

REVISIONAL CIVIL

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

SHIVA PRASAD (PLAINTIFF) *v.* PAHLAD SINGH
(DEFENDANT)*

1935
March, 27

Criminal Procedure Code, section 476B—Appeal to District Judge against complaint, or refusal to make a complaint, by a Munsif—Transfer of appeal to Subordinate Judge—Jurisdiction—Civil Procedure Code, section 24—Bengal, Agra and Assam Civil Courts Act (XII of 1887), section 22.

An appeal to the District Judge, under section 476B of the Criminal Procedure Code, from the making of a complaint, or the refusal to make a complaint, by a Munsif in a proceeding under section 476 of the Code, can not be transferred for disposal to a Subordinate Judge.

The transfer could not be authorised by section 24 of the Civil Procedure Code, for even if that section were applicable the transfer could not be made to the Subordinate Judge, inasmuch as he was not competent to try and dispose of such an appeal. Nor could the provisions of section 22(1) of the Bengal, Agra and Assam Civil Courts Act authorise the transfer or confer jurisdiction on the Subordinate Judge; for that section deals with appeals from "decrees and orders" and the making of a complaint or the refusal to make a complaint under section 476 of the Criminal Procedure Code is not an "order", as it does not adjudicate upon any rights of the parties at all; further, the words "decrees and orders" in section 22(1) are meant to refer to decrees and orders passed in proceedings to which the Civil Procedure Code would apply.

Karimullah v. Rameshwar Prasad (1), dissented from.

Messrs. *Saila Nath Mukerji* and *K. D. Malaviya*, for the applicant.

Mr. *Kumuda Prasad*, for the opposite party.

SULAIMAN, C.J., and BENNET, J.:—This is an application in revision from orders passed by the First Subordinate Judge of Meerut. After deciding a civil suit the Munsif had made a complaint against the defendant in respect of suspected forgery committed by him as also

*Civil Revision No. 443 of 1934.
(1) (1928) I.L.R., 51 All., 344.

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certain false statements made in the course of the suit, but had refused to make any complaint against the witnesses for the defendant. The defendant appealed to the District Judge in respect of the complaint made against him and the plaintiff filed appeals to that court against the witnesses against whom no complaint had been made. The learned District Judge transferred all these appeals to the court of the First Subordinate Judge to dispose of them. He declined to make any complaint against the witnesses and also directed the withdrawal of the complaint against the defendant.

In revision the plaintiff applicant prays that the orders be set aside as having been passed without jurisdiction.

No doubt, inasmuch as the proceeding has arisen out of a suit decided by a Munsif, it is a matter of a civil nature and section 439 of the Code of Criminal Procedure would not be applicable, but section 115 of the Code of Civil Procedure only applies: See *In the matter of the petition of Bhup Kunwar* (1) and *Salig Ram v. Ramji Lal* (2). The Subordinate Judge has entertained the appeals filed in the court of the District Judge which were transferred to his court and has certainly disposed of them finally and they are no longer pending in his court. There can, therefore, be no doubt that there is a case decided by him within the meaning of section 115 of the Code of Civil Procedure.

It is contended on behalf of the respondent that the District Judge had jurisdiction under section 24 of the Code of Civil Procedure to transfer these cases to the court of the Subordinate Judge. But it is quite obvious that even if section 24 were applicable, the District Judge could not transfer these cases to the Subordinate Judge unless the latter was competent to try or dispose of the same.

There has been some conflict of opinion in this Court as to whether a Subordinate Judge is competent to dispose of such matter on appeal or not. The cases of

(1) (1903) I.L.R., 26 All., 249.

(2) (1906) I.L.R., 28 All., 554.

Ram Charan v. Mewa Ram (1) and *Narain Das v. Emperor* (2) are both distinguishable inasmuch as there the appeal had been transferred to the court of the Additional District Judge and not to a Subordinate Judge. Section 8, sub-section (2) of the Bengal, Agra and Assam Civil Courts Act (Act XII of 1887) might well have been applied to such a case, because, under that section, Additional Judges can discharge any of the functions of a District Judge which the District Judge may assign to them and when discharging such functions they exercise the same powers as the District Judge. The word "function" is wide enough to include the hearing of appeals under section 476B.

As regards the transfer to a Subordinate Judge, there is the case of *Karimullah v. Rameshwar Prasad* (3), decided by MUKERJI, J., in which it was distinctly held that a District Judge is competent to transfer to a Subordinate Judge an appeal from "an order" passed by a Munsif under section 476. In that case it was taken for granted that the proceeding in the Munsif's court terminated in "an order". It does not appear to have been argued before the learned Judge that the proceedings did not terminate in "an order" within the meaning of section 22 of the Bengal, Agra and Assam Civil Courts Act. The case relied upon as authority, namely *Narain Das v. Emperor* (2), was, as already pointed out, distinguishable.

On the other hand, it has been held in the case of *Manphool v. Budhhu* (4) by one of us that it is not open to a District Judge in whose court an appeal under section 476B of the Code of Criminal Procedure 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. Similarly BAJPAI, J., has held in the case of *Mehdi Hasan v. Emperor* (5) that the District Judge has no jurisdiction under the

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(1) (1921) I.L.R., 43 All., 409.

