinate Judge is defined in Section 24 of the Bombay Civil Courts Act of 1869. If a

suit is within the power of the Court as so defined, then the Court is competent to try the suit, Section 16 of the Provincial Small Causes Courts

Act does not take away this competency. It only directs that certain suits shall not be tried by such Courts and this bar is removed u/s 24, Sub-

section (4), of the CPC when an order of transfer is made under that section. If Section 16 of the Provincial Small Causes Courts Act had the

effect of making Courts other than those governed by that Act incompetent to try "Small Cause suits", then Section 24, Sub-section (4), Civil

Procedure Code, need not have been enacted at all since the situation contemplated therein could not arise. The argument that weighed with the

learned Judge in *Murugesu Mudaliar v. Venkata Kesavalu Chetty* (1929) 56 M.L.J. 619 was this that although it was the local Government alone

that could invest particular Courts of Small Causes with jurisdiction up to Rs. 1,000, a District Court by exercising the power of transfer could

enable a Court whose "Small Cause" jurisdiction was limited to "Small Cause suits" not exceeding Rs. 300 in value, with the power of deciding

"Small Cause suits" of the value of Rs. 1,000, The answer to that argument is well expressed in *Sukha v. Raghunath Das* ILR (1916) All. 214 as

follows (p. 219):-

It is not unreasonable to suppose that the Legislature felt considerable confidence in the district courts, in consideration more particularly of the

intimate acquaintance which such courts are likely to possess with the personnel and the working of all courts subordinate to them; so that it was

not deemed improper to invest district courts with powers of transfer in respect of suits of a Small Cause Court) nature and to permit that power to

be exercised for the transfer of a case from a Court of Small Causes to a court which is neither a Court of Small Causes constituted under Act IX

of 1887, nor a court invested with the jurisdiction of a Court of Small Causes. It remains a matter of discretion with the district court whether or

not to pass an order of transfer in any suit; and the apparent intention of the Legislature was that, if a Small Cause Court suit is so transferred, it

should not change its nature by reason of the transfer, but should continue to be tried as a Small Cause Court suit and subject to all the legal

incidents of such a suit.

6. With respect, I entirely agree with that reasoning. Any other interpretation would make Section 24, Sub-section (4), Civil Procedure Code,

meaningless and give rise to a great deal of inconvenience.