

1914

HARADHAN
DEBNATH
v.
BHAGABATI
DASI.

We are informed that the balance of the purchase money was deposited by the plaintiff in Court pursuant to the order of the Court of first instance. The order of that Court with regard to the execution of the conveyance, will now be carried out. We further direct that as soon as the conveyance is executed, the plaintiff be placed in possession of the property as against the defendants in execution of the decree of this Court.

G.S.

Appeal allowed.

CIVIL RULE.

1914

Feb. 16.

Before Stephen and Mullick JJ.

MAHOMED MUSA

v.

ABUL HASSAN KHAN.*

Jurisdiction—Additional Sessions Judge, competency of, to try suit under s. 92 of the Civil Procedure Code, 1908, if not directly empowered by Local Government—Civil Procedure Code (V of 1908), ss. 24, 92—Bengal N.W.P. and Assam Civil Courts Act (XII of 1887), s. 8.

An Additional District Judge, who is not vested with the power of trying suits under s. 92 of the Code of Civil Procedure by the Local Government, has no jurisdiction to try such suits, and a transfer of such a suit by the District Judge to the Additional District Judge is not competent.

Abdul Karim Abu Ahmed Khan v. Abdus Sobhan Chowdhry (1) referred to.

CIVIL RULE obtained by the defendants, Mahomed Musa and another.

This Rule arose out of a suit brought under s. 92 of the Code of Civil Procedure, 1908, by one Abul Hassan Khan and others, as members of the public to set aside

* Civil Rule, No. 27 of 1914, against the Order of F.W. James, Additional District Judge of Patna, dated Jan. 6, 1914.

(1) (1911) I.L.R., 39 Cal. 146.

a certain compromise decree which had been arrived at and effected in the High Court in A. O. D. No. 434 of 1911, whereby one of the petitioners in this Rule was re-instated as *mutwalli* and the other petitioner was re-appointed as *naib awal* under the supervision of a committee of leading Mahomedans in Patna. The suit was instituted in the Court of the District Judge on the 2nd September, 1913. After the written statements had been filed and the issues framed in the said Court of the District Judge, the suit was transferred to the Court of the Additional District Judge on the 2nd January, 1914, by the District Judge. On this, the defendants filed a petition in the Court of the Additional District Judge objecting to the jurisdiction of that Court to hear the suit, stating that they were not aware if the said Additional Court had been specially empowered by the Local Government to try this suit and also that, even if it had been so authorised, the suit could not legally be transferred to the file of the Additional Judge, as it was instituted in the Court of the District Judge, and was pending there. The Additional Judge disallowed the objection on the 6th January, 1914, holding that the Additional District Judge has power to try cases of this nature if transferred to him by the District Judge without any special notification by the Local Government empowering the Additional Court to take up such cases. Thereupon, the defendants moved the High Court for setting aside the order of the Additional Judge, both on the ground that the Additional Judge had no jurisdiction to try such a case, and that the order of transfer was *ultra vires*.

1914

MAHOMED
MUSA
P.
ABDUL
HASSAN
KHAN.

Dr. Dwarkanath Mitra, for the opposite party. It is submitted that the order of Mr. Roe for transfer is right. The real question in controversy is whether

1914
 MAHOMED
 MUSA
 v.
 ABUL
 HASSAN
 SOKHAN.

the Additional District Judge is competent to try charity suits. This has to be determined with reference to section 92 of the Code of 1908. The Court of the Additional District Judge is a Court of Principal Civil Jurisdiction within the meaning of section 92. The Court of the Additional District Judge is appointed by the Local Government under section 8 of Act XII of 1887 to aid the District Judge in the performance of his duties. He has got the same powers as the District Judge. He can exercise any of the functions assigned to him by the District Judge. My contention seems to be supported by section 24, for it has been necessary for the purposes of that section only to say that the Additional District Judge is subordinate to the District Judge, but not as a general rule. *Abdul Karim Abu Ahmed Khan v. Abdus Sobhan Chowdhry* (1) does not help the petitioners because the Subordinate Judge was not generally vested with power to try suits under section 92, but a particular charity suit was transferred to him for trial by the Local Government. It was contended that the Subordinate Judge was not generally vested to try all cases under section 92 as is required by that section.

