

REVISIONAL CIVIL.

1905
July 1.*Before Mr. Justice Banerji and Mr. Justice Richards.*ALLAH DEI BEGAM AND ANOTHER (PLAINTIFFS) v. KESRI MAL
(DEFENDANT).**Act No. XII of 1877 (Civil Courts Act), section 17—Jurisdiction—Proceeding in relation to a case—Appeal—Transfer of a district from one judicial division to another.*

Where a certain area is transferred by a Government notification from the jurisdiction of one District Judge into the jurisdiction of a different District Judge, an appeal preferred after the date on which the notification takes effect must be received and entertained by the District Judge into whose jurisdiction the area from which the appeal comes has been transferred.

THIS was an application in revision asking for a decision as to which Court—that of the District Judge of Saharanpur or that of the District Judge of Meerut—had jurisdiction to entertain an appeal in a suit from the Muzaffarnagar district. The circumstances which gave rise to the application are fully explained in the judgment of the Court.

The Hon'ble Pandit *Sundar Lal*, for the applicants.

BANERJI and RICHARDS, JJ.—The facts out of which this application for revision has arisen are these. The applicants brought a suit in the Court of the Subordinate Judge of Saharanpur in respect of property situated in the district of Muzaffarnagar. On the 17th of February 1905 the Subordinate Judge made a decree dismissing the suit. By a notification dated the 24th of February 1905 issued by the Local Government under section 13 of the Civil Courts Act No. XII of 1887 the jurisdiction of the District Judge of Saharanpur was limited to the districts of Saharanpur and Dehra Dun, and the district of Muzaffarnagar was transferred to the jurisdiction of the District Judge of Meerut, with effect from the 1st of March 1905. By a subsequent notification a portion of the district of Muzaffarnagar was retained within the jurisdiction of the District Judge of Saharanpur, but that notification is immaterial for the purposes of this case, inasmuch as the suit of the applicants relates to property situated in that portion of the district of Muzaffarnagar which has been transferred to the jurisdiction of the District Judge of Meerut. On the 31st of March 1905 the

* Civil Revision No. 83 of 1905.

1905

ALLAH DEE
BEGAM
v.
KESRI MAL.

applicant presented a petition of appeal against the decree of the Subordinate Judge of Saharanpur in the Court of the District Judge of Saharanpur. On the 12th of April 1905 the District Judge returned the memorandum of appeal to the applicants for presentation in the Court of the District Judge of Meerut, being of opinion that, having regard to the notification of Government referred to above he had ceased to have jurisdiction in respect of cases relating to the Muzaffarnagar district. The memorandum of appeal was thereupon presented to the District Judge of Meerut, who, by his order of 27th April 1905, returned the memorandum of appeal to the applicants for presentation to the Court of the District Judge of Saharanpur. It is in consequence of these conflicting orders of the District Judges of Saharanpur and Meerut that the present application has been made, and the applicants ask us to determine which of the two Courts has jurisdiction to entertain the appeal and to make the necessary orders in respect of it.

We have given the matter our careful attention, and we are of opinion that the order of the District Judge of Saharanpur is correct, and that the petition of appeal ought to have been entertained by the District Judge of Meerut. By section 17, sub-section (1) of Act No. XII of 1887 it is provided as follows:—"Where any Civil Court under this Act has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to that case, which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of the former Court has been transferred." It is clear that the Court of the District Judge at Saharanpur has, by reason of the notification of the Government to which we have referred, ceased to have jurisdiction in respect of the "case" arising out of the suit brought by the applicants in the Court of the Subordinate Judge of Saharanpur. We have no doubt that the said suit is "a case" within the meaning of that expression in the section. We have also no doubt that an appeal is a "proceeding" in relation to that case. This proceeding might have been had in the Court at Saharanpur but for the notification of Government to which we have referred. Consequently, having regard to the provisions

of section 17, the proceeding, namely, the appeal, which might have been had in the Court at Saharanpur, may now be had in the Court to which the business of the Saharanpur Court has by the notification of Government been transferred, namely, the Court of the District Judge of Meerut. On this point there can be no doubt, having regard to the language of section 17. Reference was made in the argument to section 21 of the Act. But that section must be read subject to the other provisions of the Act, including section 17. Consequently, the appeal in this case lay to the Court of the District Judge of Meerut and not to the Court of the District Judge of Saharanpur. We accordingly direct the District Judge of Meerut to receive and entertain the memorandum of appeal which was presented to him on the 17th of April 1905 and which he returned by his order of the 27th of that month, and we further direct that the original memorandum of appeal filed with the application for revision be returned to the applicants. Costs of this application will be costs in the cause.

1905

 ALLAH DEI
 BEGAM
 v.
 KESRI MAL.

APPELLATE CIVIL.

 1905
 July 5.

Before Mr. Justice Banerji and Mr. Justice Richards.

ABDUL GHANI (DEFENDANT) v. MUHAMMAD FASIH (PLAINTIFF) AND
 ABDUL MAJID AND OTHERS (DEFENDANTS).*

Civil Procedure Code, sections 544 and 561—Appeal—Practice—Appeal by defendant against plaintiff and other defendants—Objections by plaintiff-respondent when entertainable as against co-respondents.

Where it is necessary for the proper decision of an appeal before it, it is competent to an appellate Court to take into consideration objections filed under section 561 of the Code of Civil Procedure by one of the respondents, not only as against the appellant, but, it may be, as against the co-respondents with the objector also, and to modify the decree as against them accordingly. *Bishun Churn Roy Chowdhry v. Jogendra Nath Roy* (1) followed. *Mahomed Ameer v. Frankishora Deb* (2) referred to. *Kallu v. Manni* (3) distinguished.

ONE Muhammad Fasih brought a suit for a share of profits against five defendants. One of the questions raised by the

* Second Appeal No. 755 of 1903, from a decree of J. Sanders, Esq., District Judge of Benares, dated the 17th of July 1903, modifying a decree of J. Larkin, Esq., Assistant Collector, 1st class, of Benares, dated the 16th of February 1903.

(1) (1898) I. L. R., 26 Calc., 114. (2) (1874) 21 W. R., 338.
 (3) (1900) I. L. R., 23 All., 93.