

1931  
April, 16.

Before Sir Shah Muhammad Sulaiman, Acting Chief Justice,  
and Mr. Justice Bajpai.

RAM DAS AND ANOTHER (PLAINTIFFS) v. HABIB-ULLAH  
(DEFENDANT).\*

*Civil Procedure Code, section 24—Transfer of case—Failure to give notice to opposite party—Transfer to “competent court”—Court to which transfer is made must have pecuniary and territorial jurisdiction—Revision—Civil Procedure Code, section 115.*

An order under section 24 of the Civil Procedure Code, transferring a case from one court to another, passed by a District Judge on the application of one party and without giving notice to the opposite party, is an order which, even if not without jurisdiction, is certainly tainted with material irregularity.

A transfer under section 24 must be made to a court competent to try or dispose of the case; such court, therefore, must possess both pecuniary and territorial jurisdiction to entertain it.

Mr. *Mansur Alam*, for the applicants.

The opposite party was not represented.

SULAIMAN, A. C. J., and BAJPAI, J. :—This is an application in revision from an order dated the 15th of May, 1930, transferring a case from the court of the Additional Munsif of Benares to the court of the Munsif of Haveli. The suit was for recovery of *haqi-chaharum* and was not cognizable by a court of small causes. It was originally filed in the court of the City Munsif of Benares who had territorial jurisdiction to try it. The District Judge *suo motu* transferred the case to the court of the Additional Munsif, who apparently had concurrent jurisdiction. Subsequently the plaintiffs made an application to the District Judge to transfer the case from that court to the Munsif of Haveli, because there was no presiding officer for the Additional Munsif at the time. The learned Judge without issuing notice to the defendant ordered the transfer to the court of the Munsif of Haveli.

\*Civil Revision No. 288 of 1930.

Although it was open to the learned Judge to proceed *suo motu* and transfer the case from one court to another court competent to try it, but when he was moved by the plaintiffs he was bound to issue notice to the opposite party and to hear such party if it desired to be heard. The provisions of section 24, sub-section (1), were actually not complied with and the order of the learned Judge, even if not without jurisdiction, is certainly tainted with material irregularity: vide *Fatema Begam v. Imdad Ali* (1).

It has been further contended before us that the District Judge in the exercise of his power under section 24 can transfer a case to only such other court as is competent to try or dispose of the suit. Section 24, sub-section (1), sub-clause (b) (ii). does provide that the court to which the case is transferred should be competent to try or dispose of the same. That obviously means that, if there had been no order of transfer and the suit would have been originally filed in the court to which it has been transferred, that court would have been competent to try and dispose of it. It follows that a court would not be competent to try and dispose of the suit if it does not possess both pecuniary and territorial jurisdiction to entertain it. This was the view expressed in a Patna case, *Shaikh Jannat Hussain v. Shaikh Gulam Kutubuddin* (2). As the words of the statute are in no way limited, we agree with the view expressed therein.

The learned Judge should accordingly bear this view of the matter in mind.

We allow this revision and setting aside the order of the District Judge, direct him to dispose of the plaintiffs' application after issuing notice to the defendant and hearing him.

(1) (1920) 18 A.L.J., 351.

(2) (1920) 5 Pat. L. J., 588.