

(1963) 07 GUJ CK 0005
In the Gujarat High Court

Hasmukhbhai Manmohandas Patel

APPELLANT

Vs

Punamchand Kalidas and Others

RESPONDENT

Date of Decision : 10-07-1963

Acts Referred:

Ahmedabad City Courts Act, 1961 — Section 20(1), 20(7)
Bombay Civil Courts Act, 1869 — Section 21
Civil Procedure Code, 1908 (CPC) — Section 38, 39

Citation : (1964) 5 GLR 13

Hon'ble Judges : N.M. Miabhoy, J

Bench : Single Bench

Judgement

N.M. Miabhoy, J.—This revision application raises an interesting question relating to the jurisdiction of the City Civil Court at Ahmedabad. The facts giving rise to this revision application may be briefly stated at first. One Hasumukhbhai Manmohandas Patel filed Special Jurisdiction Darkhast No. 4 of 1953 in the Court of the then learned Civil Judge (Senior Division) Ahmedabad for execution of a final partition decree. All the properties except one ordered to be partitioned were situated in the city of Ahmedabad. That one property was situated in a village of the District of Ahmedabad and thus was within the ordinary jurisdiction of the then learned Civil Judge (Senior Division) Ahmedabad. Whilst this darkhast was pending The Ahmedabad City Courts Act 1961 Gujarat Act No. XIX of 1961 (hereafter called the Act) was passed on the 15th of May 1961 and on 4th of November 1961 the City Civil Court (here after called the City Court) was established by the State of Gujarat for the city of Ahmedabad under the power vested in it by Section 3 of the Act. u/s 20 Sub-section (1) of the Act the above darkhast was taken to have stood transferred to the City Court and was given a new number in that Court. The darkhast came up for hearing before a learned Judge of the City Court. He held that the decree had become exhausted so far as the properties situated within the limits of the city of Ahmedabad were concerned and that inasmuch as the part of the decree which thereafter remained to be executed related to a property which was not situated within the city of

Ahmedabad he had no longer any jurisdiction to deal with the darkhast. Therefore the learned Judge ordered that the record of the darkhast should be sent to the Court of the learned Civil Judge (Senior Division) at Narol (hereafter called the Narol Court) which had come to be established in place of the Court of the Civil Judge (Senior Division) Ahmedabad with effect on and from 4th of November 1961 under a Notification No. CCC. 1061/4166 (ix) dated 1st of November 1961 by the State Government in exercise of the powers conferred on it by Section 21 of the Bombay Civil Courts Act 1869 (hereinafter called the Act of 1869). This darkhast was then numbered as Darkhast No. 4 of 1961 by the Narol Court. The Narol Court came to the conclusion that it had no jurisdiction to hear the darkhast and that the Court which had jurisdiction to do so was the City Court. Consequently the Narol Court sent the record of the darkhast back to the City Court. The darkhast came up for hearing before Shri D.P. Desai the learned Judge 7 Court of the City Court on 20th of February 1963. It appears that there were several other darkhasts similarly instituted in the Court of the then learned Civil Judge (Senior Division) Ahmedabad before 4-11-1961 and which had similarly been transferred to the Narol Court and which had been similarly retransferred by that Court to the City Court. The learned Judge aforesaid passed a common order on 20th of February 1963 in respect of all these retransferred darkhasts. He said in his order that in Miscellaneous Application No. 49 of 1962 in which he had heard a similar matter he had held that such darkhasts were within the jurisdiction of the Narol Court and that consequently by retransfer of such darkhasts the Narol Court had failed to exercise the jurisdiction vested in it by law. Consequently by his above order dated 20th February 1963 the learned Judge ordered that all the aforesaid darkhasts should be referred to this Court for passing suitable orders. Accordingly a reference was made by the Principal Judge City Court by his letter dated 27th of February 1963 to this Court in which he referred all the aforesaid darkhasts for the orders of this Court. The said reference was numbered as a civil revision application. There are some other proceedings pending in the City Court which have also been similarly referred to this Court. The proceedings so referred may broadly be divided into three categories. The first category consists of darkhast proceedings which were pending immediately before 4-11-1961 in the Court of the then learned Civil Judge (Senior Division) Ahmedabad. The second category consists of those darkhasts which were filed in the City Court after 4-11-1961 but in respect of which decrees were passed by the then learned Civil Judge (Senior Division) Ahmedabad before 4-11-1961. The third category consists of proceedings for obtaining final decrees instituted after 4-11-1961 but in respect of which the preliminary decrees were passed before 4-11-1961 by the then learned Civil Judge (Senior Division) Ahmedabad. The common feature of all these three kinds of proceedings is that they relate to properties which were all situated outside the jurisdiction of the City Court but which were situated before 4-11-1961 within the jurisdiction of the Court of the then Civil Judge (Senior Division) Ahmedabad.

