

1934

VADLAL
LALLUBHAI
v.
THE
COMMISSIONER
OF
INCOME-TAX,
BOMBAY

Beaumont C. J.

ought to be raised, but that is a sufficient indication to the Commissioner of the points of law which, we think, arise, and which we direct him to state in a case to be referred. Costs to be costs in the reference.

RANGNEKAR J. I agree, and have nothing to add.

Order accordingly.

Y. V. D.

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Divatia.

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October 3

DHORIBHAI DADABHAI PATEL AND OTHERS (ORIGINAL PLAINTIFFS),
APPLICANTS v. PRAGDASJI BHAGWANDASJI MAHANT (ORIGINAL
DEFENDANT), OPPONENT.*

Civil Procedure Code (Act V of 1908), sections 24, 92—Suit for framing a scheme for charity—Suit instituted in District Court—Transfer of suit to First Class Subordinate Judge—Government notification empowering the judge to hear suit that may be instituted—Notification no justification for transfer of suit.

A suit instituted under section 92 of the Civil Procedure Code, 1908, in a District Court as the principal civil Court of original jurisdiction cannot be transferred by the District Judge to one of his Subordinate Judges under section 24 of the Civil Procedure Code, 1908.

In 1928 a suit relating to a scheme for charity was instituted in the Court of the District Judge of Kaira. On July 20, 1933, a notification was issued by the Government of Bombay under section 92 (1) of the Civil Procedure Code, 1908, empowering the First Class Subordinate Judge at Nadiad "to hear suits which may be instituted" under the section. On July 28, 1933, the District Judge transferred the suit to the Court of First Class Subordinate Judge under section 24 of the Civil Procedure Code, 1908. On an application being made in revision to the High Court:

Held, that the notification purported to authorise the First Class Subordinate Judge to hear any suit which may be instituted, but this could not be relied upon to justify the transfer of the suit which had already been instituted in the District Court before the date of notification and therefore the First Class Subordinate Judge was not authorised to hear the suit.

Per Beaumont C. J. "The notification does not deal, as it should, with the institution of suits, but merely with the hearing of suits properly instituted, and is *ultra vires* and has no effect under section 92 of the Civil Procedure Code."

* Civil Revision Application No. 418 of 1933.

APPLICATION for revision against the order made by T. N. Desai, First Class Subordinate Judge of Kaira at Nadiad.

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Application for transfer.

Applicants filed a suit in the District Court of Kaira under section 92 of the Civil Procedure Code for framing a scheme and for accounts of a certain public charitable trust. The suit was instituted on August 11, 1928. The subject-matter of the suit arose in the village of Sarsa which was within the jurisdiction of the Second Class Subordinate Judge's Court at Umreth. The claim was valued at Rs. 20. On July 28, 1933, after the issues were framed, the District Judge of Kaira transferred the suit to the Court of the First Class Subordinate Judge of Kaira at Nadiad.

On July 20, 1933, that is before the date of the transfer, a notification was published in the Government Gazette in the following terms :—

“ In exercise of the powers conferred by sub-section (1) of section 92 of the Code of Civil Procedure, 1908, the Governor in Council is pleased to empower Mr. T. N. Desai, Officiating First Class Subordinate Judge, Nadiad, to hear suits which may be instituted for any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trusts.”

When the suit proceeded further before the First Class Subordinate Judge, the applicants filed a petition in that Court submitting that the Court had no jurisdiction to try the suit and the order of transfer to that Court was bad and *ultra vires*. The Judge disallowed the contention and refused to re-transfer the case to the District Court.

Applicants applied to the High Court.

U. L. Shah, for the applicants.

C. K. Shah, for the opponent.

BEAUMONT C. J. This is a revision application which raises the question whether the transfer of a suit made

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by the District Judge of Kaira to the Court of the First Class Subordinate Judge at Nadiad is valid.

The suit in question was instituted in 1928, and it is a suit relating to a scheme for a charity, a class of suits which falls within section 92 of the Civil Procedure Code. The suit was instituted in the District Court of Kaira, the subject-matter of the suit arising in the village of Sarsa which is within the Kaira District. The claim was valued at Rs. 20. Issues were framed, and on July 28, 1933, the District Judge transferred the suit to the Court of the First Class Subordinate Judge, and the question is whether that transfer is legal.

Now, section 92 provides that in cases falling within that section, a person may on the conditions specified institute a suit for specified relief in the principal civil Court of original jurisdiction, or in any other Court empowered in that behalf by the Local Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate. Apart from any express power conferred by the Local Government under the section upon a particular Court, it would seem to me clear that a suit instituted in the District Court as the principal civil Court of original jurisdiction cannot be transferred by the District Judge to one of his Subordinate Judges. Section 24 of the Code provides that the High Court or the District Court may transfer any suit pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same. Apart from section 92, any Second Class Subordinate Judge in the Kaira District would be competent to try this suit, but to hold that the District Judge has power to transfer a suit which under section 92 must be instituted in his Court to any Second Class Subordinate Judge would defeat one of the purposes of the section. It is clear that the Legislature for some reason considered that in suits of this particular nature the Court trying them should be of a certain status, and the object of the section

would be destroyed if the general powers of transfer under section 24 applied to suits instituted under section 92. In my opinion, therefore, the First Class Subordinate Judge is not competent to try this suit unless it can be shown that he was empowered to do so by the Local Government under section 92.

