

nature of the interest acquired by him upon admission to the Association is considered—and this has already been expounded in an earlier portion of this judgment—it is difficult to see how the assumption of membership involves at any stage the transfer of any property on any condition whatever. It is impossible, in their Lordships' judgment, to describe the insolvent's status of membership of the Association in language which, however tortured, could bring it within the terms of the section.

On the whole, their Lordships' conclusion, so far as the case remains open for them to deal with, is that reached by both Courts in India, and in their judgment the appeal fails.

Their Lordships will accordingly humbly advise His Majesty that it be dismissed; and with costs.

Solicitors for appellants: Messrs. *Lattey & Dawe*.

Solicitors for respondents: Messrs. *T. L. Wilson & Co.*

A. M. T.

APPELLATE CIVIL.

Before Mr. Justice Baker and Mr. Justice Nanavati.

PARSHOTTAMDAS CHUNILAL SHAH AND ANOTHER, APPLICANTS *v.*
THE FIRM OF BHAGUBAI NATHUBHAI, OPPONENT.*

Civil Procedure Code (Act V of 1908), section 24, sub-sections (1) and (4)—Suit filed in a Court of Small Causes—Application to transfer suit to Subordinate Judge's Court—Extent of Small Cause Court powers of the latter Court immaterial—Transfer can be legally effected.

Section 24, sub-section (1) of the Civil Procedure Code, 1908, gives power to the High Court or the District Court to transfer *inter alia* a suit from a Court of Small Causes to a regular Court. Sub-section (4) of section 24 lays down that any case transferred from a Court of Small Causes shall be tried as a Small Cause suit by the Court to which it is transferred, but makes no reference to the Court to which the case is so transferred being invested with Small Cause Court powers up to any particular extent.

*Civil Application No. 401 of 1931.

1932
OFFICIAL
ASSIGNEE
OF
BOMBAY
v.
SHROFF
Lord
Blanesburgh

1931
November 25.

1931

PARSHOTTAMDAS
v.
BHAGURAI

A suit for Rs. 900 odd was filed in the Court of Small Causes at Ahmedabad. There was already a suit pending between the same parties in the Second Class Subordinate Judge's Court at Ahmedabad involving identical questions. An application was thereafter made to the District Court under section 24 of the Civil Procedure Code, for the transfer of the Small Cause suit to the Subordinate Judge's Court. The transfer was opposed on the ground that inasmuch as the Small Cause Court power of the Second Class Subordinate Judge, Ahmedabad, extended only to Rs. 300, he would have no jurisdiction to try a small cause suit valued at over Rs. 900.

Held, that the High Court had power to make the transfer provided the suit to be transferred was within the limits of the pecuniary jurisdiction of the Court to which the transfer was to be made notwithstanding that the ordinary small cause powers of that Court did not exceed Rs. 300, since the jurisdiction to try the case as a small cause was conferred by sub-section (4) of section 24 of the Civil Procedure Code, 1908.

Murugesu Mudaliar v. Venkateswulu Chetty,⁽¹⁾ not approved.

Sukha v. Raghunath Das⁽²⁾; *Dulal Chandra Deb v. Ram Narain Deb*⁽³⁾; *Mudhusudan v. Behari*⁽⁴⁾ and *Badal Chandra Porhel v. Srikrishna De Nag*,⁽⁵⁾ referred to.

CIVIL APPLICATION praying for transfer of suit No. 2739 of 1930 from the Court of Small Causes at Ahmedabad to the Court of the Joint Second Class Subordinate Judge at Ahmedabad.

Application for transfer.

Petitioner No. 1, in the name of petitioner No. 2, entered into certain transactions for the purchase and sale of shares with the opponent-firm.

The opponent filed a suit (No. 2739 of 1930) against the petitioner No. 2 in the Small Causes Court at Ahmedabad to recover Rs. 977-3-0 alleging that the said sum was due from petitioner No. 2 on the transactions relating to the purchase and sale of the shares.