2. The question which arises for determination in the present revision application is whether the Special Darkhast No. 4 of 1953 which was pending in the Court of the learned Civil Judge (Senior Division) Ahmedabad on 4-11-1961 was cognizable by the City Court or by the newly established Court at Narol. As the decision of this question in the present proceeding affected the decisions in the other cases which were similarly referred by the Principal Judge City Court by his letter dated 27 February, 1963 and other matters which have been similarly referred not only Mr. M.C. Shah the learned advocate for Hasmukhbhai Manmohandas Patel but also the learned advocates appearing in those other cases were heard for or against the question to be decided I have heard the arguments of all those learned advocates and after giving full consideration to all that the learned advocates on both the sides had to say I have reached the conclusion that on the facts aforesaid it is the City Court which has jurisdiction to deal with the original darkhast No. 4 of 1963. My reasons for this conclusion are as follows.

3. Mr. Shah contends that it is the City Court which has jurisdiction to deal with the aforesaid darkhast. He bases his submission on Section 20 Sub-section (1) of the Act which is in following terms:

20 (1) All suits and proceedings cognizable by the City Court and pending immediately before the appointed day in the District Court or the Court of a Civil Judge shall stand transferred to the City Court.

The expression appointed day has been defined in Sub-section (1) of Section 2 of the Act as the day on which the remaining provisions of the Act come into force under Sub-section (2) of Section 1. Under the latter sub-section section I of the Act came into force at once and the remaining provisions were to come into force on such day as the State Government might by notification in the Official Gazette appoint. By a notification No. CCC. 1061/3733-D dated 4th October 1961 issued by the State Government under Sub-section (2) of section I aforesaid the State Government appointed 4th of November 1961 as the day on which the other provisions of the Act were to come into force. Therefore there is no dispute that the expression appointed day in Section 20 subsection (1) now means 4th November 1961. Sub-section (1) of Section 20 refers to all suits and proceedings. There is no dispute that the latter expression includes execution proceedings and proceedings for final decree. The sub-section says that all suits and proceedings shall stand transferred to the City Court provided two conditions are satisfied. The first condition is that the suits and proceedings must be pending either in the District Court which means the then District Court at Ahmedabad or the Court of a Civil Judge which means the then Court of the Civil Judge (Senior Division) at Ahmedabad. There is no dispute that in the present case the darkhast was so pending on this day. The second condition is that the suits and proceedings must be cognizable by the City Court. The contention of Mr. Shah is that the darkhast aforesaid was cognizable by the City Court. As against this the learned advocates who support the references of the learned Principal

Judge and oppose the proposition for which Mr. Shah contends contend that the darkhast aforesaid is not cognizable by the City Court. Therefore having regard to the rival contentions the key expression in Section 20 Sub-section (1) of the Act is the expression cognizable by the City Court and it is on a proper interpretation of that expression that the answer to the aforesaid question depends. Omitting a reference to suits with which I am not concerned in the present proceeding the question for consideration is which proceedings come within the cognizance of the City Court.

4. Now the jurisdiction of the City Court is defined by a part of Section 3 of the Act as follows:

Section 3:....

Notwithstanding anything contained in any law such Court shall have jurisdiction to receive try and dispose of all suits and other proceedings of a civil nature and arising within the City of Ahmedabad except suits or proceedings which are cognizable by the High Court and Small Cause Court.

An analysis of this part of the section shows that suits or proceedings cognizable by the High Court and Small Cause Court do not come within the purview of the City Court. There is no dispute about this. No one contends that the aforesaid darkhast is within the cognizance of either this High Court or the Small Cause Court. Omitting references to suits the substantive part of the aforesaid provision is that in order that proceedings may be within the cognizance of the City Court two conditions must be satisfied. The first is that the proceeding must be of a civil nature and the second is that the proceeding must arise within the City of Ahmedabad. Now having regard to the fact that the part of the decree which remains to be executed relates to a property situated outside the City of Ahmedabad the darkhast will be outside the jurisdiction of the City Court in as much as the relief sought therein is in respect of a property which is outside the territorial jurisdiction of that Court. If the darkhast were to be filed afresh after 4-11-1961 and if reliance was to be placed on the aforesaid part of Section 3 of the Act then the City Court will have no jurisdiction to deal with the darkhast. This is the contention of the opponents. Mr. Shah however contends that the aforesaid part of Section 3 is not the only part of the Act which confers jurisdiction upon the City Court. He contends that jurisdiction is also conferred upon the City Court by the provision contained in Sub-section (7) of Section 20 of the Act. Therefore it is necessary to quote Sub-section (7) of Section 20: Sub-section (7):

All applications for the execution or enforcement of a decree or order made before the appointed day by any Court which has been superseded or has ceased to exist by virtue of the provisions of this Act and all other applications arising out of the said decree or order shall be made to and disposed of by the City Court.