(2) (1927) I.L.R., 49 All., 792.

(3) (1928) I.L.R., 51 All., 344.

(4) (1934) I.L.R., 57 All., 785.

(5) (1934) I.L.R., 57 All., 687.

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Criminal Procedure Code to transfer such an appeal to the Subordinate Judge.

The main question for consideration, therefore, is whether a Subordinate Judge has such jurisdiction under section 22, sub-section (1) of the Bengal, Agra and Assam Civil Courts Act. That sub-section provides that a District Judge may transfer to any Subordinate Judge under his administrative control any appeals pending before him from the decrees or orders of Munsifs. It is, therefore, quite obvious that unless the proceeding in the court of the Munsif terminated in "an order" within the meaning of this sub-section the Subordinate Judge would not have any jurisdiction to hear the appeal. The word "order" has not been defined in the Act, but it occurs just after the word "decree" and an indication as to what it connotes can to some extent be gathered from the definition of "order" in section 2, sub-section (14) of the Code of Civil Procedure by way of analogy. According to that definition an order means the formal expression of any decision of a civil court which is not a decree. Now section 476 of the Code of Criminal Procedure does not anywhere say that the Munsif in making the complaint has to pass an order to that effect. It requires the civil court to make a complaint in writing signed by the presiding officer of the court and to forward the same to a Magistrate having jurisdiction. Section 476B which permits an appeal to be preferred by the aggrieved party does not say that the appeal is from any "order" passed by the original court. Again, the appellate court is not required to make any "order" on appeal, but has authority either to make complaint itself or to direct the withdrawal of the complaint as the case may be. One may in a loose way call it an order, but strictly speaking it is not so.

It seems to us that the mere fact that an appeal is provided to the same forum to which appeals ordinarily lie from the appealable decrees or sentences of the original court does not in any way show that the appeal is from the Munsif's "order". When we come to

examine the nature of the proceeding it is quite obvious that the court being satisfied *prima facie* that there is a fit case for inquiry simply makes a complaint; it does not and cannot decide any matter finally against the person against whom the complaint is made nor is there any adjudication of any rights of the parties at all. Sections 18 to 21 of the Civil Courts Act deal with the ordinary jurisdiction of District Judges, Subordinate Judges and Munsifs which is declared to extend to all original suits for the time being cognizable by civil courts, and provision is made as to which court appeals would lie in. Section 22 uses the same words "decrees or orders" as occur in section 20 and section 21. It seems to follow that the words "decrees and orders" were meant to refer to decrees and orders passed by a Munsif in civil proceedings pending before him to which the Code of Civil Procedure would apply; whereas the making of a complaint under section 476 is an act done by the Munsif under the authority conferred upon him by section 476 of the Code of Criminal Procedure.

In these circumstances it seems to us that it is difficult to say that the Munsif in making the complaint is passing an order within the meaning of section 22 of the Bengal, Agra and Assam Civil Courts Act. With great respect we are unable to agree with the view expressed in *Karim-ullah v. Rameshwar Prasad* (1). Following the view expressed in the two later cases quoted above, we hold that the Subordinate Judge had no jurisdiction whatsoever to hear these appeals.

We may, however, point out that where by the special notification mentioned in section 21, sub-section (4) of the Civil Courts Act appeals from decrees and orders of Munsifs are directed to be preferred to the court of such a Subordinate Judge, he would become the court to which appeals ordinarily lie from the appealable decrees of the former court under section 195, sub-section (2), and therefore an appeal would lie to him under section

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476B. In such a case there will be no question of the appeal being transferred by the District Judge to the court of the Subordinate Judge, as the appeal would be filed in his court direct.

The revision is accordingly allowed and the order of the Subordinate Judge withdrawing the complaint against the defendant Pahlad Singh is set aside and the case is sent back to the court of the District Judge for disposal according to law. As the transfer of the appeal was by the District Judge *suo motu*, we direct that the parties should bear their own costs of this revision.

APPELLATE CIVIL

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

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JAWAHIR RAM AND OTHERS (PLAINTIFFS) v. JHINGURI LAL AND OTHERS (DEFENDANTS)*

Limitation Act (IX of 1908), article 116—Breach of warranty of title and covenant for quiet possession—Sale by manager of joint Hindu family—Sale set aside on suit by sons—Vendee deprived of property—Suit for refund of price and compensation—Limitation—Terminus a quo—Whether from decree of first court or of appellate court.

Joint Hindu family property was sold by the manager, with an express covenant for title and quiet possession, under which the vendees would be entitled to compensation if any sort of defect was found in respect of the share sold and it was interfered with. Upon a suit by the sons the sale was set aside, for want of legal necessity, in January, 1924, and they obtained delivery of possession against the vendees in February, 1924. An appeal by the vendees to the District Judge was dismissed in January, 1926, and a second appeal to the High Court was dismissed in October, 1928. In June, 1930, the vendees sued the vendor for refund of the price and damages, basing their claim on the breach of covenant:

Held that the suit was barred by limitation under article 116 of the Limitation Act, and the six years' period under that article began to run from the breach of the contract, which

*First Appeal No. 12 of 1932, from a decree of M. Owais Karney, Subordinate Judge of Gorakhpur, dated the 31st of August, 1931.