The petitioners filed a suit (No. 962 of 1930) against the opponent in the First Class Subordinate Judge's Court at Ahmedabad for Rs. 2,746 alleging that the said sum was due from the opponent in respect of the same transactions

⁽¹⁾ (1929) 56 Mad. L. J. 649.

⁽²⁾ (1916) 39 All. 214.

⁽³⁾ (1904) 31 Cal. 1057.

⁽⁴⁾ (1918) 27 Cal. L. J. 461.

⁽⁵⁾ (1928) 56 Cal. 588.

relating to the purchase and sale of the shares and the suit was transferred to the Second Class Subordinate Judge's Court at Ahmedabad for disposal.

1931
PARSHOTTAMDAS
v.
BHAGUBAI

Petitioners, thereafter, applied to the District Court at Ahmedabad praying that the Small Cause Suit No. 2739 of 1930 be transferred to the Second Class Subordinate Judge's Court at Ahmedabad since the issues involved in both the suits were the same. The application was dismissed by the District Court.

Petitioners thereupon applied to the High Court.

H. V. Divatia, for the applicants.

A. G. Desai, for the opponent.

BAKER J. This is an application for transfer of a suit from the Small Cause Court, Ahmedabad, to the Second Class Subordinate Judge's Court on the ground that there is already a suit between the same parties pending in the Subordinate Judge's Court in which the same questions are involved. The application, which is under section 24, Civil Procedure Code, raises a point of law, on which there is no ruling of this Court, though there is one of the Madras High Court. The point is that the suit in the Small Cause Court is for Rs. 900 odd, whereas the Small Cause Court powers of the Second Class Subordinate Judge extend only to Rs. 300, and hence it is contended that the transfer must be to a Court competent to try the suit, and as under clause (4), section 24, the suit must be tried as a Small Cause suit, and the Subordinate Judge's Small Cause Court powers do not extend to the value of the suit, the transfer is incompetent, as the Local Government alone has power to confer jurisdiction under the Provincial Small Causes Courts Act. This is the view accepted by a single Judge of the Madras High Court in *Murugesu Mudaliar v. Venkata Kesavalu Chetty*.⁽¹⁾

The expression "competent to try" it must refer to the pecuniary jurisdiction of the Court; e.g. it would not be

⁽¹⁾ (1929) 56 Mad. L. J. 649.

1931

PARSHOTTAM DAS

v.
BHAGUBAI

Baker J.

within the powers of the High Court to transfer a suit over Rs. 5,000 to a Second Class Subordinate Judge whose powers extend only to suits of the value of Rs. 5,000 or less. I do not think any question of territorial jurisdiction can arise, as it is within the power of the High Court acting under section 24 to transfer a suit from one district to another. The difficulty arises from sub-section (4) of the section, which if the view adopted by the Madras High Court is followed, does not seem to have much point. It is now held by all High Courts, though at one time this Court took a different view, that the words "Court of Small Causes" in sub-section (4) of section 24 makes no distinction between a regular Court of Small Causes and a Court of the Subordinate Judge invested with Small Cause Court jurisdiction, as nearly all Subordinate Judges are. There is no direct ruling on the point beyond the Madras High Court ruling already referred to, though similar cases have frequently arisen, but no objection seems to have been taken on this score. In *Sukha v. Raghunath Das*⁽¹⁾ a suit of Small Cause Court nature instituted in the Court of a Subordinate Judge invested with the powers of a Judge of Small Cause Court was transferred to the Court of a Munsif not possessing the powers of a Small Cause Court, and was tried by him and a decree passed therein. It was held that no appeal lay from the Munsif's decree, and it is remarked (p. 219) :—

"... the provisions of section 24, sub-section (4) of the Code of Civil Procedure do mean something. On any interpretation, they do mean at least this, that if a suit is pending in a court constituted under the provisions of the Small Cause Courts Act of 1887, the District Court has power to transfer that suit to another court which is neither a court constituted under that Act, nor a court invested with the jurisdiction of a Court of Small Causes, and that the court to which the case is transferred will then be deemed, by virtue of the order of transfer, to be a Court of Small Causes for the purpose of that particular suit."