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Now, it appears that on July 20, 1933, i.e., before the date of the transfer which was on July 28, a notification was published in the *Bombay Government Gazette* in the following terms :—

“In exercise of the powers conferred by sub-section (1) of section 92 of the Code of Civil Procedure, 1908, the Governor in Council is pleased to empower Mr. T. N. Desai, Officiating First Class Subordinate Judge, Nadiad, to hear suits which may be instituted for any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust.”

All the words of the notification occurring after the words “to hear suit” are descriptive of the suits referred to, and the notification may be paraphrased by saying that the Government empowers Mr. T. N. Desai, Officiating First Class Subordinate Judge, Nadiad, to hear suits covered by section 92 of the Code. Now, I venture to think that it is a sound and, I would even say, a golden rule of drafting that where an Act of Parliament or other instrument confers power to authorise some act, the instrument which exercises the power should be expressed in language following as far as possible the language of the Act or instrument which creates the power. Section 92 authorizes the Local Government to empower the institution of a suit falling within section 92 in the Court of the First Class Subordinate Judge of Nadiad, if the whole or any part of the subject-matter is situate within the local limits of that Court’s jurisdiction. But when one looks at the language of the notification which exercises the authority, it bears in its operative part no relationship to the language of section 92 which creates the authority. The notification does not deal with the institution of suits ; it deals with the hearing

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of suits which may be instituted ; nor is there any limit in the notification upon the local jurisdiction of Mr. Desai, who is empowered to hear the suits. If the notification is construed literally, it authorises or purports to authorize Mr. Desai to hear any suit falling within section 92 which may be instituted, which must mean properly instituted, in any place. My own view is that the notification does not deal, as it should, with the institution of suits, but merely with the hearing of suits properly instituted, and is *ultra vires* and has no effect under section 92.

But it is not essential for the purpose of this case to go as far as that, because I am of opinion that even if the notification be given effect to according to its terms, it only purports to authorize Mr. Desai to hear suits which may be instituted, and this suit had already been instituted before the notification. Upon any construction the notification does not, in my opinion, authorize Mr. Desai to hear suits which had already been instituted. Therefore, it seems to me that the notification cannot be relied upon as a justification for the transfer of the suit in this case. As I have already said, apart from the notification, I think the District Judge had no power to transfer the suit.

That being so, the rule must be made absolute with costs and the transfer of the suit set aside.

DIVATIA J. I agree that the rule should be made absolute on the ground that the notification refers only to the hearing of suits that may be instituted. In this case the suit has been instituted in 1928 and the notification is issued in July, 1933. So, on the date of the notification the suit was already instituted in the Court of the District Judge of Kaira. Section 92 refers to institution of suits, but the notification empowers Mr. T. N. Desai, Officiating First Class Subordinate Judge, Nadiad, to hear suits that may be instituted. Therefore, this notification would not, in my opinion, apply to those suits which have been already

instituted before the date of the notification and the District Judge would have no power to transfer such a suit to Mr. Desai's Court under section 24 of the Civil Procedure Code. That transfer being void, Mr. Desai would have no power to go on with the suit.

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Rule made absolute.

J. G. E.

APPELLATE CIVIL.

Before Mr. Justice Murphy and Mr. Justice Sen.

RAGHUNATH SHANKAR DIXIT AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 2), APPELLANTS v. LAXMIBAI KOM HARI WARE, BY HER MUKHTYAR GOVIND NARAYAN WARE AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT No. 3), RESPONDENTS.*

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October 18

Hindu Law—Hindu Widows' Remarriage Act (XV of 1856), section 2—Widow of a Hindu—Conversion to Mahomedanism—Remarriage—Forfeiture of Hindu husband's estate—Caste Disabilities Removal Act (XXI of 1850), section 1.

A Hindu widow who has ceased to be a Hindu before her remarriage by conversion to Mahomedanism, forfeits whatever interest she had in her husband's estate.

Matungini Gupta v. Ram Rutton Roy,⁽¹⁾ *Vitta Tayaramma v. Chatakondur Sivayya*⁽²⁾ and *Mussammatt Suraj Jote Kuer v. Mussammatt Attar Kumari,*⁽³⁾ followed.

Abdul Aziz Khan v. Nirma,⁽⁴⁾ disapproved.

Per Sen J. The provision of section 2 of Hindu Widows' Remarriage Act, 1856, was intended to meet the objection that a Hindu widow could not be permitted to retain any right in her husband's estate on her voluntarily leaving her husband's family. The only aspects of her position that appear to have been taken into consideration in the enactment of section 2 are the limited interest a widow holds in her husband's estate and the contingency of her renouncing the position which entitled her to hold such interest. The question of a change of religion has no direct relevancy to these two questions, and it would be wrong to interpret the expression "any widow" as a widow of a Hindu merely so long as she remained a Hindu.

The view that the word "remarriage" in section 2 of the Hindu Widows' Remarriage Act refers only to remarriage under the Act, is too narrow a view and mistaken, firstly, because the words "under the Act" do not occur in the section,

* Second Appeal No. 84 of 1933.

(1) (1891) 19 Cal. 289, F. B.

(3) (1922) 1 Pat. 706.

(2) (1918) 41 Mad. 1078, F. B.

(4) (1913) 35 All. 466.