

MISCELLANEOUS CIVIL.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Kendall.

1932
June, 16.

KISHORI LAL (APPLICANT) v. BALKISHAN (OPPOSITE
PARTY).*

Civil Procedure Code, section 24—Transfer of case—“Competent to try”—Court to which case is transferred must have pecuniary, but not necessarily territorial, jurisdiction—Civil Procedure Code, section 11—Res judicata—Whether the two courts must have concurrent territorial jurisdiction.

It is open to the High Court or a District Judge to transfer a case pending in a subordinate court to another subordinate court which has pecuniary jurisdiction to try the suit, although it may not possess territorial jurisdiction to try it.

Seemle, for the purposes of *res judicata* it is not necessary that the two courts must have concurrent territorial jurisdiction.

Mr. S. B. L. Gaur, for the applicant.

Mr. N. P. Asthana, for the opposite party.

SULAIMAN, C. J. :—This is an application for the transfer of a suit pending in the court of the Munsif of Kasganj. A question arose whether the suit could be transferred to the court of another Munsif in the same district, and my learned brother, entertaining a doubt as to the correctness of the ruling in *Ram Das v. Habib-Ullah* (1), has referred the point of law to a Division Bench.

The question for consideration is whether the High Court or the District Judge, acting under section 24 of the Code of Civil Procedure, has power to transfer a suit pending in one subordinate court to another subordinate court which has pecuniary, but not territorial, jurisdiction to try that suit.

In one sense it might be said that the present question did not strictly arise in the case mentioned above, because the Bench came to the conclusion that the

*Miscellaneous Case No. 166 of 1932.
(1) (1931) I.L.R., 53 All., 916.

order of the District Judge directing a transfer of the case when he did not proceed *suo motu*, but on an application made by a party, was illegal and irregular inasmuch as no notice had been issued to the defendant. The order could have been set aside on that ground alone. It, however, appears that the learned advocate for the applicant pressed the other question as well, presumably because he did not want that the case should be transferred to the particular Munsif to whose court it had been transferred. **BAJPAL, J.**, in whose judgment I concurred, accordingly expressed that view following a Patna case, namely, *Shaikh Jannat Hussain v. Shaikh Gulam Kutubuddin* (1), and gave directions to the District Judge to bear that view in mind. It is, therefore, not possible to say that the last observation was altogether an *obiter dictum*.

Under section 25 of Act XIV of 1882 the High Court and the district court were given power to transfer a suit pending in a subordinate court to any other subordinate court "competent to try the same in respect of its nature and the amount or value of its subject matter". These words have been slightly altered, and in their place we now have in section 24 the words "competent to try or dispose of the same". Under the old section there could be no doubt that all that was required of the subordinate court to which the case was to be transferred was that it should have pecuniary jurisdiction to try the suit. The deletion of those words from the new section may *prima facie* suggest that the competence of the court now required may be either pecuniary or territorial. If the words were to be taken literally, it might be open to argument that the word "competency" includes both pecuniary and territorial jurisdiction. Although the change in the words in the section was not emphasised, this view was certainly expressed by the learned Chief Justice of the Patna High Court in the case of *Shaikh Jannat Hussain v. Shaikh Gulam*

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Kutubuddin (1). He was of opinion that the word "competent" was very wide and included both kinds of jurisdiction. The headnote of the case did not show that the other learned Judge had expressed some doubt as regards this view and had reserved his opinion. The unfortunate omission of the words which appeared in the old section has made the new section somewhat ambiguous; but on re-consideration I am satisfied that the words have been deleted because they were considered redundant or unnecessary by the legislature. To hold that it is necessary that the court to which the case is transferred must have territorial jurisdiction would make it impossible for a High Court to transfer a case pending in the court of a District Judge to that of the District Judge of another district. For these District Judges would not have concurrent territorial jurisdiction. The section would, therefore, be nullified if the interpretation put upon it in the case of *Ram Das v. Habib-Ullah* (2) were to be accepted. In order not to render the section useless, I am constrained to hold that the word "competent" must be taken to refer to pecuniary jurisdiction only.

Cases of concurrent jurisdiction where two courts have both pecuniary and territorial jurisdiction to try a suit are dealt with in section 22. The same words "competent to try the suit" occur in section 11 of the Code of Civil Procedure, as also in section 15. It is quite clear that for purposes of *res judicata* it is not necessary that the two courts must have concurrent territorial jurisdiction, which depends entirely on the subject matter in dispute. The provision in section 15 would point to the same conclusion. It may also be pointed out that a distinction has been drawn in the Code as regards territorial jurisdiction, and section 21 provides that no objection as to the place of suing shall be allowed unless such objection was taken in the court of first instance at the earliest possible opportunity, and in all cases where issues are settled at

(1) (1920) 5 Pat. L.J., 588.

(2) (1931) I.L.R., 53 All., 916.

or before such settlement, and unless there has been a consequent failure of justice.

On a re-consideration I am, therefore, of opinion that the observation made in the last portion of the judgment in *Ram Das's* case, in which I concurred, did not lay down the correct law.

KENDALL, J. :—I concur.

By THE COURT :—In our opinion, it is open to the High Court or a District Judge to transfer a case pending in a subordinate court to another court which has pecuniary jurisdiction to try the suit, although it may not at the moment possess territorial jurisdiction to try it. We accordingly direct that this case be laid before the learned Judge who has referred it to this Bench, for disposal on the merits.

PRIVY COUNCIL.

HANSRAJ GUPTA AND OTHERS (APPLICANTS)
v. N. P. ASTHANA AND OTHERS (OPPOSITE PARTIES).

[On appeal from the High Court at Allahabad.]

Company—Winding up—List of contributories—Invalidity of contract to take shares—Register of shareholders—Company Rules (Allahabad High Court) rules 57, 58—Indian Companies Act (VII of 1913), sections 105, 156.

If at the commencement of the winding up of a company under the Indian Companies Act, 1913, a person is on the register of shareholders with his knowledge and consent, the invalidity under section 105 of the Act of the contract in pursuance of which he applied for and was allotted shares is not a ground for removing his name from the list of contributories, because after the winding up his liability in respect of the shares arises *ex lege*, namely under section 156 of the Act, and not *ex contractu*.

Semble that the period of 30 days mentioned in rule 58 of the Company Rules of the Allahabad High Court, as that

*Present: Lord BLANESBURGH, Lord RUSSELL of KILLOWEN, Lord SALVESEN, Sir GEORGE LOWNDEN, and Sir DINSHAH MULLA.

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Sulaiman,
C. J.J.C.*
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