It is quite obvious that this sub-section does not deal with all proceedings but

that it deals with only two types of proceedings. Firstly it deals with applications for execution or enforcement of a decree or order and secondly it deals with all other applications which arise out of a decree or order. The sub-section is not applicable to all decrees or orders but it is applicable only to those decrees and orders which were made before the appointed day by any court which has been superseded or has ceased to exist by virtue of the provisions of this Act. It is only to decrees or orders made by the latter kind of Court that the provisions of Sub-section (7) apply and the controversy in the present case centres round the interpretation and application of the aforesaid expression viz. Court which has been superseded or has ceased to exist by virtue of the provisions of this Act.

5. Now the argument in support of the jurisdiction of the City Court may shortly be stated. The contention is that the Court of learned Civil Judge (Senior Division) Ahmedabad which passed the decree under execution has been either superseded or has ceased to exist by virtue of the provisions of the Act. On the other hand the opponents of the proposition contend that that Court does not answer the aforesaid description. Therefore the main task which has got to be performed is to determine whether by virtue of the provisions of the Act the Court of the learned Civil Judge (Senior Division) Ahmedabad has either been superseded or has ceased to exist. The opponents of the position have also advanced some more arguments in support of their view which I propose to consider after the above main controversy is resolved.

6. In order to answer the aforesaid question it is necessary first of all to notice the provision contained in Section 19 of the Act which is as follows:

Section 19:

With effect on and from the appointed day the Bombay Civil Courts Act 1869 and the Provincial Small Cause Courts Act 1887 and all rules notifications and orders made thereunder shall cease to apply to or be in force in the City of Ahmedabad and the provisions of the Bombay General Clauses Act 1904 shall save as otherwise expressly provided in this Act apply to such cesser as if it were a repeal of an enactment. Now this section clearly provides that with effect from the appointed day that is 4 not only the provisions contained in the Bombay Civil Courts Act 1869 but all rules notifications and orders made thereunder shall cease to apply to or be in force in the City of Ahmedabad.... Mr. Shah emphasizes the fact that the provisions of the Act of 1869 and rules notifications and orders made thereunder were not abolished for the City of Ahmedabad but that those provisions were only to cease to apply or be in force in the City of Ahmedabad. Therefore his contention is that what is provided for is not the abolition of the Act of 1869 and the rules notifications and orders made thereunder but that what is provided for is only the non-application or the cesser of the application of those provisions rules etc. in the City of Ahmedabad. It is contended that the latter part of Section 19 which speaks of a repeal is for the limited purposes of the Bombay General Clauses Act 1904 that that part only introduces the fiction of a repeal and that it does not in specific terms repeal the

provisions of the Act of 1869 in so far as it applied to the City of Ahmedabad. Therefore the contention is that the case should not be decided on the basis that the provisions of the Act of 1869 and the rules notifications and orders made thereunder were repealed but that it should be decided on the basis as if they had ceased to apply and to be in force in the City of Ahmedabad. Though there is force in the argument of Mr. Shah the argument has no practical force in so far as the aforesaid controversy is concerned. The real question which has got to be considered is as to what effect the aforesaid part of Section 19 of the Act has on the Court of the learned Civil Judge (Senior Division) which was in existence in the City of Ahmedabad before 4-11-1961.

7. Now before I deal with the effect which Section 19 had upon the Court of the learned Civil Judge (Senior Division) Ahmedabad it is necessary to refer to the admitted fact that before 4-11-1961 that Court had been established u/s 21 of the Act of 1869. Section 21 of the Act of 1869 enacts that there shall be in each district so many Civil Courts subordinate to the District Court as the State Government shall from time to time direct. Section 5 of the Act of 1869 provides that there shall be in each district a District Court presided over by a Judge to be called the District Judge. There is no dispute that under the latter provision a District Court was established at Ahmedabad some time after the Act of 1869 was passed. There is also no dispute that immediately after the latter Act amongst the several Civil Courts which were established in the District of Ahmedabad was the Civil Court in the City of Ahmedabad. Section 22 of the Act of 1869 empowers the State Government to appoint Judges designated as Civil Judges for the Civil Courts established u/s 21. u/s 24 the Judges are of two classes: (i) Civil Judge (Senior Division) and (ii) Civil Judge (Junior Division). There is no dispute that u/s 22 long before the appointed day a Civil Judge (Senior Division) was appointed to preside over the Civil Court established at Ahmedabad. u/s 22A of the Act of 1869 the State Government has the power to fix the local limits of the ordinary jurisdiction of Civil Judges. There is no dispute that under that section the territorial jurisdiction of the Judge of Senior Division appointed at the Civil Court at Ahmedabad was fixed as not only the City of Ahmedabad but also the City and the North Daskroi Talukas. Therefore there is no dispute that the ordinary jurisdiction of the Civil Judge (Senior Division) Ahmedabad comprised the City of Ahmedabad and the areas situated in the surrounding Talukas. u/s 23 of the Act of 1869 the State Government is empowered to fix the place where the Civil Judges appointed u/s 22 shall hold their Courts. It is not disputed that the Civil Judge (Senior Division) appointed to the Civil Court at Ahmedabad was to hold his Court in the City of Ahmedabad. Now u/s 25 of the Act of 1869 a Civil Judge (Senior Division) exercises in addition to his ordinary jurisdiction a special jurisdiction and that special jurisdiction extends not only to the areas which are within his ordinary jurisdiction but also to areas which are situated within the ordinary jurisdiction of the Civil Judges (Junior Division) appointed in the district in which Civil Judge (Senior Division) is appointed. It is not disputed that there was only one Civil

