

I would therefore answer questions nos. 2 and 3 in the affirmative. In view of my answers to questions nos. 2 and 3, it is not necessary to decide the question of estoppel embodied in the first question.

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GUR BARKISH
SINGH,
SARDAR
v.
RAJA
HARNAM
SINGH

MISCELLANEOUS CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava and
Mr. Justice E. M. Nanavutty

SITA RAM RASTOGI, APPLICANT v. BALAK RAM DUBEY
AND OTHERS, OPPOSITE PARTY

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December, 23.

*Civil Procedure Code (Act V of 1908), section 24(1) (b) (ii)—
“Competent Court” in section 24, meaning of—Transfer
of suit to another court—Court to which case is transferred,
if should be competent from the point of view of territorial
jurisdiction—Grounds for transfer of case to another court.*

Held, that the more rational, appropriate and beneficial construction to be placed on the word “competent” as used in section 24(1) (b) (ii) is that the Court concerned is competent when it can, as regards the nature and subject-matter of the case and as regards its pecuniary value, entertain a transferred suit, but that it does not include competence from the point of view of territorial jurisdiction. The competence contemplated by the section is the intrinsic competence of the Court concerned and not competence dependent on the accident of the Court being located in one district or another. *Jannat Husain v. Gulam Kutubuddin Ahmad* (1), and *Ram Das v. Habibullah* (2), dissented from.

Where the circumstances are such that a party may well have a reasonable apprehension that it will not be possible for the Judge to approach the decision of the case with an open mind and it would be embarrassing for him to arrive at a finding contrary to the one already arrived at by him, it is a proper case in which the High Court should exercise its general powers of transfer.

*Civil Miscellaneous Application No. 747 of 1932, for transfer of case pending in the Court of the District Judge of Fyzabad.

(1) (1920) 57 I. C., 522.

(2) (1931) 29 A. L. J. R., 1061.

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Mr. *Shambhu Nath Kaul*, for the applicant.

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Messrs. *Radha Krishna* and *Sundar Lal*, for the opposite party.

SRIVASTAVA and NANAVUTTY, JJ. :—This is an application under section 24 of the Code of Civil Procedure for transfer of an appeal against the decision of a Subordinate Judge from the file of the learned District Judge of Fyzabad to the file of some other District Judge, on the ground that the District Judge of Fyzabad had already expressed his opinion on the point at issue in the appeal.

The facts are that when the appeal came originally for hearing before the learned District Judge, he admitted certain additional documentary evidence under Order XLI, rule 27 of the Code of Civil Procedure, and decided the appeal on the basis of the entire evidence including the additional evidence admitted by him. There was an appeal against his decision to this Court. The result of the appeal was that the decree of the District Judge was set aside and the case was remanded to him with directions to re-hear the appeal after strictly complying with the provisions of Order XLI, rule 27 of the Code of Civil Procedure.

When the case was taken up for hearing by the learned District Judge after the remand, the opposite party did not insist upon the additional evidence being admitted and withdrew the same from consideration. The applicant then asked the learned District Judge not to hear the appeal on the ground that when he previously decided the appeal, he had expressed his opinion on the evidence already on the record. In the course of his order passed on this application, the learned District Judge remarked as follows :

“There is no doubt that my judgment contains findings of fact based on evidence which is independent of the additional evidence now excluded and the

respondent can very well feel that he is at a disadvantage . . .”

He accordingly allowed the applicant time to move this Court for transfer of the appeal to some other District Judge.

We think under the circumstances the applicant may well have a reasonable apprehension that it will not be possible for the learned District Judge to approach the decision of the case with an open mind. We also feel that it would be embarrassing for him to arrive at a finding contrary to the one already arrived at by him. We are therefore of opinion that it is a proper case in which we should exercise our general powers of transfer.

