

1882
July 21.

Before Mr. Justice Straight and Mr. Justice Mahmood.

TULA RAM AND ANOTHER (PLAINTIFFS) v. HARJIWAN DAS AND OTHERS
(DEFENDANTS.)*

Civil Procedure Code, s. 24—Place of suing.

S. 24 of the Civil Procedure Code does not empower a High Court to transfer a suit instituted within its own jurisdiction to the jurisdiction of another High Court, but only to declare in which Court a suit shall proceed, and, if necessary, to stay all further proceedings within its own jurisdiction.

The defendants in a suit instituted at Mainpuri, who resided and carried on business at Surat, applied under s. 24 of the Civil Procedure Code that the suit might be tried at Surat, on the ground that it would be tried with greater convenience to them at that place. *Held* that there being no balance in favour of either justice or convenience on the side of the Surat Court, the suit should proceed at Mainpuri.

THE defendants in a suit instituted in the Court of the Subordinate Judge of Mainpuri applied to the Subordinate Judge, under s. 24 of the Civil Procedure Code, to have the suit tried at Surat in the Presidency of Bombay, the application being dated the 8th May, 1882. The Subordinate Judge, under the provisions of the same section, submitted the application through the District Court to the High Court. The facts which led to the application are sufficiently stated for the purposes of this report in the order of the High Court.

Babu *Jogindro Nath Chaudhri*, for the plaintiffs.

Pandit *Ajudhia Nath*, for the defendants.

The order of the Court (STRAIGHT, J., and MAHMOOD, J.,) was delivered by

STRAIGHT, J.—We think that the application filed in the Court of the Subordinate Judge of Mainpuri on the 8th May last, and submitted by him to us through the District Court, must be regarded as preferred under s. 24 of the Procedure Code. Indeed, the petition itself says so in terms, and the remarks of the Subordinate Judge which accompany it are not very intelligible.

The applicants, who reside and carry on their business at Surat in the Presidency of Bombay, are the defendants in a suit insti-

* Reference No. 165 of 1881.

tuted by the plaintiffs, opposite parties, in the Court of the Subordinate Judge of Mainpuri on the 18th November, 1881. The plaintiffs are proprietors of a firm at Etawah known as Tula Ram, Jiwa Lal, and by their plaint they allege that they remitted to the defendants at Surat goods for them to dispose of as agents for and on behalf of the plaintiffs; that accounts were rendered from time to time, and moneys remitted by the defendants, who charged a commission on the sales they effected; and that a balance of Rs. 3,079-1-6 still remains due from the defendants to the plaintiffs.

The defendants deny that the goods were sent to them direct; on the contrary, they assert that they were consigned to a servant of the plaintiffs, one Gaya Din, who resided at Surat, and by him handed to the defendants; that all payments were made to Gaya Din; and that no balance remains due. They accordingly contend that no cause of action has accrued to the plaintiffs within the jurisdiction of the Subordinate Judge of Mainpuri, and that the cause can with greater convenience to them be tried at Surat.

The language of s. 24 of the Procedure Code seems to us far from clear, and it is not very easy to see what the precise power is that it confers upon the High Courts. Ss. 22 and 23 which precede it are plain enough, for they in precise and specific terms make use of the words "apply to transfer;" but it will be noted that in s. 24 the expressions are "to apply to the High Court" and "apply accordingly," and no mention is made of what the application is to be for. Under Act VIII of 1859, s. 13, provision was made for suits for immoveable property situate in districts subordinate to different Sadr Courts, and it was enacted that the Sadr Court in whose district the suit had been brought might, with the *concurrency* of the other Sadr Court, give authority to proceed with the same. But in the present Code the High Court is to "determine in which of the several Courts having jurisdiction the suit shall proceed." By the context of ss. 22 and 23 and the omission of the word "transfer," we can only construe s. 24 as intending something short of transfer, and cannot interpret it as empowering us to remove a cause from our own jurisdiction to that of another

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High Court. Placing the most reasonable construction we can upon s. 24, we think it authorises us to declare in which Court a suit shall proceed, and if necessary to stay all further proceedings within our own jurisdiction and that of the Courts subordinate to us. We are not prepared to go the length of holding that it gives us the power to intrude orders of our Court into the jurisdiction of the other High Courts. Such being the view we take of s. 24, we next have to see whether the defendants, applicants, have made out a case to justify us in closing the doors of the Court of the Subordinate Judge of Mainpuri to the plaintiffs, and leaving them to seek their remedy in another jurisdiction. We do not think that they have, or that any sufficient cause has been shown for depriving the plaintiffs of the right given them by law to select in which of the Courts they will carry on their suit. We see no balance in favour either of greater justice or convenience on the side of the Surat Court, and we accordingly determine that the suit shall proceed in the Court of the Subordinate Judge of Mainpuri. We must, however, not be understood to have disposed of the plea of want of jurisdiction raised by the defendants as to the place where the cause of action accrued. The decision of the plea in this case depends upon a question of fact, and must be disposed of on its own merits by the Subordinate Judge. The costs of this application will be costs in the cause.

Order accordingly.

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REVISIONAL CRIMINAL.

Before Mr. Justice Tyrrell.

EMPRESS OF INDIA v. JUALA PRASAD.

Act X of 1872 (Criminal Procedure Code), s. 471—Preliminary inquiry.

An order made under s. 471 of Act X of 1872 sending a case for inquiry to a Magistrate is not necessarily bad because the Court did not make a preliminary inquiry before making such order. The law requires only such preliminary inquiry "as may be necessary."

Held, therefore, where a Munsif, being of opinion that both the parties to a suit tried by him had given false evidence therein on certain points, sent the case for inquiry to the Magistrate under s. 471 of Act X of 1872, with a proceeding embodying the facts of the case, and charging the parties respectively with giving false evidence on such points, and there was nothing to show that any inquiry that the Munsif