Mr. S. P. Sinha (with him *Babu Umakali Mukherji* and *Babu Surendra Nath Ghosal*), for the petitioners. The District Judge could not by assigning the case to the Additional District Judge confer jurisdiction upon him to try such a suit. The jurisdiction must be conferred by the Local Government and that in general terms: *Abdul Karim Abu Ahmed Khan v. Abdus Sobhan Chowdhry* (1). The words "Principal Court of Civil Jurisdiction" in section 92 can refer only to the Court of the District Judge. It cannot include the Court of the Additional District Judge who:

(1) (1911) F.L.R. 93 Cal. 146.

for the purposes of section 24 of the Code, is to be deemed to be subordinate to the District Judge.

Dr. Dwarkanath Mitra, in reply.

Cur. adv. vult.

1914
MAHOMED
MUSA
- v.
ABUL
HASSAN
KHAN.

STEPHEN AND MULLICK, JJ. In this case the Local Government acting under section 8 of the Bengal and Assam Civil Courts Act, 1887, appointed Mr. James Additional District Judge at Patna. On the 2nd February, 1914, Mr. Roe, the District Judge, transferred to him a suit under section 92 of the Code of Civil Procedure instituted before himself, which had proceeded as far as the settlement of issues. It is not disputed that this transfer was made under section 24 of the Civil Procedure Code. On Mr. James taking up the case, it was argued before him that he had no jurisdiction to deal with it, but this was overruled. A Rule, however, has been granted in this Court calling on the opposite party to show cause why the order transferring the case to the file of the Additional Judge should not be set aside as being made without jurisdiction. The objection to Mr. Roe's order is as follows: The effect of Mr. James' appointment was that he became capable of discharging any of the functions of a District Judge which the District Judge might assign to him, and of exercising the powers of a District Judge in discharging them; but the functions so assigned must be general and no such functions were assigned by Mr. Roe's order of transfer under section 24 of the Code. This is a sound objection, and a comparison of the language of the two enactments referred to, makes any other conclusion impossible. It is also consistent with the decision of this Court in *Abdul Karim Abu Ahmed Khan v. Abdus Sobhan Chowdhry* (1). Had the Local Government empowered Mr. James to receive suits under

(1) (1911) I. L. R. 39 Cal. 146.

1914
 MAHOMED
 MUSA
 v.
 ABUL
 HASSAN
 KHAN.

section 92, the case might have been different, for it is not disputed that he would then have been "the Principal Civil Court" under section 92 of the Civil Procedure Code, though he would be a Subordinate Court under section 24. Had the District Judge assigned to Mr. James the function of a District Judge in respect of section 92, then also all might have been well. But, as it is, Mr. James had no jurisdiction to deal with cases under section 92 at the time the order was made, and Mr. Roe effected nothing by his order of transfer.

The Rule is, therefore, made absolute and the order of transfer is set aside. We make no order as to costs.

S.M.

Rule absolute.

APPELLATE CIVIL.

Before Imam and Chapman, JJ.

KULA CHANDRA CHAKRAVARTI

v.

BAMA SUNDARI DASEE.*

1914
 Feb. 16.

Hindu Law—Stridhan—Widow's estate—Alienation—Property acquired by Hindu widow with accumulations of income of husband's estate.

Property acquired by a Hindu widow, with accumulations of the income of her husband's estate, does not constitute her *stridhan* but forms part of the *corpus* of the estate and as such is inalienable except for purposes that would justify alienation of the original estate.

Bhagbutti Deyi v. Bholanath Thakoor (1) and *Isri Dutt Koer v. Hansbutti Koerain* (2) referred to.

APPEAL by Kula Chandra Chakravarti, the plaintiff.

* Appeal from Original Decree, No. 225 of 1911, against the decree of Sarat Kishore Bose, Subordinate Judge of Pabna, dated Feb. 24, 1911.

(1) (1875) I. L. R. 1 Calc. 104

(2) (1888) I. L. R. 10 Calc. 324;

L. R. 2 I. A. 256

L. R. 10 I. A. 150.