Judge (Senior Division) appointed in the district of Ahmedabad and that therefore that Civil Judge had also special jurisdiction over the whole district of Ahmedabad. Therefore the position before the appointed day was that there was a Civil Court at Ahmedabad presided over by a Judge of the Senior Division who exercised ordinary jurisdiction in the City of Ahmedabad and the City and the North Daskroi Talukas and special jurisdiction over the whole district of Ahmedabad. It is also not disputed that under the Civil Judge (Senior Division) Ahmedabad a number of Joint Civil Judges were appointed u/s 23 to assist him in the disposal of the civil business on his file and that these Civil Judges were either of the class of Senior Division Judges or of Junior Division Judges. This was the set up of the Civil Court at Ahmedabad on or before the appointed day i.e. 4-11-1961.

8. Section 20 Sub-section (1) of the Act also deals with suits and proceedings pending in the District Court. I do not propose to discuss the question with reference to the District Court as it does not arise for discussion in the present proceeding. I propose to confine my attention only to proceedings pending before the Court of a Civil Judge which would mean in the context of the present case the Court of the Civil Judge (Senior Division) Ahmedabad aforesaid.

9. Now the question for consideration is as to what impact Section 19 of the Act had on the aforesaid set up by virtue of the fact that the Act of 1869 ceased to apply or to be in force in the City of Ahmedabad. In my judgment Section 19 of the Act did not efface the Civil Court established at Ahmedabad u/s 21 of the Act of 1869. The Civil Judge (Senior Division) Ahmedabad was appointed not only for the City of Ahmedabad but also for the surrounding Talukas and he had also a special jurisdiction not only in the city of Ahmedabad but over the whole district of Ahmedabad. There is nothing in Section 19 of the Act which says or implies that the Court of the Civil Judge (Senior Division) Ahmedabad will become abolished on the coming into operation of that section. On the contrary as I shall presently point out there are indications in the Act itself which show that that Court was not abolished and that it still remained in existence though a part of its territorial jurisdiction was curtailed. Similarly the appointment of the Civil Judge for the Civil Court at Ahmedabad u/s 22 of the Act of 1869 was not cancelled by Section 19 of the Act. The Judge was appointed not only for the city of Ahmedabad but also for the other areas aforesaid. However Section 19 of the Act had the effect of affecting the territorial jurisdiction of the learned Civil Judge (Senior Division) Ahmedabad as fixed by the Government u/s 22A of the Act of 1869. Under the relevant notification u/s 22A of the Act of 1869 the Government had included the city of Ahmedabad within the ordinary local jurisdiction of the Civil Judge (Senior Division) Ahmedabad but because of Section 19 of the Act the Act of 1869 ceased to apply to the city of Ahmedabad and that area would be removed from the jurisdiction of the learned Civil Judge (Senior Division) Ahmedabad. In my judgment therefore the only effect which the non-application of the Act of 1869 to or the cesser of that Act in the city of Ahmedabad was that the jurisdiction of the learned Civil Judge (Senior Division) Ahmedabad in so far

