

## APPELLATE CIVIL.

*Before Mr. Justice Cargenven.*1926,  
December 10.

MOIDEEN MEERA SAHIB, PETITIONER (RESPONDENT),

v.

CRUZ MICHAEL FERNANDO, RESPONDENT (PETITIONER).\*

*Rule 4, clause (3) of Rules for Elections under Madras Local Boards Act (XIV of 1920)—Elections to Union Boards—Jurisdiction of District Court to transfer part-heard case—Objection to personation of a voter.*

Rule 4, clause (3) of the rules for the conduct of election enquiries framed under the Madras Local Boards Act (XIV of 1920) enables a District Court to transfer to a Munsif's Court even a part-heard case in the case of elections to Union Boards. *Zamindar of Bodakimidi v. Kumari Lahiri* (1918) M.W.N., 772, followed.

Even if no objection is taken at the time of election to the voting of any person personating a real voter, the same can be taken at the election enquiry.

PETITION under section 115 of Act V of 1908 and section 107 of the Government of India Act praying the High Court to revise the Order of the Court of the District Munsif of Srivaikuntam, dated the 7th day of August 1926, in O.P. No. 346 of 1925 (O.P. No. 58 of 1925 on the file of the District Court of Tinnevely).

The necessary facts are given in the judgment.

Rule 4, clause (3) is given in the judgment.

*S. Rajagopala Achariyar* for petitioner.

*K. R. Rama Ayyar* for respondent.

## JUDGMENT.

This Civil Revision Petition has been presented against the Order of the District Munsif of Srivaikuntam in O.P. No. 346 of 1925, which comprised an enquiry

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\* Civil Revision Petition No. 914 of 1926.

under the rules relating to election disputes. The election in question was to Ward No. 10 of the Union Board of Alwarthirunagari. There were three candidates—the petitioner, the respondent and one Alagapiran Ayyangar. Of the 35 voters, 29 cast their votes—15 in favour of the present petitioner and 14 in favour of the respondent, the third candidate getting no vote at all. The petitioner was accordingly declared elected whereupon the respondent filed this petition before the District Court objecting to the election. The learned District Judge issued summons to some of the witnesses, actually examined one witness and allowed certain documents to be filed and then transferred the case for disposal to the District Munsif of Srivaikuntam. Some of the witnesses whom it was desired to examine were said to be absent in Colombo and the respondent applied for a commission, which was objected to by the petitioner but was granted and was returned executed in due course. Subsequently the petitioner, alleging, it is said, that being a Village Munsif he was unable to spare time then for the enquiry and that he had no facilities for examining the witnesses on commission, asked that they should be summoned to appear in person or that a second commission should be issued. There has been a great deal of delay, very largely due to the petitioner's own fault, in the conduct of this enquiry and the District Munsif refused to grant an adjournment for this purpose and proceeded to dispose of the petition, finding that in the case of three votes instanced by the respondent the voters must have been impersonated. He accordingly passed an order unseating the petitioner and directing that the respondent should be declared to have been elected.

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The first objection raised to this order in revision is that the Court should have granted the adjournment asked for. I do not think that there is any substance

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in the contention that the petitioner as Village Munsif was precluded from attending to the case. It has not even been alleged before me that he put in a formal application for leave to the Revenue authorities and that it was refused. It appears that the election took place as far back as the 27th May 1925, and the District Munsif's order was not passed until the 6th of August 1926. I think that he was fully justified in bringing the proceedings to an end under the circumstances.

The next point has to do with the action taken by the learned District Judge in transferring the case after it had been partly heard by him. It is said that in so doing he acted *ultra vires* and that the District Munsif had not jurisdiction to take up the enquiry and conclude it, whether or not he would have been competent to have tried it *de novo* upon its transfer to him. Under sub-rule (3) of rule 4 of the rules for the conduct of enquiries and decision of disputes relating to elections

“ a District Judge or Subordinate Judge may in the case of Union Board Elections direct any Court Subordinate to him to hold the enquiry.”

