CIVIL REVISION.

Before Mr. Justice Dunkley.

1936

July 21.

SEAL *v.* ARAMUGAM CHETTYAR.*

Jurisdiction—Suit cognisable by Court of Small Causes—Suit entertained by the Township Court—Decree of Township Court not a nullity—Defect of procedure—Character of suit tried by wrong Court—Procedure to remedy defect—Reference to High Court—Provincial Small Cause Courts Act (IX of 1887), s. 16—Civil Procedure Code (Act V of 1908), s. 24, O. 46, r. 7.

The effect of the provisions of s. 16 of the Provincial Small Cause Courts Act is not to deprive the regular Court altogether of jurisdiction in suits cognisable by a Court of Small Causes, but merely to prevent the exercise of that jurisdiction by the regular Court so long as there is a Court of Small Causes having jurisdiction within the same local limits. Consequently the proceedings of the Township Court which erroneously tries a suit of a small cause nature though defective in procedure are not a nullity.

I. C. Mukherjee v. *Banerjee*, I.L.R. 40 Cal. 537 ; *Jodha Bilal* v. *Maganlal*, 31 Bom. L.R. 1307 ; *Shankerbhai* v. *Somabhai*, I.L.R. 25 Bom. 417, referred to.

The character of a suit is not altered by the mode in which it is tried, and under the provisions of O. 46, r. 7 of the Civil Procedure Code, the District Judge can submit the record of a case erroneously tried by the Township Court to the High Court which may uphold the decision if it finds that substantial justice has been done.

Parshottamdas v. *The Firm of B. Nathubhai*, I.L.R. 56 Bom. 387, referred to.

C. K. Ray for the applicant.

P. K. Basu for the respondent.

DUNKLEY, J.—The plaintiff-applicant brought a suit in the Township Court of Kyaiklat for the recovery of four months' salary amounting to a sum of Rs. 60. The Township Court of Kyaiklat has been invested with jurisdiction as a Court of Small Causes under the Provincial Small Cause Courts Act to try suits of a small cause nature up to Rs. 100 in value. The learned Township Judge correctly recognized that the suit of the applicant was of a small cause nature and fell within the jurisdiction of his Court as a Court of Small Causes,

* Civil Revision No. 190 of 1936 from the judgment of the Township Court of Kyaiklat in Civil Regular Suit No. 27 of 1936.

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and, in fact, the plaint was headed as a "small cause." However, after the defendant-respondent had been served with summons, it appears that the pleaders for the parties represented to the Judge that the suit was of a somewhat difficult nature (which it was not) and that, therefore, it ought to be tried in a regular way. In consequence of this representation, on the 15th February, 1936, the learned Judge passed the following order:

"The case involves the question of master and servant, with intricate law points. By consent, this case is transferred to regular side."

It consequently appears that the learned Judge consciously, although aware that the suit was of a small cause nature and within the jurisdiction of his Small Cause Court, caused it to be tried in his civil Court with regular jurisdiction. There is no provision of law which prevents the Judge of a Small Cause Court from recording the evidence given at any trial before him at full length, or from delivering a full and considered judgment such as is ordinarily passed in a regular suit, and therefore this order of the learned Township Judge served no purpose whatever. It was also made without jurisdiction, for a Township Judge has no authority to order the transfer of a suit from one Court to another, and as it was made without jurisdiction there is no reason why any attention should be paid to it. It is however clear that when the learned Township Judge tried this suit, and ultimately passed a judgment and decree dismissing the plaintiff-applicant's claim, he considered that he was sitting as the Township Judge and not as Judge of a Small Cause Court.

The main point which has been raised on this application for revision on behalf of the plaintiff-applicant is that the Township Court as such had no jurisdiction to try the suit, and that there being an inherent want

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of jurisdiction the proceedings at the trial are a nullity and must be set aside. Reference has been made to authorities in support of the well-known proposition that even the consent of parties cannot give jurisdiction where there is an inherent want of jurisdiction, and that the proceedings of a Court taken without jurisdiction are a nullity and can be set aside at any time. I do not propose to quote any of these authorities because, in my view, the present case is not a case of this nature. Learned counsel for the applicant relies on the provisions of sections 16, 32 and 33 of the Provincial Small Cause Courts Act. Section 16 is in the following terms :

"Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable."

A Township Court has jurisdiction under the Burma Courts Act to try all suits of a civil nature up to Rs. 1,000 in value. If it tried a suit in excess of Rs. 1,000 in value it would be acting without jurisdiction and its proceedings would be a nullity, but that is entirely different from the present case. Even allowing that the suit was tried by the Township Court and not by the Small Cause Court, it was a suit which the Township Court had jurisdiction to try. The effect of the provisions of section 16 of the Provincial Small Cause Courts Act, in my opinion, is not to deprive the regular Court altogether of jurisdiction in suits cognizable by a Court of Small Causes, but merely to prevent the exercise of that jurisdiction by the regular Court so long as there is a Court of Small Causes having jurisdiction within the same local limits. The provisions of sections 32 and 33 of the Act do not appear to me to affect the matter at all. Section 32 merely lays down, so far as it is relevant

to the present matter, that the provisions of Chapters III and IV of the Act, within which section 16 occurs, in regard to the exclusion of the jurisdiction of other Courts, apply

"to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts."

Section 33 lays down that

"a Court invested with the jurisdiction of a Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court, with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure, be deemed to be different Courts."