as it extended over the city of Ahmedabad became curtailed and the provision of Section 19 of the Act in my opinion had no other effect. Mr. Shah contends that u/s 23 of the Act of 1869 the place where the learned Civil Judge (Senior Division) Ahmedabad was to hold his place was the city of Ahmedabad itself and as the provisions of the Act of 1869 ceased to apply to the city of Ahmedabad the privilege of that learned Judge to hold his Court in the city of Ahmedabad was also taken away by Section 19 of the Act and that that being so the Court of the learned Civil Judge (Senior Division) Ahmedabad must be taken to have been abolished. I cannot agree with this submission. In my judgment in the first place u/s 23 of the Act of 1869 itself there is no bar to a Civil Judge holding his Court outside the limits of his ordinary jurisdiction. The proviso to the first paragraph of Section 23 of the Act of 1869 says in specific terms that the State Government may for special reasons direct that a Civil Judge shall hold his Court at a place outside the local limits of his jurisdiction. Mr. Shah contends that the State Government has no power to fix a place for holding the Court of a Civil Judge unless the place is also within the area in which the Act of 1869 is in operation. I am unable to find any such limitation or restriction in the aforesaid proviso. But even assuming for a moment that the learned Civil Judge (Senior Division) Ahmedabad lost the power of holding his Court in the city of Ahmedabad by virtue of the provision contained in Section 19 of the Act in my opinion that cannot have any effect whatsoever upon the existence of a Civil Court at Ahmedabad presided over by a Senior Division Judge and having authority to exercise jurisdiction over the areas other than the city of Ahmedabad. In my judgment having regard to the fact that that Court had jurisdiction over areas other than the city of Ahmedabad it is crystal clear that unless there is something more than what Section 19 of the Act contains the jurisdiction over those other areas is not in any way lost. The aforesaid provision contained in Section 19 of the Act is made for the purpose of facilitating the establishment of a City Court at Ahmedabad and there is no intention whatsoever of creating a vacuum in other areas. It is quite clear that if the argument of Mr. Shah were to be given effect to the result will be that there will be no Civil Court by the provisions of the Act itself in the above other areas on the coming into operation of the Act.

10. Mr. Shah tries to derive support for his reasoning from the notification No. CCC. 1061/4166 (ix) dated 1st November 1961 issued by the Government of Gujarat u/s 21 of the Act of 1869. I have already referred to this notification in a previous part of this judgment. The relevant part of this notification is as follows:

...and in super session of all notifications relating to the establishment of a Court of Civil Judge the Senior Division) at Ahmedabad. the Government of Gujarat hereby directs that with effect on and from the 4th November 1961 (1) The Court of Civil Judge (Senior Division) Ahmedabad shall be abolished (2) there shall be a new Court of Civil Judge (Senior Division)....

The place for holding of this new Court is fixed u/s 22A of the Act of 1869 at

Narol and the local limits of the ordinary jurisdiction of that Court is mentioned as the above areas excluding the city of Ahmedabad. Now the argument is that the State Government has established a new Court because under the provisions of the Act the old Court of the Senior Division Judge at Ahmedabad had come to an end. A statute can not be construed by reference to the view which the Government has taken about its interpretation. Apart from this infirmity in the argument of Mr. Shah it is not correct to say that the aforesaid notification is based on the view that the latter Court had been abolished by the provisions of the Act itself. This follows from the fact that the notification itself states that the Court of the Civil Judge (Senior Division) Ahmedabad shall be abolished. If the view of the Government was that the Act had abolished that Court the Government would not have said so in the aforesaid notification.

11. Therefore on the whole I have come to the conclusion that the effect of Section 19 of the Act on the judicial set up as it existed in Ahmedabad in relation to the Civil Court established u/s 21 of the Act of 1869 was only to curtail the territorial jurisdiction of that Court by excluding the city of Ahmedabad and nothing more and the Court of the Civil Judge (Senior Division) Ahmedabad which was in existence on the appointed day remained intact and continued to exercise jurisdiction over the areas other than the city of Ahmedabad. It is true that that Court in its turn is abolished by the aforesaid notification dated 4th November 1961 but that is not the result of the Act but it is the result of the exercise of the powers by the State Government vested in it under Sections 2121 and 23 of the Act of 1869.

12. However Mr. Shah contends that the aforesaid result does not necessarily mean that the Court of the learned Civil Judge (Senior Division) at Ahmedabad was not superseded within the meaning of Sub-section (7) of Section 20 aforesaid. He contends that the effect is that Civil Court at Ahmedabad was partially superseded before the appointed day in relation to its total territorial jurisdiction and was completely superseded in relation to the jurisdiction which it exercised over the city of Ahmedabad. As against this Mr. Mehta contends that it was not a case of supersession or cessation of any Court at all and that in any case being a case of partial supersession the provision of Sub-section (7) of Section 20 of the Act does not apply inasmuch as by holding that it applies the Court will be adding the word partially before the word superseded in Sub-section (7) of Section 20 of the Act. Mr. Mehta's main contention is that Section 19 of the Act is not designed or intended to supersede any Court whatsoever. He submits that that section is enacted only with a view to remove from one and the same area two conflicting sets of Courts which otherwise would come into existence if Section 19 of the Act were not enacted. He contends that the intention of the Legislature by enacting the Act was to establish the City Court at Ahmedabad and that if the jurisdiction of the Court of the Senior Division Judge which was functioning then was not taken away then the result would be that there would be in one and the same area two sets of Courts having the same jurisdiction. In my judgment this argument does not affect the question in hand