Those remarks are by way of dissent from certain remarks in *Dulal Chandra Deb v. Ram Narain Deb*,⁽²⁾ which has however been subsequently dissented from in *Madhusudan*

⁽¹⁾ (1916) 39 All. 214.⁽²⁾ (1904) 31 Cal. 1057.

v. *Behari*⁽¹⁾; see also *Badal Chandra Porhel v. Srikrishna De Nag*,⁽²⁾ where a suit for Rs. 870 instituted in the Court of Small Causes at Sealdah having jurisdiction up to Rs. 1,000 was transferred by consent of parties to the Munsif at Alipore having Small Cause Court powers up to Rs. 250, to be tried along with a suit for rent between the same parties pending before him. It was held that the decision of the Munsif was that of a Small Cause Court and was not appealable. The point before us now did not however arise in that suit, as although the Munsif who had pecuniary jurisdiction to try the suit was not vested with Small Cause Court powers up to the requisite amount, the parties had the transfer made by consent. With respect, it seems to me that the view taken by the Madras High Court is likely to lead to inconvenience, because the Small Cause Court powers conferred on regular Subordinate Judges' Courts are in most cases restricted to a maximum of Rs. 500, and if in cases of a Small Cause Court nature the competence of the Court to which it is proposed to transfer the case is to depend on the extent to which it has been invested with Small Cause Court powers, it would very frequently be impossible to transfer a case from the regular Small Cause Court, whose jurisdiction extends to Rs. 1,000 or more, to any other Subordinate Judge's Court, which is exactly what is contended here. I do not think any Subordinate Judge in this Presidency has Small Cause Court powers over Rs. 500. Consequently, if the argument of the opponent is correct, no Small Cause suit over Rs. 500 could be transferred to a regular Court. This obviously very materially limits the operation of section 24, and in the absence of clear words in the section I should not be disposed to take that view. I am not impressed by the argument that to hold otherwise would be to usurp the functions of the Local Government. This is not a case of conferring jurisdiction to try all or any cases of a Small Cause Court nature, but one case only, a power which seems to me to follow from

1931

PARSHOTTAMDAS

v.
BHAGUBAI

Baker J.

⁽¹⁾ (1918) 27 Cal. L. J. 461.⁽²⁾ (1928) 56 Cal. 588.

1931
 PARSHOTTAM DAS
 v.
 BHAGUBAI
 Baker J.

the provisions of sub-section (4) of section 24. That sub-section is widely expressed, and lays down that any case transferred from a Court of Small Causes shall be tried as a Small Cause suit by the Court to which it is transferred, and makes no reference to the Court to which the case is so transferred being invested with Small Cause powers up to any particular extent or indeed with Small Cause Court powers at all, and it is exactly that point which the sub-section seems designed to meet. If it had been intended by the Legislature to make any such limitation, it could certainly have said so. The terms of the section appear rather to be intended to confer the powers of a Small Cause Court upon the trying Court for that particular case irrespective of the powers with which the Court is invested. In the circumstances, with respect, I am not prepared to follow the view of the Madras High Court, and I am of opinion that sub-section (4) of section 24 gives the power to transfer a suit from a Small Cause Court to a regular Court irrespective of the Small Cause powers of the Court to which the suit is transferred. I may add that any other interpretation would make sub-section (4) unmeaning, as if the suit were within the limit of the Small Cause Court powers of the Court to which it is transferred, that Court would presumably be obliged under the ordinary law to try it as a Small Cause suit irrespective of section 24, sub-section (4). The present case is only likely to arise where there is a regular Small Cause Court in existence. I am therefore of opinion that this Court has power to make the transfer, and that provided the suit to be transferred is within the limits of the pecuniary jurisdiction of the Court to which the transfer is to be made, the extent of its Small Cause powers does not matter, as jurisdiction to try the case as a small cause is conferred by sub-section (4) of section 24.

