

1916

JHUNKU LAL
v.
PIARI LAL.

Babu Ishwar Das respectively? (2) How much out of the said profits has been realized by each of the attaching creditors and how much, if any, has been received by the receiver Pandit Kanhiya Lal, and how much, if any, still remains with the West Patent Press Company and the receiver Babu Ishwar Das? The parties will be at liberty to adduce further evidence relevant to these issues. On receipt of the findings ten days will be allowed for filing objections.

Issues remitted.

1916

December, 1.

REVISIONAL CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

SUKHA AND ANOTHER (DEFENDANTS) v. RAGHUNATH DAS (PLAINTIFF)*

Civil Procedure Code (1908), section 24 (4)—Suit instituted in court of Subordinate Judge invested with Small Cause Court powers—Transfer of suit by order of District Judge to Munsif's court—Jurisdiction of Munsif—Appeal—Act No. IX of 1887 (Provincial Small Cause Courts Act), sections 32 to 35.

The expression "a Court of Small Causes" in section 24 (4) of the Code of Civil Procedure includes courts invested with Small Cause Court jurisdiction as well as courts constituted under Act No. IX of 1887.

Where, therefore, a suit of a Small Cause Court nature, instituted in the court of a Subordinate Judge invested with the powers of a Judge of Small Cause Court, was transferred by the District Judge to the court of a Munsif not possessing the powers of a Small Cause Court, and was tried by him and a decree passed therein, it was held that no appeal lay from the Munsif's decree.

Mangal Sen v. Rup Chand (1) and *Sankararama Aiyar v. Padmanabha Aiyar (2)* followed. *Ram chandra v. Ganesh (3)* and the reasoning of *Dulal Chandra Deb v. Ram Narain Deb (4)* dissented from.

The facts appear from the following order of reference to a Division Bench:—

MUHAMMAD RAFIQ, J.—This application in revision arises out of an order made by the learned Subordinate Judge of Muttra rejecting the appeal of the applicant on the ground that no appeal lay. It appears that the opposite party instituted a suit in the court of the Subordinate Judge of Muttra who was invested with the powers of a Judge of a Small Cause Court. The suit was a

* Civil Revision No. 76 of 1916.

(1) (1891) I. L. R., 13 All. 324.

(3) (1898) I. L. R., 23 Bom., 882.

(2) (1912) 29 M. L. J., 373.

(4) (1904) I. L. R., 31 Cal., 1057.

suit of Small Cause Court nature. The case, with some other cases, was transferred to the file of the Munsif of Muttra by the District Judge by his order dated the 31st of March, 1915. The order was made under section 24 of the Code of Civil Procedure. In his order the learned District Judge especially called the attention of the Munsif to clause (4) of section 24 of the Code of Civil Procedure. The learned Munsif to whose court the case was transferred was not invested with the powers of a Small Cause Court Judge. He, however, tried the case as Small Cause Court Judge and decreed the claim. An appeal was preferred by the defendants, to which a preliminary objection was taken that no appeal lay, the case having been decided as a Small Cause Court suit. The applicant in his application to this Court contends that the order of the learned District Judge under section 24 of the Civil Procedure Code could not invest the Munsif with the powers of a Small Cause Court Judge. In support of his contention he relies on the following cases:—*Ramchandra v. Ganesh* (1), *Dulal Chandra Deb v. Ram Narain Deb* (2). No one appears for the respondent. In the judgement of the lower appellate court reference is made to three cases viz., *Mangal Sen v. Rup Chand* (3), *Sarju Prasad v. Mahadeo Pande* (4), and *Dulal Chandra Deb v. Ram Narain Deb* (2). The case of *Mangal Sen* is the only case of this Court which negative the contentions of the applicant. In the case of *Sarju Prasad* a bench of this Court differed from the view laid down in the case of *Mangal Sen*. It is true that the facts of this case are not on all fours with the case of *Sarju Prasad*, but the question raised is an important one and I think it advisable to refer it to a bench of two Judges and I so order accordingly.

The case coming up for hearing before a bench of two Judges, Mr. M. L. Agarwala, for the applicants:—

Section 24, clause (4), Civil Procedure Code, applies only to suits transferred or withdrawn from Courts of Small Causes, strictly so-called; i.e., Courts of Small Causes constituted as such under Act IX of 1887, and not other courts invested with the jurisdiction of a Court of Small Causes. Act IX of 1887 itself draws a sharp distinction between these two classes of courts.

(1) (1898) I. L. R., 23 Bom., 382. (3) (1891) I. L. R., 13 All., 324.

