

REVISIONAL. CIVIL

Before Mr. Justice Niamat-ullah

MUNIRAN (PLAINTIFF) v. ALI HUSAIN (DEFENDANT)*

1935

February, 20

Civil Procedure Code, section 24(4)—Honorary Munsifs Act (Local Act II of 1896), section 8(2), proviso—Transfer of suit from Munsif exercising small cause court powers to Bench of Honorary Munsifs—Suit not retaining small cause court character thereupon—Transferred again to a Munsif not having any small cause court powers—Appeal from decree.

A suit of small cause court nature was filed in the court of a Munsif exercising adequate small cause court powers. It was thereafter transferred to a Bench of Honorary Munsifs, and from there it was again transferred to an Additional Munsif who had no small cause court powers, and was decided by him:

Held, that an appeal lay from the decision. Upon transfer to the Bench of Honorary Munsifs the suit did not retain its character as a small cause court suit by virtue of section 24(4) of the Civil Procedure Code, as its operation is expressly excluded by the proviso to section 8(2) of the Honorary Munsifs Act, 1896. Nor did section 24(4) in terms apply to the second transfer as it was not a transfer from a court of small causes. That section not being applicable, the Additional Munsif could not be deemed to be a court of small causes for the purposes of that suit.

Mr. M. N. Raina, for the applicant.

Mr. Lakshmi Narain Gupta, for the opposite party.

NIAMAT-ULLAH, J.:—This is an application for revision under section 115 of the Civil Procedure Code and is directed against an order passed by the learned District Judge of Shahjahanpur. The applicant in this Court was the plaintiff in a suit for recovery of Rs.152-8-0, instituted in the court of the Munsif, who had jurisdiction of a court of small causes up to Rs.200. It is not disputed that the suit was cognizable by the Munsif on the small cause court side of his jurisdiction. Before any proceedings could be taken, the suit was transferred to a Bench of Honorary Munsifs, where it remained pending until, on the applica-

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tion of the defendant, the District Judge transferred it to the court of the Additional Munsif, Shahjahanpur, who had no jurisdiction to try cases under the Provincial Small Cause Courts Act. The Additional Munsif tried the suit on the merits and dismissed it. The plaintiff appealed from the decree to the court of the District Judge, Shahjahanpur, who held that no appeal lay, as the Munsif should be deemed to have decided the case as a Judge, small cause court. This view purports to be based on section 24(4) of the Civil Procedure Code. The District Judge dismissed the appeal, holding that none had lain to him. The present application for revision is directed against the decree of the District Judge dismissing the plaintiff's appeal to his court.

The reasons on which the judgment of the District Judge proceeds are somewhat involved; but his view seems to be that the suit, throughout its progress, retained its character as a suit of small cause court nature, that even when it was pending in the court of the Bench of Honorary Munsifs it was a suit of a small cause court nature with the only difference that the losing party had a right of appeal under the Honorary Munsifs Act (Local Act II of 1896) and that the Additional Munsif, who was not subject to the Honorary Munsifs Act, had power to try it as a Judge, small cause court, though he had otherwise no jurisdiction under the Provincial Small Cause Courts Act. The learned Judge has referred to section 24(4) as being applicable to the circumstances of this case.

In my opinion the ground on which the learned Judge has based his judgment is erroneous. It is true that the court in which the suit was originally instituted had jurisdiction to try it as a small cause court. It is equally true that, if the suit had been transferred on the application of one of the parties to it to another court other than that of Honorary Munsifs, such court

would have had jurisdiction to try it as a small cause court, even though it otherwise had no jurisdiction under the Provincial Small Cause Courts Act. But when the suit was transferred to the Bench of Honorary Munsifs, it became subject to the provisions of the Honorary Munsifs Act, Local Act No. II of 1896. The proviso to section 8(2) of that Act expressly excludes the application of section 24(4). It should be noted that the reference in the proviso is to section 25 of Act XIV of 1882, which corresponds to section 24 of Act V of 1908. The proviso clearly provides that section 24(4) of the Civil Procedure Code shall not be deemed applicable to cases transferred from courts of small causes to those of the Honorary Munsifs who are to exercise jurisdiction under Local Act II of 1896. The learned District Judge has overlooked the proviso to section 8(2), otherwise he could not have maintained that the suit, when transferred to the court of the Bench of Honorary Munsifs, retained its character as a suit of small cause court nature with the difference that the decree of the Honorary Munsifs was appealable. As already stated, the application of section 24(4) is completely excluded by the proviso to section 8(2). But for section 24(4), a court to which a suit of small cause court nature is transferred can try it within the limits of its own jurisdiction, and not as a court of small causes if it has no power under the Provincial Small Cause Courts Act. Outside section 24(4) there is no rule of law which justifies the view that the court to which a suit is transferred has all the powers of the court in which it was originally instituted. It follows that it is not correct to say that "the suit retained its character as a small cause court suit" while it was pending in the court of the Honorary Munsifs.

When the suit was transferred from the court of the Bench of Honorary Munsifs to that of the Additional Munsif, the latter cannot acquire the jurisdiction of the

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court of small causes in respect of this suit by virtue of section 24(4), which does not in terms apply, the transfer not being from a court of small causes. The Additional Munsif of Shahjahanpur could, therefore, try the suit only within the limits of his own jurisdiction, and not within the jurisdiction supposed to have been delegated to him. In my opinion, the decree passed by the Additional Munsif in this suit was as much open to appeal as any other decree passed by him in any suit of a like description instituted in his court. Accordingly I hold that the plaintiff's appeal to the court of the District Judge was competent and that he should have disposed of it on the merits. The application for revision is allowed with costs, the decree of the District Judge is set aside and the case is remanded to his court with the direction that the plaintiff's appeal be disposed of on the merits.

APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
 Mr. Justice Bennet*

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RAM CHARAN AND ANOTHER (DEFENDANTS) v. GAJADHAR
 AND ANOTHER (PLAINTIFFS)*

Landlord and tenant—Trees—Abadi—Parti land—Trees planted by tenant in waste land of abadi—Ownership.

Trees planted by tenants, without the permission of the zamindar, in *parti* land of the abadi presumably belong to the zamindar who is the owner of the land, unless a custom is set up and proved which entitles the tenants to cut and take the wood of such trees.

Messrs. *Akhtar Husain Khan* and *Kedar Nath Sinha*, for the appellants.

Messrs. *G. P. Bhargava* and *Deo Narain Singh*, for the respondents.

*Second Appeal No. 1171 of 1931, from a decree of Kalidas Benerji, Additional Subordinate Judge of Allahabad, dated the 22nd of May, 1931, confirming a decree of Thakur Hardeo Singh, Munsif, East Allahabad, dated the 25th of April, 1930.