On the merits there is little to be said. It appears that the plaintiff in the Small Cause suit is the defendant in the regular suit, and one of the defendants in the Small Cause suit is the plaintiff in the regular suit. Whether the two

suits relate to the same transaction is a matter of evidence which would more appropriately be considered by the trying Judge, but I am of opinion that the two suits would be more conveniently tried by the same Judge, who would be the best person to decide how far the issues are common to the two suits. Apart from this, if the two suits are tried by different Courts, and the contention of the applicants is correct, there is a possibility of contrary findings on the same issues between the same parties which is always a source of embarrassment. I am therefore of opinion that the suit should be transferred, and the rule made absolute with costs.

NANAVATI J. I agree. Section 24, sub-section (4), of the Civil Procedure Code is clearly intended to enable the transfer of a suit from a Court of Small Causes to one which is not such a Court. It follows therefore that it is intended to remove the bar laid down in section 16 of the Provincial Small Causes Courts Act of 1887. That section enacts that a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits etc. It does not deprive the regular Courts of their jurisdiction but merely directs them not to try a "Small Cause suit". (I use this short phrase to indicate a suit cognizable by a Court of Small Causes). They still remain triable by the regular Courts if the prohibition in section 16 can be got over. The argument that under section 24 (1) (a) and (b), Civil Procedure Code, the Court to which a suit is transferred must be competent to try or dispose of the same, and that by reason of section 16 of the Provincial Small Causes Courts Act regular Courts are not competent to try "Small Cause suits" is not in my opinion correct. The jurisdiction of a Subordinate Judge is defined in section 24 of the Bombay Civil Courts Act of 1869. If a suit is within the power of the Court as so defined, then the Court is competent to try the suit. Section 16 of the Provincial Small Causes Courts Act does not take away this competency. It only directs that certain suits shall

1931

PARSHOTTAMDAS

v.

BHAGURAI

Baker J.

1931

PARSHOTTAMDAS

v.

BHAGUBAI

Nanarati J.

not be tried by such Courts and this bar is removed under section 24, sub-section (4), of the Code of Civil Procedure when an order of transfer is made under that section. If section 16 of the Provincial Small Causes Courts Act had the effect of making Courts other than those governed by that Act incompetent to try "Small Cause suits", then section 24, sub-section (4), Civil Procedure Code, need not have been enacted at all since the situation contemplated therein could not arise. The argument that weighed with the learned Judge in *Murugesu Mudaliar v. Venkata Kesavalu Chetty*⁽¹⁾ was this that although it was the local Government alone that could invest particular Courts of Small Causes with jurisdiction up to Rs. 1,000, a District Court by exercising the power of transfer could enable a Court whose "Small Cause" jurisdiction was limited to "Small Cause suits" not exceeding Rs. 300 in value, with the power of deciding "Small Cause suits" of the value of Rs. 1,000. The answer to that argument is well expressed in *Sukha v. Raghunath Das*⁽²⁾ as follows (p. 219) :—

"It is not unreasonable to suppose that the Legislature felt considerable confidence in the district courts, in consideration more particularly of the intimate acquaintance which such courts are likely to possess with the personnel and the working of all courts subordinate to them; so that it was not deemed improper to invest district courts with powers of transfer in respect of suits of a Small Cause Court nature and to permit that power to be exercised for the transfer of a case from a Court of Small Causes to a court which is neither a Court of Small Causes constituted under Act IX of 1887, nor a court invested with the jurisdiction of a Court of Small Causes. It remains a matter of discretion with the district court whether or not to pass an order of transfer in any suit; and the apparent intention of the Legislature was that, if a Small Cause Court suit is so transferred, it should not change its nature by reason of the transfer, but should continue to be tried as a Small Cause Court suit and subject to all the legal incidents of such a suit."

With respect, I entirely agree with that reasoning. Any other interpretation would make section 24, sub-section (4), Civil Procedure Code, meaningless and give rise to a great deal of inconvenience.

Rule made absolute.

J. G. R.

⁽¹⁾ (1929) 56 Mad. L. J. 649.

⁽²⁾ (1916) 39 All. 214.