

REVISIONAL CIVIL.*Before Mr. Justice Scott-Smith.*

KISHEN LAL AND OTHERS (PLAINTIFFS)
Petitioners,

versus

JAI LAL AND OTHERS (DEFENDANTS) *Respondents.*

Civil Revision No. 153 of 1918.

~~308~~ *Civil Procedure Code, Act V of 1908, section 24 (1) (a)—Transfer of a case by Senior Subordinate Judge to the junior Subordinate Judge—whether intra vires—jurisdiction of Court to which the case has been transferred cannot be challenged if not objected to at the proper time.*

Held, that the Court of the junior Subordinate Judge is not subordinate to that of the Senior Subordinate Judge within the meaning of section 24 of the Code of Civil Procedure, and the latter cannot therefore transfer a case to the former under subsection (1), clause (a) of that section, notwithstanding that the District Judge has delegated his powers of transfer to him.

Held, however, that although the transfer of the present case to the Court of the junior Subordinate Judge was *ultra vires* the plaintiffs-petitioners having submitted to the jurisdiction of that Court and raised no objection to the irregular way in which the Court had become seized of the case, could not now turn round and challenge the legality of the proceedings.

Defects of jurisdiction arising from irregularities in the commencement of the proceedings may be waived by failure to take objection at the proper stage of the proceedings.

Pisani v. Attorney-General of Gibraltar (1) and *Gurdeo Singh v. Chandrikah Singh* (2), referred to.

Revision from the order of Lala Khan Chand, Subordinate Judge, 2nd Class, Hissar, dated the 29th October 1917.

SHEO NARAIN and SHAMIR CHAND, for Petitioners.

MUHAMMAD SHAFFI, NANAK CHAND, and MEHR CHAND, MAHAJAN, for Respondents.

(1) (1874) L. R. 5 P. C. 515.

(2) (1907) I. L. R. 36 Cal. 193 (207).

1916.

KISSER LAL.

S. C. LAL.

SCOTT-SMITH, J.—This is an application for revision of the order of the Subordinate Judge, 2nd Class, Hissar, passing a decree in plaintiff's favour in accordance with an award after rejecting defendants' objections. Notice issued on the second ground only in which it is contended that the award, not having been made within the time allowed by the Court referring the matter to the arbitrators, was a nullity in law. The case was pending in the Court of *Pandit* Gulal Chand, junior Subordinate Judge of Hissar, who, on the 25th April 1916, after the matter had been referred to arbitration and before the award was filed, took two months' privilege leave. No successor was appointed in his place, and on the 2nd May 1916 the senior Subordinate Judge recorded an order that the case should be kept in his Court. The award not being filed within the time originally fixed an extension of time was granted on the following dates:—8th and 31st May, 30th June and 27th July. On the 10th of October the case was re-transferred by the senior Subordinate Judge to *Pandit* Gulal Chand, who had previously returned from leave, and on the same date in the presence and at the request of the parties time for filing the award was extended by that officer up to 15th of November. Time was again extended to the 18th of December, to the 8th January 1917 and to the 9th January 1917 on which latter date the award was filed. Objections to the award were subsequently put in and, having been disposed of, the senior Subordinate Judge passed the order, of which revision is now sought.

There is nothing to show that the Senior Subordinate Judge had the power to transfer the case to his own Court after the departure of *Pandit* Gulal Chand on leave. The distribution of civil work amongst subordinate courts is frequently in this Province delegated by the District Judge to the Senior Subordinate Judge, and it is probable that this delegation was made in Hissar, for we find that when this suit was originally instituted it was made over by the Senior Subordinate Judge to the junior Subordinate Judge. The power to transfer cases under section 24, Civil Procedure Code, can also be delegated by the District Judge to a Subordinate Judge, but there is no evidence before

1919.

NISHAN LAL.

v.