one way or the other and it is not all effective to counter the result which I have arrived at. In my judgment the deprivation of the jurisdiction of the Court of the Civil Judge (Senior Division) at Ahmedabad from the city of Ahmedabad means that on the application of the Act a vacuum was created in the city of Ahmedabad and the vacuum was so created in order to enable the Government by a notification u/s 3 to establish the City Court. In my judgment the vacuum was so created with the definite and purposeful intention of substituting the City Court for the Court of the Senior Division which was existing then. In my judgment this is the clear case of supersession of the Civil Court (Senior Division) Ahmedabad by the City Court. Undoubtedly supersession is not complete. It is partial only. This must follow from my conclusion that the Court of Senior Division Judge at Ahmedabad was not abolished and that its jurisdiction was only curtailed. But I am unable to see anything in the language of Sub-section (7) of Section 20 of the Act which can compel me to hold that it excludes a partial supersession. In fact if the provisions of the Act are studied not only with reference to the Court of the Senior Division Judge but also with reference to the District Court at Ahmedabad it must follow that in both the cases there is partial supersession only and there cannot be complete supersession.

13. The argument of Mr. Mehta is that having regard to my conclusion that only the jurisdiction of the Court of the Senior Division was curtailed the expression by any Court which has been superseded is not an apposite expression. The argument is that the appropriate expression will be by any Court the Jurisdiction of which has been superseded. The argument does not appeal to me. It is true that Sub-section (7) aforesaid does not make any reference to any change in territorial jurisdiction. It is true that such a change is in fact effected by Section 19 of the Act. But it was not the intention of the Legislature to make the change of territorial jurisdiction the test for the matter in hand. The intention of the Legislature was to make the supersession of the Court the test for determining the Court which shall have jurisdiction to deal with applications of the kind mentioned in Sub-section (7).

14. In view of my aforesaid conclusion it is not necessary for me to consider whether the second part which states that the Court may also be a Court which has ceased to exist does or does not apply to the facts of the present case. Having regard to my conclusion aforesaid however it is crystal clear that that part will not apply to the Court of the Civil Judge (Senior Division) Ahmedabad because that Court had never ceased to exist. It is not necessary for me in the present proceeding to determine whether there was or was not a Court which had ceased to exist. That expression may however aptly apply to the Provincial Small Causes Court which by virtue of the provisions of the Act ceased to exist. However I do not wish to express any definite opinion on the subject.

15. The next argument is that even if I hold that the Court of the learned Civil Judge (Senior Division) Ahmedabad was superseded by the City Court even then Sub-section (7) of Section 20 of the Act cannot apply inasmuch as the

supersession cannot be said to have taken place by virtue of the provisions of the Act. As I have already said that in order that Sub-section (7) can apply it is also necessary to establish that the supersession took place by virtue of the provisions of the Act. The argument is that the cessation did not take place by virtue of the provisions contained in the Act but the supersession took place by virtue of an act of the Government in abolishing the Court of the Senior Division Judge at Ahmedabad and by constituting a New Court at Narol. I cannot agree. In my judgment the supersession has taken place by virtue of the provisions contained in the Act. In this connection it is important to notice that the sub-section does not say that the supersession must be under the Act. What the section states is that it should be by virtue of the Act which means by force of the provisions contained in the Act. In my judgment having regard to the fact that the jurisdiction of the Civil Judge (Senior Division) comes to be curtailed directly by virtue of the provisions contained in Section 19 the supersession has taken place by virtue of that particular section and not by virtue of anything else. It is true that the City Court is not established by the Act itself. The City Court comes to be established by virtue of a notification u/s 3. But even then the establishment of that Court is by virtue of the provision contained in the Act. Under the circumstance in my judgment the Court of the Senior Division Judge at Ahmedabad as it existed before the appointed day answers the description of the Court as given in Sub-section (7) Section 20 of the Act. It is that Court which is superseded by virtue of the provisions of the Act. Having regard to the fact that the decree under execution was one which was passed by that Court in my judgment the decree under execution was one which was passed by a Court which was superseded by virtue of the provisions of the Act. Therefore in my judgment all the conditions necessary for the application of Sub-section (7) of Section 20 of the Act are satisfied in the present case.

