

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice.

1934
December 21

DHOBI SHANKERJI SAMALJI (ORIGINAL DEFENDANT), APPLICANT *v.* PATEL
VRAJLAL BAPALAL, MANAGER OF THE ESTATE OF SHETH TRICUNMLAL
GIRDHARLAL (ORIGINAL PLAINTIFF), OPPONENT.*

Civil Procedure Code (Act V of 1908), section 24—Transfer of suit—Transfer if administrative order—Practice.

Where more than one Subordinate Judge is attached to any Court there can be no objection to suits filed in that Court being entered in a single list, and it is competent to the senior Subordinate Judge of that Court to allocate the business amongst the various Subordinate Judges. But there is a clear distinction between orders of transfer and administrative orders allocating business to the Courts of particular Judges.

If the order is an order for transfer, it can only be made by the High Court or the District Court under section 24 of the Civil Procedure Code, 1908.

When once a Judge has taken cognizance of a suit any order removing that suit from his file is an order of transfer and it cannot be regarded as a mere administrative redistribution of business.

CIVIL REVISION APPLICATION from an order passed by
C. N. Desai, First Class Subordinate Judge, Ahmedabad.

Transfer of suit.

The material facts are set out in the judgment of the learned Chief Justice.

H. D. Thakor, for the applicant.

I. B. Desai, for the opponent.

BEAUMONT C. J. This is an application in revision against an order made by the First Class Subordinate Judge of Ahmedabad by which he directed that suit No. 538 of 1932 be transferred to the Court of the Second Joint Subordinate Judge from that of the Third Joint Subordinate Judge. It is argued that that order was made without jurisdiction.

* Civil Revision Application No. 445 of 1933.

Section 24 of the Civil Procedure Code provides that orders for transfers of suits may be made by the High Court or the District Court, and it is contended, therefore, that this being an order of transfer, the learned First Class Subordinate Judge was not competent to make it. On the other hand, for the respondent it is said that this is not an order for transfer, that the suit was filed in the Court of the Subordinate Judge of Ahmedabad, and that it was competent for the senior Subordinate Judge of that Court to make an administrative order transferring it from one of the Subordinate Judges attached to that Court to another. I directed the application to stand over, because I thought it desirable to ascertain what the practice in the various districts is in relation to this matter. From inquiries which the Registrar has made, it seems to be the general practice, where more than one Subordinate Judge is attached to any Court, for suits filed in that Court to be entered in a single list and for the senior Subordinate Judge of that Court to allocate the business amongst the various Subordinate Judges. In the case of suits relating to matters of over Rs. 5,000 the matter is bound to go to a First Class Subordinate Judge, but otherwise the suits can be assigned to different Judges so as to ensure that they are all kept equally busy. There is, in my opinion, no objection to that practice, because I think that under the Bombay Civil Courts Act, 1869, the Subordinate Judge's Court is one, notwithstanding that more than one Judge is attached to that Court. It appears also generally to be the practice for the senior Subordinate Judge, where necessary, to re-arrange the lists of his Judges, and if he thinks that two suits relate to the same subject-matter, or that for any reason they can be conveniently tried together, or if business has become congested in one Judge's Court, or for some other reason a redistribution is required, he makes the necessary order. That again seems

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a practice to which no objection can be taken, provided the order does not amount to an order of transfer. The practice as to the date at which these orders are made varies in different districts. In some districts the order is sometimes made after the Judge has taken cognisance of the suit but before any evidence has been heard, and in other districts it is sometimes made after the evidence has commenced. In my opinion there is a clear distinction between orders of transfer and administrative orders allocating business to Courts of particular Judges. When once a Judge has taken cognisance of a suit, it seems to me that any order removing the suit from his file is an order of transfer. It may be that no serious inconvenience is occasioned by such an order if the Judge has not commenced to hear the evidence; but that is not the point. If the order is an order for transfer, it can only be made by the District Judge or the High Court, and in my opinion, once a Judge has taken cognisance of a suit, any order removing the suit from his file is an order of transfer, and cannot be regarded as a mere administrative redistribution of business. Now in the present case the suit which was transferred, i.e., suit No. 538 of 1932, was commenced in the year 1932, and was in the list of the Third Joint Second Class Subordinate Judge of Ahmedabad. On November 10, 1932, issues were framed in that suit, so that the learned Judge had clearly taken cognisance of the suit. At some time in the year 1932 another suit, No. 1366 of 1932, was commenced, and that was assigned to the Second Joint Second Class Subordinate Judge at Ahmedabad. As I have said, the order under revision purports to transfer the suit No. 538, in which the learned Third Joint Second Class Subordinate Judge had framed issues, to the Second Joint Second Class Subordinate Judge. That order was, I think, made without jurisdiction by the First Class Subordinate Judge. That

being so, the application must be allowed, and the order of the First Class Subordinate Judge must be set aside. I have not considered the question as to transfer on its merits, because, in my view, if an application for transfer is to be made, it should be made to the District Judge. Application allowed with costs.

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Application allowed.

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APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, Mr. Justice Broomfield and Mr. Justice N. J. Wadia.

SHARANBASAPPA TIPPANNA INDI, MINOR BY HIS GUARDIAN DEPUTY NAZIR OF BIJAPUR (PLAINTIFF) v. SANGANBASAPPA SHIDRAMAPPA SHAHAPUR AND OTHERS (DEFENDANTS).*

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Indian Stamp Act (II of 1899), section 2, sub-section (17) and Schedule I, Article 40—“Mortgage-deed”—Consent decree creating charge on immovable property not being subject-matter of suit—If “mortgage-deed” includes such decree—Decree does not require to be stamped—Act imposing taxation to be construed strictly.

A consent decree creating a charge on immovable property which is not the subject-matter of the suit does not require to be stamped.

The definition of “mortgage-deed” as set forth in section 2, sub-section (17) of the Indian Stamp Act, 1899, does not include such a decree.

An act imposing taxation has always to be construed strictly, that is to say, the Crown has to show that the tax in question is imposed upon a fair construction of the language used in the Act.

CIVIL REFERENCE made by N. D. Upponi, First Class Subordinate Judge, Bijapur.

Stamp duty on consent decree.

The following statement of facts is taken from the letter of reference :—One Sharanbasappa Tippanna, minor by his next friend the Deputy Nazir of the District Court,

* Civil Reference No. 7 of 1934.