JAI LAL.

me, and I have been unable to ascertain that the Senior Subordinate Judge of Hissar was invested with the powers under section 24, Civil Procedure Code. Even if he was those powers must be exercised in accordance with law. Section 24 (1) (a) enables a Court to exercise such powers to transfer any suit pending before it for trial or disposal to any Court subordinate to it. Similarly section 24 (1) (b) enables a Court to withdraw any suit pending in any Court subordinate to it and to transfer the same for trial or disposal to the Court from which it was withdrawn. The power can only be exercised in regard to cases pending in a Court subordinate to the Court exercising the power, and I do not think that the senior Subordinate Judge could in any event have transferred a case of his own Court to that of the junior Subordinate Judge which is not subordinate to him within the meaning of the section. It seems therefore that the order of the 10th August re-transferring the case to the Court of the junior Subordinate Judge was *ultra vires*. Mr. Muhammad Shafi, on behalf of the respondents, urges that if we are to consider that one of the orders of transfer was wrong, we are to consider that they both were wrong. If they were both wrong, then the orders passed between the time when *Pandit Gulal Chand* went on leave and the time when he again became seized of the case are all *ultra vires*, and when he again became seized of the case he had full power to extend the time for filing the award even though the time for filing it originally fixed had previously expired—see second schedule, paragraph 8, Civil Procedure Code.

He also points out that this very objection as to jurisdiction was raised before the Lower Court and was decided by it against the present petitioner, and that whether it decided it rightly or wrongly it had jurisdiction to decide it, and the mere fact that it decided it wrongly is no ground for revision by this court. There appears to be considerable force in this argument; but in my opinion his strongest argument is that the parties having acquiesced in the jurisdiction both of the Senior Subordinate Judge during *Pandit Gulal Chand's* absence and of *Pandit Gulal Chand* after the case was re-transferred to that officer cannot now object thereto. In this

1910

KISHEN LAL.

P.
JAI LAL.

connection he has referred *inter alia* to *Gardeo Singh v. Chandrikah Singh* (1). It is pointed out there that distinction has often been drawn between elements which are essential for the foundation of jurisdiction and the mode in which such jurisdiction has to be assumed and exercised. It is said that the distinction is well founded and the case of *Pisani v. Attorney-General of Gibraltar* (2) is referred to, wherein their Lordships of the Judicial Committee held "that, where there is jurisdiction over the subject matter, but non-compliance with the procedure prescribed as essential for the exercise of jurisdiction, the defect might be waived." It is said "the same principle was adopted in *ex-parte Prati* (3) and *ex parte May* (4) which are authorities for the proposition that where jurisdiction over the subject matter exists requiring only to be invoked in the right way, the party, who has invited or allowed the Court to exercise it in a wrong way, cannot afterwards turn round and challenge the legality of the proceedings due to his own invitation and negligence." It is further stated "that defects of jurisdiction arising from irregularities in the commencement of the proceedings may be waived by the failure to take objection at the proper stage of the proceedings." See the rulings quoted at the top of the page 208 of the same volume. Now, in the present case there can be no doubt that the Lower Court had jurisdiction over the subject matter, and the only objection urged is that there was non-compliance with the procedure prescribed as essential for the exercise of the jurisdiction, *viz.*, that the case had not been transferred to that Court by the District Judge who was the only officer authorised to make such transfers. There is, however, the authority referred to above in support of the proposition that any defect of jurisdiction arising from such an irregularity may be waived. Now, in the present case we find that on each date on which time was extended the parties were present either in person or by pleader or by agent, and they not only never objected to the jurisdiction of the Court, but joined in requesting that time should be extended. In these circumstances it

(1) (1107) L. L. R. 36 Cal. 193 (207)

(2) (1874) L. R. 5 P. C. 515

(3) (1884) 12 Q. B. D. 334

(4) (1884) 12 Q. B. D. 497

1919.

KISHEN LAL

F.
JAI LAL.

is quite clear that the plaintiffs submitted to the jurisdiction of the Lower Court and raised no objection to the irregular way in which the Court had become seized of the case. I therefore hold that this objection to jurisdiction cannot be listened to now. The time for making the award had been duly extended from time to time in accordance with the provisions of rule 8 of the second Schedule to the Civil Procedure Code. The award therefore was a valid award and the Lower Court was right in passing a decree in accordance therewith.

The application for revision accordingly fails and is rejected with costs.

Revision dismissed.