16. As against the aforesaid view some more arguments are advanced by some of the other learned advocates appearing in the case. It is contended that the expression Court which has been superseded or has ceased to exist by virtue of the provisions of this Act does not mean what it actually says but that the true meaning of that part of Sub-section (7) of Section 20 of the Act when read as a whole is that the decree or order must have been passed by a Court exercising jurisdiction within the limits of the City of the Ahmedabad. I cannot agree with this submission in my opinion such an interpretation cannot be given to the above expression unless it is re-written completely. It will be doing violence to the language used by the Legislature if one were to interpret the sub-section in the aforesaid manner. It is not as if that the Legislature was unaware of the distinction between a Court which is superseded and a Court which has passed a decree in the exercise of jurisdiction within the limits of the City of Ahmedabad. One has only to compare the language used in Sub-section (5) of Section 20 with the language used in Sub-section (7) of that section to see the futility of the above argument. Sub-section (5) deals with appeal or revision application. In relation to these matters for the purpose of providing as to where these matters

shall get transferred the Legislature has deliberately used a different phraseology and said that in respect of such an appeal or revision application against any judgment decision decree or order passed before the appointed day by a Court in the exercise of jurisdiction over the area within the limits of the City of Ahmedabad the matter shall stand transferred to one or the other Court.

17. Another argument which is advanced is that it is rather strange that whereas in respect of all suits and proceedings which are to be instituted after the appointed day the Legislature should have provided by Section 3 of the Act that the matters therein should have arisen within the city of Ahmedabad in respect of execution and other applications mentioned in Sub-section (7) Section 20 the Legislature should have made a different provision. It is contended that there is no reason whatsoever as to why the Legislature should give a discriminatory treatment to applications for execution and other kinds of applications aforesaid. It is contended that the learned Civil Judge (Senior Division) is as much competent to deal with the latter types of applications as the City Court. I do not think it is proper to speculate as to the reason which impelled the Legislature to make a provision of the aforesaid kind. The fact of the matter is that the provision exists and must be applied. However if one has to find reason for the provisions one can imagine more than one. The Legislature may have thought that it will be better either for the sake of expediency or convenience that the area in which the subject matter is situated should not be made the criterion in respect of decided cases and thereby give scope for argument as to where and how much of the subject matter is situated in one or the other area. It may have thought that a definite and clear-cut rule should be laid that the City Civil Court shall have jurisdiction to deal with execution matters and further proceedings arising out of decided cases. Another reason may be that the learned advocates who had appeared in the decided cases might be better able to deal with such cases the presumption being that such advocates will continue their practice in the City Court. Still another reason may be that the Legislature may have thought that as the record of such cases was likely to remain with the City Court it will be better to confer jurisdiction in the latter Court. Or the Legislature may have thought that in some cases as in the present case the decrees may be partly in relation to properties situated in and partly outside Ahmedabad and difficulties may arise if they were to be executed in or if further proceeding were to be taken by two different Courts each dealing with only a part of the subject matter. However it is not necessary to speculate as to what was the reason which impelled the Legislature to make the provision. The fact is that in respect of the types of applications mentioned in Sub-section (7) aforesaid there is a clear direction given by the Legislature that in respect of further proceedings therein jurisdiction vests in the City Court and that the superseded court will have nothing to do with them.

18. Another argument of Mr. A.H. Mehta is that the Court of the Civil Judge (Senior Division) Ahmedabad is not superseded but that only its jurisdiction is curtailed. I cannot agree with this form of the submission also. It is true that the

effect of Section 19 is the curtailment of the jurisdiction of that Court. But at the same time the further effect thereof necessarily is that it is also superseded though partially by the City Court.

19. Mr. Mangaldas Shah bases his argument upon the expression disposed of by the City Court. He contends that the effect of this particular expression is the importation of that part of Section 3 which I have reproduced above and which gives jurisdiction to the City Court in respect of proceedings arising within the city of Ahmedabad I do not think I can give effect to this argument also. The aforesaid words are only intended to give jurisdiction to the City Court to dispose of the proceedings and they are not at all intended to curtail the jurisdiction which is otherwise conferred by Sub-section (7) of Section 20 of the Act.

