

(1911) 09 CAL CK 0010
In the Calcutta High Court

Abdul Karim Abu Ahmed Khan Ghaznavi and Another	APPELLANT
Vs	
Abdus Sobhan Choudhury and Others	RESPONDENT

Date of Decision : 05-09-1911

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : 13 Ind. Cas. 243

Hon'ble Judges : Woodroffe, J;Teunon, J

Bench : Division Bench

Judgement

Woodroffe, J.—This Rule must, I think, be made absolute, because the notification of the 12th July 1911 was not such a notification as was contemplated by Section 92 of the Code of Civil Procedure. It was a notification directed to a particular Judge and purported to deal with a particular litigation, and that litigation was, at the date of the notification, already pending in the Court of the District Judge. It follows that the Subordinate Judge of Mymensingh was not competent to try or dispose of the suit and the District Judge had no power to transfer the suit to a Court which was not then competent to dispose of it. In, however, making this Rule absolute I desire to make it clear, in order to avoid any possible objection in future, that the District Judge has, notwithstanding anything that has hitherto been done, power to try this suit. The result of our holding that the Subordinate Judge was not competent to try the suit is that the District Judge effected nothing by his order of transfer and, therefore, the suit remained where it was originally instituted. The District Judge, therefore, has jurisdiction to try the suit; and we think, having regard to the circumstances of the case and also to the waste of time that has been involved by reason of the infructuous proceedings in the Court of the Subordinate Judge, that this case should be heard as soon as possible; that is to say, as soon as the Judge can conveniently hear it.

2. We may also say, having regard to the statements made to us, that if there is pressure of work in the Judge's Court, an application may properly be made by

him for assistance in carrying on his work as District and Sessions Judge.

3. In the circumstances of the case, the Rule is made absolute without costs.

4. Let the record and this order be sent down at once.