(2) (1904) I. L. R., 31 Cal., 1057. (4) (1915) I. L. R., 37 All., 450

1916

SUKHA
v.
RAGHUNATH
DAS.

1916

SUKHA
v.
RAGHUNATH
DAS.

A reference to the language of sections 32 to 35 of that Act shows that the Legislature did not intend the expression "Court of Small Causes" to include both the classes. The same distinction is maintained by section 7 of the Civil Procedure Code, and this shows that the omission in clause (4) of section 24 of the Civil Procedure Code of any mention of courts invested with the jurisdiction of a Court of Small Causes is deliberate and designed to exclude cases transferred from such courts from the operation of that clause. If the contrary had been intended, such courts would have been expressly mentioned along with Courts of Small Causes; *Ramchandra v. Ganesh* (1) and *Dulal Chandra Deb v. Ram Narain Deb* (2). The case of *Sarju Prasad v. Mahadeo Pande* (3) referred to by the lower court is not in point; it was not a case of transfer under section 24 of the Civil Procedure Code; and the same remarks apply to *Shiam Behari Lal v. Kali* (4). The decision in the case of *Mangal Sen v. Rup Chand* (5) really turned upon the interpretation of the provisions of section 35 of Act IX of 1887. Considerations of efficiency, which were pointed out at page 1062 of the Calcutta case cited above, support the applicant's contention. The present case was tried as a regular suit, the evidence was recorded in full and the decree was drawn up as a regular Munsif's court decree.

The opposite party was not represented.

PIGGOTT, J.:—This is an application in revision which has been referred to a bench of two Judges owing to the difficulty of the point of law raised. The facts are given in the referring order of Mr. Justice Rafiq. A suit was instituted in the court of the Subordinate Judge of Muttra. This was also a court invested with the jurisdiction of a Court of Small Causes, within the meaning of sections 32, 33, 34 and other sections of the Provincial Small Cause Courts Act, IX of 1887. The suit in question was of a Small Cause Court nature, that is to say, had it been tried in the court in which it was originally instituted it would have been tried as a Small Cause Court suit by a court lawfully empowered to try it as such, and would have been subject

(1) (1898) I. L. R., 23 Bom., 382. (3) (1915) I. L. R., 37 All., 450.

(2) (1904) I. L. R., 31 Cal., 1057. (4) (1914) 12 A. L. J. R., 109.

(5) (1891) I. L. R., 13 All., 324.

to the provisions of the Provincial Small Cause Courts Act as to the right of appeal. The suit in question, however, along with certain others, was transferred by an order of the District Judge to the court of the Munsif of Muttra for disposal. This was not at that time a court invested with the jurisdiction of a Court of Small Causes. In his order of transfer the learned District Judge makes an express reference to the provisions of section 24, clause (4), of the Code of Civil Procedure. There can be no doubt, therefore, that the court which ordered the transfer understood that the provisions of this sub-section would apply to the case and deliberately intended that it should be tried by the learned Munsif as a Court of Small Causes. That court having decreed the plaintiff's claim, the defendants appealed to the District Judge and the appeal came up for disposal before the Subordinate Judge of Muttra. He held that, by reason of the provisions of section 24, clause (4), aforesaid, the suit had been tried by a court which must, for the purpose of that suit, be deemed to have been a Court of Small Causes, and he accordingly held that no appeal lay. The defendants have brought the matter before this Court by means of an application for revision. They contend that the learned Subordinate Judge was wrong; that an appeal did lie to his court, and that he has erroneously refused to exercise a jurisdiction vested in him by law. It is worth while to quote the words of the sub-section with which we are dealing. Section 24 of the Code of Civil Procedure confers certain powers of transfer on the High Court or the District Court, and then in sub-section (4) it is enacted that "the court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall for purposes of such suit be deemed to be a Court of Small Causes." The question which we have to determine is whether the words, "a Court of Small Causes" as used in this sub-section mean only courts constituted under the Provincial Small Cause Courts Act, 1887, or include also courts exercising the jurisdiction of a Court of Small Causes under that Act. We have been referred to a good deal of case-law on the subject; but it is worth while to note at the very outset that many of the decided cases have no direct bearing on the question before us, because they do not involve any question as to the interpretation of section 24 of the present Code

1916

SUKHA
v.
RAGHUNATH
DAS.

