

APPELLATE CIVIL.

*Before Mr. Justice Pandrang Row and
Mr. Justice Abdur Rahman.*

G. ABDUL KHADIR SAHEB (FIRST DEFENDANT),
PETITIONER,

1939,
September 18.

v.

V. PACHAIYAPPA CHETTI AND ANOTHER (PLAINTIFF
AND SECOND DEFENDANT), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), sec. 24—Court of Small Causes, Madras—Suit on file of—Transfer of, under sec. 24 of the Code, to City Civil Court, Madras—Permissibility—Madras City Civil Court Act (VII of 1892), secs. 3 and 5—Applicability and effect.

Under section 24 of the Code of Civil Procedure a suit on the file of the Court of Small Causes, Madras, can be transferred from that Court to the City Civil Court, Madras.

PETITION praying that in the circumstances stated in the affidavit filed therewith the High Court may be pleased to issue an order directing transfer of Small Cause Suit No. 11852 of 1938 from the file of the Court of Small Causes, Madras, to the file of the City Civil Court, Madras, to be tried along with Original Suit No. 157 of 1939 on the file of the City Civil Court, Madras.

P. K. Janakiram for petitioner.

N. Panchanatha Ayyar for first respondent.

P. G. Krishna Ayyar for second respondent.

The ORDER of the Court was pronounced by PANDRANG ROW J.—This is an application made under sections 24 and 151, Civil Procedure Code, for the transfer of Small Cause Suit No. 11852 of 1938 on the

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file of the Court of Small Causes, Madras, from that Court to the City Civil Court, Madras, to be tried along with Original Suit No. 157 of 1939 on the file of the latter Court on the ground that the two suits are connected and that it is convenient that they should be tried by the same Court. A preliminary objection has been raised to the application on the ground that under section 24, Civil Procedure Code, there could be no transfer of the kind asked for. Reliance is placed on section 3 of the Madras City Civil Court Act which gives jurisdiction to the City Civil Court to try certain suits excluding suits cognizable by the Court of Small Causes, Madras. There is however a distinct provision in section 5 of the same Act to the effect that every person appointed a Judge of the City Civil Court shall be by virtue of his office a Judge of the Court of Small Causes, Madras, with respect to cases cognizable by the latter Court. It cannot therefore be said that the City Civil Judge to whom the present case may be transferred would have no jurisdiction to try the suit. On the other hand there is a distinct provision in section 24, Civil Procedure Code, which under section 8 of the Code applies to a Small Cause Court, to the following effect :

“The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall for the purposes of such suit be deemed to be a Court of Small Causes.”

In view of section 5 of the Madras City Civil Court Act, this does not appear to be a case of conferring by the order of transfer itself jurisdiction on the Court to which the transfer is made, which it would not possess but for the transfer.

There can thus be no sound objection to the entertainment of the application in a case like this under section 24, Civil Procedure Code. In the view we have

taken of the preliminary objection it seems unnecessary to decide whether another remedy is not available to the petitioner by way of an application to the Chief Justice of the High Court under section 5 of the Madras City Civil Court Act.

On the merits it is clear that the balance of convenience is in favour of the transfer asked for. It seems to us however that we cannot reject the complaint made by the second respondent that he may have, as a result of the transfer to be made, to pay additional court-fee in the City Civil Court. It is not proper that we should deal in advance with the question whether additional court-fee would be properly leviable in the circumstances. But assuming that such additional fee would be leviable, which question however we entirely leave to the City Civil Court to decide, it seems to us that the second respondent's complaint is one for which some redress should be provided. We therefore direct the transfer as prayed for but with the condition that the additional court-fee, if any, which may be required to be paid as a result of the transfer should be paid by the petitioner in this application in the first instance, and that that amount should be treated as the costs of the petitioner in the suit and provided for by the final decree in that suit. There will be no order as to the costs of this petition.

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A.S.V.