The question is whether the words “ to hold the enquiry ” can be taken to cover the conclusion of an enquiry which has been initiated in the higher Court. I have been referred to *Kumaraswami Reddiar v. Subbaraya Reddiar*(1) as authority to the contrary. That was a case which was decided under section 13 of the Madras Civil Courts Act, III of 1873, which enables the District Judge to refer any appeals from the decrees and orders of District Munsifs, preferred in the District Court, to any Subordinate Judge within the District. Following certain decisions under section 25 of the Civil Procedure Code of 1882 and under section 6 of Act VIII of 1859 it was held that there was no such power in the case of

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(1) (1900) I.L.R., 23 Mad., 314.

a part-heard appeal. So far as the Civil Procedure Code is concerned the introduction of the words "at any stage" into the present section 24, which corresponds to the old section 25, makes this decision no longer good law and, as has been pointed out in *Palanisami Cowndan v. Thondama Cowndan*(1) it was never the law applicable to the trial of suits, inasmuch as Order XVIII, rule 52, makes it clear that a suit may be transferred even when part-heard. The argument has been used that rule 6 of the rules for the conduct of enquiries, which provides that every election petition shall be enquired into as nearly as may be in accordance with the procedure applicable under the Civil Procedure Code of 1908 to the trial of suits, attracts the provisions of section 24. I think it may at least be said that on the analogy presented by section 24, the transfer, after part hearing, of an enquiry of this nature, which resembles in all essential respects a suit, would be permissible. In *Zamindar of Bodokinidi v. Kumar Lalhiri*(2) the question arose whether the transfer of a suit by the Agent to the Governor in Ganjām to the Special Assistant Agent, under the Agency Rules, after he had partly heard it, was within his competence. The phrase used by the rule in question was

"may refer any suit for the decision of the Divisional Assistant"

and it was decided that although the words "at any stage" occurring in section 24 of the Civil Procedure Code were not to be found in the rule, yet there was no ground for limiting the Agent's power of transfer to suits in which no proceedings were taken at all before they were transferred. KRISHNAN, J., pointed out that

"the rule did not in terms restrict the power of transfer to a stage before the first hearing"

(1) (1903) I.L.R., 26 Mad., 595.

(2) (1918) M.W.N., 772.

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and this observation is as pertinent to the present case as it was to that one. Again in *Alagu Ambalam v. Emperor*(1) the power of a District Magistrate to withdraw an appeal from a Subordinate Court was considered, and it was held that there was nothing in the Code of Criminal Procedure to limit the power of withdrawal in such a way, for instance, as to exclude from it part-heard cases. Applying the principle of these decisions to the present case I consider that there is nothing in the rules which incapacitated the District Judge from taking the course which he adopted. It may be further pointed out that the objection is of a technical character, that there is nothing to show that it in any manner prejudiced the petitioner, and that he failed to take any objection to it before the lower Court. I accordingly find no substance in this point.

It is next said that under rule 3 of the same rules

“ if any candidate claims a declaration that he himself or any other candidate has been duly elected he shall join as respondents to his petition all other candidates who were nominated for the election but had not withdrawn before the polling.”

Admittedly the third candidate, Alagapiran Ayyanagar, was not joined in this petition and notwithstanding the omission the learned District Munsif has given a declaration, as prayed, that the respondent has been properly elected. It must be found accordingly that there was a breach of the terms of rule 3 and the question I have to consider is whether in revision this Court should interfere and set aside the order. I am not impressed by the argument that it was not a matter for the petitioner to raise. If any rule has been broken the petitioner may certainly take advantage of the fact and endeavour to get a decision passed in favour of his

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(1) (1908) I.L.B., 31 Mad., 277.

opponent set aside. But there is in the first place the circumstance that the third candidate obtained not a single vote in his favour and did not himself prefer any objection before the lower Court. It is fairly certain therefore that had he been impleaded, the outcome of the proceedings would not have been different. Added to this, no objection was raised by the petitioner before the lower Court and I think, proceeding on the analogy afforded by Order I, rule 13 read with section 99, Civil Procedure Code, he should not, except in unusual circumstances, be allowed to press it in revision. As I have said, the election took place so far back as 27th May 1925, more than 18 months ago, and some substantial grounds not unconnected with the merits of the case should be put forward for further interference. I do not think that this objection is otherwise than a formal one and I therefore refuse to allow it.

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The remaining point, in which also I see no substance, is that the persons who seem to have impersonated voters Nos. 26 and 30 were not challenged at the time of the election and therefore the evidence relating to the invalidity of these votes cannot be received. No provision has been shown me according to which this objection can be sustained and I think it is quite clear that irregularities of this kind, although not brought to light at the time of election, can be enquired into and acted upon under the rules.

The Civil Revision Petition fails on all points and is dismissed with costs.

N.R.