1916

SUKHA
v.
RAGHUNATH
DAS.

of Civil Procedure, Act V of 1908, or of the corresponding section 25 of Act XIV of 1882. For instance, in *Shiam Behari Lal v. Kali* (1), and also in *Sarju Prasad v. Mahudeo Prasad* (2), question to be determined had to do with the case of a Munsif not invested with Small Cause Court powers succeeding to the office of a Munsif who was so invested. No question arose in either of these cases as to the interpretation of section 24 of the Code of Civil Procedure. Again in *Dulal Chandra Deb v. Ram Narain Deb* (3), the question for determination was essentially similar to that in the above two cases, and the references made to the provisions of section 24 of the Code of Civil Procedure, can only be regarded as substantially *obiter dicta*. There is an older case of this Court, that of *Mangal Sen v. Rup Chand* (4), in which the facts were more nearly similar to those now before us and in which reference was made to the provisions of section 25 of the Code of Civil Procedure of 1882. The learned Judges do not base their decision entirely upon the consideration of the terms of this section, but the case has always been quoted as an authority for the proposition that the words "a Court of Small Causes" as used in section 24 (4) of the present Code of Civil Procedure, or in section 25 of Act XIV of 1882, do include courts invested with Small Cause Court jurisdiction. The only decision directly to the contrary seems to be that of the Bombay High Court in *Ramchandra v. Ganesh* (5). It has been contended before us that the authority of the decision in *Mangal Sen's* case has been shaken by the more recent pronouncements of this Court to which reference has been made, and that the authority of the decision of the Bombay High Court, with the reasoning upon which that decision is based, as also the line of reasoning adopted by the learned Judges of the Calcutta High Court in *Dulal Chandra Deb v. Ram Narain Deb* (3), should prevail with us. The proposition contended for is that the words "a Court of Small Causes" in the sub-section in question mean a court properly and strictly so called, and do not include a court invested with the jurisdiction of a Court of Small Causes. It seems to us that the plain *prima*

(1) (1914) 12 A. L. J., 109.

(2) (1914) I. L. R., 31 Cal., 1057.

(3) (1915) I. L. R. 37 All., 450.

(4) (1891) I. L. R., 18 All., 324.

(5) (1898) I. L. R., 28 Bom., 382.

facie meaning of the words, as they appear in section 24 of the Code of Civil Procedure, is against this contention, and that the burden lies on those who maintain it. The learned Judges of the Calcutta High Court lay great stress upon the argument that the Legislature cannot be held to have intended that the mere order of a District Judge should have the effect of investing the presiding officer of a particular court with certain powers, when such powers can only be conferred ordinarily by an order of the Local Government. To this argument there seems to be a two-fold answer. To begin with, the provisions of section 24, sub-section (4) of the Code of Civil Procedure do mean something. On any interpretation, they do mean at least this, that if a suit is pending in a court constituted under the provisions of the Small Cause Courts Act of 1887, the District Court has power to transfer that suit to another court which is neither a court constituted under that Act, nor a court invested with the jurisdiction of a Court of Small Causes, and that the court to which the case is transferred will then be deemed, by virtue of the order of transfer, to be a Court of Small Causes for the purpose of that particular suit. It would seem therefore that the power which the learned Judges of the Calcutta High Court consider to be "nothing else than disastrous" does in fact exist in certain cases, and the only question is whether it exists in others. In the second place, the provisions of section 24 (4) of the Code of Civil Procedure are strictly limited in extent. Their operation is limited to particular cases transferred by special order of the High Court or of the District Court. It is not unreasonable to suppose that the Legislature felt considerable confidence in the district courts, in consideration more particularly of the intimate acquaintance which such courts are likely to possess with the personnel and the working of all courts subordinate to them; so that it was not deemed improper to invest district courts with powers of transfer in respect of suits of a Small Cause Court nature and to permit that power to be exercised for the transfer of a case from a Court of Small Causes to a court which is neither a Court of Small Causes constituted under Act IX of 1887, nor a court invested with the jurisdiction of a Court of Small Causes. It remains a matter of discretion with the district court whether or not to pass an order

1916

SUKHA
v.
RAGHUNATH
DAS.

1916

 SUKHA
 v.
 RAGHUNATH
 DAS.