The learned counsel for the opposite party has however raised the objection that under section 24 of the Code of Civil Procedure we have no authority to transfer the appeal to any other District Judge. It is pointed out that section 24(1) (b) (ii) authorizes a High Court to transfer an appeal for disposal “to any Court subordinate to it and competent to try or dispose of the same.” The argument is that the words “competent to try or dispose of the same” mean that the Court to which the appeal is transferred should possess not only pecuniary but also territorial jurisdiction to dispose of it. There can be no doubt that the word “competent” signifies that the Court to which the appeal is transferred should have power to hear it. Whether this power is to be determined merely upon the nature or subject-matter of the case and upon its pecuniary value or also upon the territorial limits of the jurisdiction exercised by the Court to which the transfer is made, is not altogether free from difficulty. In *Jannat Husain v. Gulam Kutubuddin Ahmad* (1), it was held that a District Judge has no power to transfer a case under section 24(2) to a Court whose local jurisdiction does not include the area in which the suit arose. In other words the learned Judges

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were of opinion that the word "competent" as used in section 24(2) includes competence from the point of view of territorial jurisdiction. This case was followed by a Bench of the Allahabad High Court in *Ram Das v. Habibullah* (1). The learned Judges who decided the case observed that as the words of the statute are in no way limited, the Court to which the case is transferred must possess both pecuniary and territorial jurisdiction to entertain it. With all respect to the learned Judges who decided these cases, we find ourselves unable to subscribe to the opinion expressed therein. To our mind the competence contemplated by the section is, if we may say so, the intrinsic competence of the Court concerned and not competence dependent on the accident of the Court being located in one district or another. Thus the Court to which a Small Cause Court suit is transferred ought to be one possessed of adequate Small Cause Court powers. Similarly the Court to which a suit or appeal is transferred must possess sufficient pecuniary jurisdiction to hear it. If these conditions are satisfied and there is nothing in the nature or subject-matter of the case or in its pecuniary value to prevent the Court to which the case is transferred from taking cognizance of it, must the Court also possess necessary territorial jurisdiction to entertain it? We know that ordinarily there is only one Court, whether of a Munsif or of a Subordinate Judge or a District Judge exercising jurisdiction within a particular territorial area. If the powers of transfer possessed by the High Court or the District Court under section 24 of the Code of Civil Procedure are to be limited to a Court possessing also territorial jurisdiction to entertain the case, it would for all practical purposes make the provisions of section 24 of the Code of Civil Procedure nugatory. To take the present case as an illustration. There is no other Judge exercising jurisdiction in the Fyzabad District to whom the present

(1) (1931) 29 A.L.J.R., 1061.

appeal can be transferred. So if we accede to the opposite party's contention, the result would be that we must perforce reject the application even though we are satisfied that there are good grounds for accepting it. We therefore think that the more rational, appropriate and beneficial construction to be placed on the word "competent" as used in this section is to hold that the Court concerned is competent when it can, as regards the nature and subject-matter of the case and as regards its pecuniary value, entertain a transferred suit, but that it does not include competence from the point of view of territorial jurisdiction.

We accordingly allow the application and direct that the appeal be transferred to the file of the District Judge of Lucknow

Application allowed.

PRIVY COUNCIL

KANHAIYA LAL AND ANOTHER *v.* HAMID ALI

[On Appeal from the Chief Court of Oudh]

Idol—Parties—Suit for possession of land—Effect of dedication to Idol involved—Idol not joined—Remitted for new trial.

Where a suit for possession of a plot of land upon which the defendants had executed a *thakurdwara* involved a question as to the effect of a dedication of the land to the idol installed, the Judicial Committee, being of opinion that an appeal could not be dealt with in the absence of the idol or his representative, set aside the decrees made and remitted the case to the Chief Court for directions as to a new trial with reference to the effect of the dedication with the appropriate parties added. *Pramatha Nath Mullick v. Pradyumna Kumar Mullick* (1), followed.

APPEAL (No. 23 of 1931) from a decree of the Chief Court of Oudh (3rd of January, 1930) affirming a

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*Srivastava
and
Nanavutty,
J.J.*

*P. C.**
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April, 10

* *Present* : Lord TOMLIN, Lord THANKERTON, and Sir GEORGE LOWNDES.

(1) (1925) I. L. R., 52 Cal., 809 : L. R., 52 I. A., 245.