

PALANISAMI
COWNDAN
v.
THONDAMA
COWNDAN.

As regards the second point, the High Court has power under section 25 of the Code of Civil Procedure to transfer a pending suit. There is no reason why the word 'pending' should not be construed in its ordinary sense. Section 191 (2) of the Code of Civil Procedure clearly contemplates the transfer of a suit under section 25 after the case has been, in part, heard. There was jurisdiction to order the transfer.

The second appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.

1903.
January 29.

BAVU SAHIB (FIRST COUNTER-PETITIONER), PETITIONER,

v.

THE DISTRICT JUDGE OF MADURA, RESPONDENT.*

*Legal Practitioners Act—XVIII of 1879, as amended by Act XI of 1896, s. 36—
Application to have persons declared as touts—Hearing on affidavits—Validity—
Operation of order limited to Sessions District.*

Where application is made to a Court to declare persons to be touts, under section 36 of the Legal Practitioners Act, it is desirable that the Court should hear oral evidence, though it is open to the Court to act on affidavits.

The operation of such an order is limited to the Judge's own Court and Courts subordinate to him.

APPLICATION that certain persons should be declared to be touts, under section 36 of the Legal Practitioners Act (XVIII of 1879, as amended by Act XI of 1896). Application was made to the District Court of Madura that 19 persons should be declared touts. The District Judge acted on affidavits and passed the following order with reference to 16 of the persons referred to:—'The District Judge orders that the marginally-noted persons be declared touts, that a copy of these proceedings be kept hung up in the District Court and in the Subordinate Court of Madura, East and West, and in the District Munsifs' Courts of Madura and

* Civil Miscellaneous Petition No. 937 of 1902, presented under section 15, Charter Act, praying the High Court to set aside the order of H. Moberly, District Judge of Madura, in proceedings, dated 2nd May 1902, No. 3558, declaring the petitioner to be a law tout under section 36 of the Legal Practitioners Act.

Tirumangalam, that a copy of this be sent to the District Magistrate, Madura, for publication in the District Gazette in view to copies being sent to the local Criminal Courts. Ordered further that these persons declared to be touts be excluded from the precincts of the respective Courts. No. 14 is exempted, his statement that he is a gumastah is confirmed by a Vakil."

BAVU SAHIB
v.
THE DISTRICT
JUDGE OF
MADURA.

Mr. C. Krishnan for petitioner.

JUDGMENT.—Notice was issued to the District Judge, but the Government Pleader does not appear. Objection is taken by the petitioners to the action of the District Judge on the ground that he acted on affidavits. We think that it was open to the District Judge, under sections 194, 195 and 647, Civil Procedure Code, to act upon affidavits filed in support of the application made by the Vakils to have the petitioners declared to be law touts; though in a matter of this kind we think it would have been more regular and satisfactory to have examined the deponents in Court as witnesses. We observe, however, that no objection was taken before the District Judge on this score, nor did the petitioners even apply, as they might have done, to have the deponents examined or cross-examined in Court. We must therefore disallow this objection. We, however, observe that the District Judge acted in excess of his jurisdiction in extending the operation of his order to the Criminal Courts in the District other than his own Sessions Court. Section 36 of the Legal Practitioners Act only gives him jurisdiction in his own Court and in Courts subordinate to him. Under section 17 (1) and (5) of the Criminal Procedure Code neither the District Magistrate nor the other Magistrates are subordinate to the Sessions Judge except so far as is expressly provided by the Criminal Procedure Code.

We must therefore, under section 622, Civil Procedure Code, cancel so much of the order as relates to the Courts of the District and other Magistrates.