20. Mr. Mehta contends that even if it be held that under Sub-section (7) City Court is given jurisdiction to deal with execution and other applications in respect of decrees or orders made by the superseded Court the general effect of Sub-section (7) is only to confer such jurisdiction upon the City Court only in respect of fresh proceedings and no more. It is contended that this cannot have any effect upon pending proceedings. I entirely agree that the Sub-section (7) deals in specific terms with future proceedings in respect of the decrees and orders mentioned therein. Mr. Mehta further contends that the necessary result of this finding is that the provisions of subsection (7) are not attracted to Sub-section (1) of Section 20 of the Act. He contends that the by the City Court must be confined to those matters which are dealt with by Section 3 of the Act and not to those which are dealt with by Sub-section (7) aforesaid. I cannot agree. In my judgment the true effect of a conjoint reading of Section 3 and Sub-section (7) of Section 20 of the Act is that the City Civil Court is invested with jurisdiction not only in respect of matters which are mentioned in Section 3 but also in respect of matters which are dealt with by Sub-section (7) and the matters dealt with by both these parts of the Act constitute the total jurisdiction with which the City Court has been invested and that therefore the matters dealt with by both the parts of the Act constitute matters which are within the cognizance of the City Court. Mr. Mehta however contends that having regard to the fact that Sub-section (7) of Section 20 of the Act deals with only pending matters and Sub-section (7) deals with fresh matters it could have been hardly the intention of the Legislature that the kind of matters which were to be instituted in future should have been included in respect of matters already pending. In my judgment this is a wrong approach. The question for consideration is which are the matters which are within the cognizance of the City Court and all these matters are bound to be such matters as can be taken cognizance of by the City Court after its establishment. Even the matters which are dealt by Section 3 of the Act are matters which can be taken cognizance of by the City Court only after its establishment. Therefore the fact that the matters are to arise in future cannot make any difference. If Section 3 is attracted then in my judgment for the same reason Sub-section (7) must also be attracted to Sub-section (1) of Section 20 of the Act.

21. In my judgment a strange result will follow if Sub-section (7) of Section 20 of the Act is not brought in aid for the purpose of determining the jurisdiction of the City Court. The result will be that in respect of the darkhast from which the present revision application arises although it will have to be dealt with by the Narol Court if for some reason this darkhast comes to be disposed off then a fresh darkhast for the same relief will have to be instituted in the City Court. It is hardly probable that the Legislature could have intended such a strange result.

22. There is another way in which the argument advanced by the opponents of the proposition can be tested. I asked all the learned Advocates contending against the proposition to point out to me any Court which in their submission is a Court superseded other than the District Court or the Senior Division Judges Court I pointed out to them that the effect of the acceptance of their submission would be that there would not be a single Court which would answer the aforesaid description. Not only none of the learned advocates was prepared to point out any such Court but each one of them had to concede that in his opinion there was no such Court which answered the aforesaid description. That means that the Legislature introduced a provision which was redundant and superfluous. In my judgment if a Court can reasonably be found which answers the description of a superseded Court then it will be improper to put such a construction on any provision of the Act as will lead to the conclusion that there is not a single Court which is superseded.

23. In my judgment if Sub-section (7) of Section 20 of the Act were to be construed as being limited to decrees and orders passed in exercise of jurisdiction over the area of the City of Ahmedabad alone then the whole of Sub-section (7) will be superfluous because it is quite clear that the same result will follow from a part of Section 3 aforesaid which deals with the jurisdiction of the City Court. In my judgment Sub-section (7) is intended to confer jurisdiction upon the City Court which is in addition to the jurisdiction conferred on it by the aforesaid part of Section 3 of the Act.

24. For the aforesaid reasons I have come to the conclusion that the original Special Darkhast No. 4 of 1953 filed in the Court of the learned Civil Judge (Senior Division) Ahmedabad and pending in that Court on 4-11-1961 stood transferred to the City Court under Sub-section (1) of Section 20 of the Act and that that Darkhast must be disposed off by the City Court in accordance with law.

25. Before I conclude I want to sound a note of warning. All that I have decided in the present revision application is that under Sub-section (7) of Section 20 of the Act an application of the kind dealt with in this revision application requires to be made to and dealt with by the City Court and it is for that reason that the City Court has got jurisdiction in the matter. However I wish to make it clear that I am not called upon to decide and I do not express any opinion as to how the matter is to be disposed of after the same goes back to the City Court. If any argument happens to be addressed to that Court based on the fact that the property is not situated within its jurisdiction and if it is submitted that by reason

of some law which has not been affected by the Act such as for example Sections 38 and 39 of CPC the decree cannot be executed by the City Court but requires to be transferred to some other Court for execution then the City Court will decide that question on its own merits. All that I have decided is that by virtue of the fact that the darkhast was pending in the Court of the learned Civil Judge (Senior Division) Ahmedabad on the appointed day and that the decree was passed by that particular Court the matter being pending in that Court it is cognizable under Sub-section (7) of Section 20 of the Act and u/s 20(1) it stood transferred to the City Court on the appointed day.

Having regard to my aforesaid conclusion it is clear that the order of the City Civil Court transferring the matter to the Narol Court was wrong and that the order of the Narol Court transferring the darkhast back to the City Court was correct and that the reference made by the Principal Judge to this Court was not justified. Therefore the reference which is numbered as Civil Revision Application fails and is rejected. The City Court shall proceed with the hearing of Darkhast No. 4 of 1953 and dispose it off in accordance with law.

Rule discharged. No order as to costs.