The effect of these provisions therefore is that the Township Court of Kyaiklat, when trying a suit of a small cause nature and of a value less than Rs. 100, is a different Court from the Township Court when trying a suit not of a small cause nature, but this does not alter the fact that the Township Court as a regular Court has inherent jurisdiction to try all suits of a civil nature up to the value of Rs. 1,000. Consequently, if that Court by error tries a suit which is of a small cause nature and is cognizable by a Small Cause Court exercising jurisdiction within the same local limits, then the proceedings of the Township Court are not entirely without jurisdiction and, therefore, are not a nullity. This is the view which has been taken by this Court in a number of cases which have come before the Court where a Township Court having small cause jurisdiction has tried a case of a small cause nature and within that jurisdiction as a regular suit, and there has been an appeal from the decision to the District Court. It is the view which has been generally accepted by the High Courts in India. Briefly stated, the proposition

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is that the character of the suit is not altered by the mode in which it is tried. As authorities therefor the cases of *Shankerbhai and others* v. *Somabhai and another* (1) and *Indra Chandra Mukherjee* v. *Srish Chandra Banerjee* (2) may be mentioned. With due respect, the point was well stated by a Bench of the Bombay High Court in the case of *Jodha Bital* v. *Maganlal Chhaganlal Desai* (3). The Bench, referring to a case where a Subordinate Judge who had jurisdiction under the Provincial Small Cause Courts Act had transferred a case to another Judge who had no small cause powers, said :

"We do not mean to infer from this that he had no jurisdiction to try the suit because failure to comply with section 16 of the Provincial Small Cause Courts Act seems to us to be merely a defect in procedure in proceeding in a Court other than the Small Causes Court having jurisdiction to try the case."

That this must be the correct view is apparent from the provisions of section 24, sub-section (*4*), and Order XLVI, rule 7, of the Code of Civil Procedure. Supposing, for the sake of argument, it be admitted that the learned Township Judge, in making his order of the 15th February, 1936, transferring this suit for trial from his small cause jurisdiction to his regular jurisdiction, was acting within his authority, then it is plain that under the provisions of sub-section (*4*) of section 24 of the Code of Civil Procedure he would still be trying the suit as a Court of Small Causes, for this sub-section is as follows :

"The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes."

Order XLVI, rule 7, of the Code makes it clear that where a suit which is cognizable by a Court of Small

(1) (1900) I.L.R. 25 Bom. 417. (2) (1913) I.L.R. 40 Cal. 537.
(3) (1929) 31 Bom. L.R 1307, 1309.

Causes has been tried by a Court which is not a Small Cause Court, in contravention of the provisions of section 16 of the Provincial Small Cause Courts Act, then the only procedure which may be taken to correct that error is for a party to the suit to require the District Court to make a reference to the High Court, and upon that reference the High Court may make such order in the case as it thinks fit. This provision clearly shows that the proceedings of the regular Court, although the suit has been tried by it in contravention of the provisions of section 16 of the Provincial Small Cause Courts Act, are by no means a nullity, but may be upheld if the High Court considers that substantial justice has been done. This is the view which was taken by Nanavati J. in the case of *Parshottamdas Chunilal Shah and another* v. *The Firm of Bhagubai Nathubhai* (1), with which I respectfully agree. Moreover, whether the present application in revision be looked upon as an application under section 25 of the Provincial Small Cause Courts Act or under section 115 of the Code of Civil Procedure the power of this Court to interfere to reverse or vary the decree of the original Court is discretionary, and in regard to this matter I desire to remark that if the contention which has been put forward on behalf of the applicant is correct then it would appear that the present application must have been made under section 115 of the Code of Civil Procedure, although it purports to have been brought under section 25 of the Provincial Small Cause Courts Act. Learned counsel for the applicant is unable to contend that his client has been prejudiced in any way by the fact that the suit has been tried as a regular suit instead of as a small cause, and it would scarcely be possible for either party so to contend as in the regular trial they have had a better opportunity of

(1) (1931) I.L.R. 56 Bom. 387, 393.

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placing their respective cases before the Court, and also they have obtained a full record of the evidence and a considered judgment. Consequently, I should be unable to hold that it was a proper exercise of the discretion which is vested in me to interfere in this case on the sole ground that the Township Court tried the suit without jurisdiction, when it has to be admitted that neither party has been prejudiced by that action.

[On the facts His Lordship held that the applicant could not sue the respondent as he was not engaged by him, nor was he in the position of a trustee in a contract made for the benefit of the applicant. His Lordship upheld the decision of the Township Court in dismissing the suit, but on these grounds.]

APPELLATE CIVIL.

Before Mr. Justice Dunkley.

1936

July 27.

P.L.O.P.R.M. RAMASWAMY CHETTYAR
v.
M.S.M. CHETTYAR FIRM.*

Mutual open current account—Independent obligations on both sides—One sided obligation—Moneys lent—Payments by debtor from time to time reducing debt—Limitation Act (IX of 1908), Sch. I, art. 85.

To be mutual, within art. 85 of the Limitation Act, there must be transactions on each side creating independent obligations on the other, and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations. Each party must be able to say to the other "I have an account against you."

Hirada Basappa v. *Gadigi Muddappa*, 6 Mad. H.C.R. 142, followed.

Chittar Mal v. *Bihari Lal*, I.L.R. 32 All. 11; *Ebrahim Mehter* v. *Abdul Huq*, 8 L.B.R. 149; *Ganesh* v. *Gyanu*, I.L.R. 22 Bom. 606; *Narandas* v. *Nissandas*, I.L.R. 6 Bom. 134; *Satappa* v. *Annapa*, I.L.R. 47 Bom. 134; *Velu Pillai* v. *Ghose Mahomed*, I.L.R. 17 Mad. 293, referred to.

R.M.A.R.R.M. Arunachallam Chetty v. *V.E.R.M.N. Chetty*, 11 L.B.R. 369, distinguished.

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* Civil Second Appeal No. 177 of 1936 from the judgment of the District Court of Pegu in Civil Appeal No. 9 of 1936.