

Before Mr. Justice Bennet

MANPHOOL (PLAINTIFF) v. BUDHHU (DEFENDANT)\*

1934  
December, 12

*Criminal Procedure Code, sections 195, 476B—Appeal from order of Munsif refusing to make a complaint under section 476—Transfer by District Judge of the appeal to Subordinate Judge—Jurisdiction—Subordinate Judge not competent to hear such appeal—Civil Procedure Code, section 24(1)(a).*

It is not open to a District Judge, in whose court an appeal under section 476B of the Criminal Procedure Code is pending from the order of a Munsif under section 476, to transfer that appeal to the court of a Subordinate Judge, as the Subordinate Judge has not got jurisdiction to hear such an appeal; according to section 195(3) of the Code the only court competent to hear the appeal is that of the District Judge. Section 24(1)(a) of the Civil Procedure Code does not authorise the transfer, as the Subordinate Judge is not competent to try or dispose of the appeal.

Mr. S. K. Mukerji, for the applicant.

Mr. Nanak Chand, for the opposite party.

BENNET, J.:—This is an application in civil revision by the plaintiff Manphool against an order in appeal under section 476B of the Criminal Procedure Code passed by the learned Subordinate Judge. There was an order passed by the Munsif under section 476 of the Criminal Procedure Code refusing to take proceedings under sections 209, 471, 463, 191 and 193 of the Indian Penal Code against Manphool on the complaint of Budhhu defendant. This application was made by Budhhu in connection with the civil suit before the Munsif. Under section 476B an appeal lay and Budhhu brought an appeal in the court of the District Judge. This was the correct court in which such an appeal should be brought. The District Judge, however, purported to transfer this appeal under section 24(1)(a) of the Civil Procedure Code to the Subordinate Judge, who has purported to dispose of this appeal. The question raised in revision is whether the Subordinate Judge had any jurisdiction to hear an appeal

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of this nature and whether the District Judge had any jurisdiction to order the transfer of this appeal instead of hearing it himself. It is laid down in section 476B that an appeal may be made "to the court to which such former court is subordinate within the meaning of section 195(3)". Section 195(3) provides: "For the purposes of this section a court shall be deemed to be subordinate to the court to which appeals ordinarily lie from the appealable decrees or sentences of such former court."

This is the portion of the section which applies in the present case. It is clear, therefore, that the section contemplates that the appeal should be to the court of the District Judge from the order of the Munsif under section 476. The further question arises as to whether the power of transfer under section 24 of the Civil Procedure Code exists. That section provides in subsection 1(a) that the district court may transfer "any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same". This subsection involves the point that the matter transferred should be a suit, appeal or other proceeding. Learned counsel argues that appeal means only a civil appeal. It may be further observed that the transfer must be to a court which is competent to try and dispose of the same. It is not shown that the court of the Subordinate Judge has any jurisdiction to try and dispose of the appeal in question. No such jurisdiction is given by the Criminal Procedure Code to the Subordinate Judge and the Civil Courts Act does not give the Subordinate Judge any such jurisdiction. The case is very similar to that of a revenue appeal. As a Subordinate Judge has no jurisdiction to try a revenue appeal, therefore, it is not open to the District Judge to transfer a revenue appeal to a Subordinate Judge under section 24 of the Civil Procedure Code. There is authority for the applicant in revision. This authority is shown in *Ram*

*Charan Chanda Talukdar v. Tariipulla* (1), a Bench ruling where it was held that appeals under section 195(6) of the former Criminal Procedure Code could not be transferred to a Subordinate Judge by the District Judge. This ruling was followed by a learned single Judge in *Dulari Koeri v. Fauzdar Khan* (2). A similar ruling has been laid down in *Bismillah Khan v. Shakir Ali* (3). For the opposite party reference was made to *Narain Das v. Emperor* (4), but in that ruling the court to which the transfer was made was the court of an Additional Judge and not the court of a Subordinate Judge and it was held that under section 8 of the Civil Courts Act the transfer could be made. I hold therefore that it is not open to a District Judge in whose court an appeal under section 476B is pending to transfer that appeal to the court of a Subordinate Judge, as the Subordinate Judge has not got jurisdiction to hear such an appeal. Accordingly I allow this application in revision with costs and I set aside the order of the Subordinate Judge and direct that the appeal should be taken again on the file of the District Judge and should be disposed of by him according to law.

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### MISCELLANEOUS CIVIL

*Before Mr. Justice Niamat-ullah and Mr. Justice Allsop*

NARAIN MOHAN DEV AND ANOTHER (DEFENDANTS) v.  
KRISHNA BALLABHI DEVI AND ANOTHER (PLAINTIFFS)\*

1934

December, 12

*Court Fees Act (VII of 1870), schedule II, article 17(vi)—  
Suit by some shebaitis of an idol against other shebaitis for  
formulation of a scheme for peaceful division of the worship  
and the emoluments—Impossible to estimate money value—  
Fixed fee payable.*

The plaintiffs alleged that they as well as the defendants had a joint right to worship a certain idol and to participate in

\*Stamp Reference in First Appeal No. 388 of 1931.

(1) (1912) I.L.R., 39 Cal., 774.

(2) A.I.R., 1933 Pat., 179.

(3) (1928) I.L.R., 4 Luck., 155.

(4) (1927) I.L.R., 49 All., 792.