

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Davies.

PALANISAMI COWNDAN (PLAINTIFF), APPELLANT,

v.

THONDAMA COWNDAN (DEFENDANT), RESPONDENT.*

1902.
December 18.

Civil Procedure Code—Act XIV of 1882, ss. 25, 191 (2)—Suit commenced in a District Court—Issues settled by District Judge—Case transferred to Sub-Court by High Court—Decision by Sub-Judge—Appeal to and decision of District Judge—Validity of decision in appeal and of transfer by High Court.

A suit was instituted in a District Court, and issues were settled by the District Judge. The suit was then transferred by the High Court to the Court of the Subordinate Judge, who decided the case; an appeal was then preferred to and was heard by the District Court, though the Judge who heard the appeal was not the Judge who had settled the issues. On a second appeal being preferred to the High Court:

Held, (1) that the District Court had jurisdiction to hear the appeal, section 17 of the Madras Civil Courts having no application;

(2) that the High Court had jurisdiction under sections 25 and 191 (2) of the Code of Civil Procedure to make the transfer to the Subordinate Judge, though the case was in part heard.

The facts of the case appear from the head-note and judgment.

V. Krishnaswami Ayyar for appellant.

The Advocate-General for respondent.

JUDGMENT.—Two points have been raised on behalf of the appellant: first, that the District Court had no jurisdiction to hear the appeal; second, that there was no jurisdiction to make the order of transfer from the District Court to the Sub-Court.

As regards the first point, the suit was instituted in the District Court and issues were settled by the District Court. The suit was then transferred to the Sub-Court by order of the High Court. The appeal from the decree of the Sub-Court was heard by the District Court. The Judge who heard the appeal was not the Judge who settled the issues. This being so it is clear that section 17 of the Civil Courts Act has no application and the District Court had jurisdiction to hear the appeal.

* Second Appeal No. 1336 of 1901, presented against the decree of V. A. Brodie, District Judge of Coimbatore, in Appeal Suit No. 188 of 1901, presented against the decree of W. Gopalachariar, Subordinate Judge of Coimbatore, in Original Suit No. 1 of 1900.

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.