of transfer in any suit; and the apparent intention of the Legislature was that, if a Small Cause Court suit is so transferred, it should not change its nature by reason of the transfer, but should continue to be tried as a Small Cause Court suit and subject to all the legal incidents of such a suit. We find there is one case directly in point which is in opposition to the view of the Bombay High Court and follows in principle the older decision of this Court in *Mangal Sen's* case (1). This is the case of *Sankarama Aiyar v. Padmanabha Aiyar* (2). The Bombay case of *Ramchandra v. Ganesh* (3) and the Calcutta case already referred to are therein expressly dissented from, and the principle laid down by the Allahabad High Court in *Mangal Sen's* case (1) is approved. The learned Judges of the Bombay High Court purport to base their decision upon a comparison of the wording of certain sections in the Provincial Small Cause Courts Act, 1887, with the provisions of the Code of Civil Procedure now reproduced in sections 7 and 24 of Act V of 1908. They point out, truly enough, that Act IX of 1887 draws a clear distinction between Courts of Small Causes which are such exclusively and for all purposes, and courts which are invested with the jurisdiction of a Court of Small Causes. They then refer to the wording of section 5 of the former Code of Civil Procedure (Act XIV of 1882). That section refers to "Courts of Small Causes constituted under Act IX of 1887" and "all other courts exercising the jurisdiction of a Court of Small Causes" as two different kinds or descriptions of Court. From this the learned Judges argue that when, in a later section, reference is made to "a Court of Small Causes," those words should be read as if the entire expression "a Court of Small Causes constituted under Act IX of 1887" had been used, and that the Legislature did not intend to include in that expression other courts exercising the jurisdiction of a Court of Small Causes. The point is a fine one, but it would certainly appear as if any force it may ever have possessed has been greatly weakened by a slight alteration in the wording of the present Code. The section corresponding to section 5 of Act XIV of 1882 is section 7 of Act V of 1908. Instead of speaking

(1) (1891) I. L. R., 13 All., 324. (2) (1912) 23 M. L. J., 373.

(3) (1898) I. L. R., 23 Bom., 382.

1916

 SUKHA
 O.
 RAGHUNATH
 DAS.

of "Courts of Small Causes constituted under Act IX of 1887," the new Code speaks of "courts constituted under the Provincial Small Cause Courts Act, 1887, or courts exercising the jurisdiction of a Court of Small Causes under that Act." If any inference is to be drawn from the wording of this section, one would rather be inclined to suppose that when, in a later section, i.e., section 24 (4), the general expression "a Court of Small Causes" is used, the intention of the Legislature was to make it an expression inclusive of the two classes of courts referred to in section 7. On the whole therefore, upon a consideration of the provisions of the Code of Civil Procedure and of Act IX of 1887, and of all the various authorities to which reference has been made, we think that the view on which the learned Subordinate Judge acted in the present case was correct. We agree with the learned Judges of the Madras High Court in holding that the expression "a Court of Small Causes" in section 24 (4) of the Code of Civil Procedure does include courts invested with Small Cause Court jurisdiction, as well as Courts constituted under Act IX of 1887. The Legislature apparently intended that the District Court should have power to make an order of transfer such as has been made in the present case, trusting to the discretion of that court, and its knowledge of local conditions, not to make an order of transfer to a court not competent to make a proper exercise of the special powers which an order of transfer carries with it in respect of particular cases so transferred. There seems therefore no foundation for the plea on which this revisional application is based and we dismiss it accordingly, but without costs, as the opposite side is not represented.

WALSH, J.—It is desirable to emphasize that we are dealing with a case of transfer and not with a case of succession, on which most of the decided cases have turned, and we are not differing from the decisions in Volumes 12 of the Allahabad Law Journal and 37 I. L. R., Allahabad, referred to above. On a point of practice of this kind it is desirable to avoid differences. But as the Madras High Court has differed irretrievably from the Bombay High Court, it is impossible for us not to differ from one of them. It seems to me that the distinction between a Court of Small Causes and a court invested with the

1916

SUKHA
v.
RAGHUNATH
DAS

jurisdiction of a Court of Small Causes which is preserved in the Provincial Small Cause Courts Act has no bearing upon the question of transfer at all. And it is to be observed that section 33 of the Provincial Small Cause Courts Act, which was not referred to in argument because we had no argument on the other side, distinctly provides that a court invested with the jurisdiction of a Court of Small Causes with respect to the exercise of that jurisdiction, and the same court with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall for the purpose of that Act and the Code of Civil Procedure be deemed to be different courts. As there is no such distinction provided between a Court of Small Causes and a court exercising the jurisdiction of a Small Cause Court, the inference would be that they were not intended to be different courts for the purposes of the Code of Civil Procedure. Finally, one of the principal arguments addressed to us was that the result of our decision would be to invest a court, or rather an individual, with jurisdiction to decide unappealable cases which the Legislature intended that he should not try. But that argument, which sounds plausible enough, deals with the question of the court or person to whom a suit is to be transferred. The section we are construing deals with the court from which a suit is to be transferred, and I am unable to see any reason either in good sense, or derived from an examination of the rest of the legislation on the subject, why in respect of this matter there should be any difference between a suit which is to be tried as a Small Cause Court suit by a court invested with the jurisdiction of a Small Cause Court and a suit which is to be tried by a Court of Small Causes constituted under the Act.

Application dismissed.