

(1948) 02 MAD CK 0011
In the Madras High Court

Kammala Seshagiri Rao alias Prof. Giri Rao	APPELLANT
Vs	
Kammala Somasundaramma (first petitioner) and Another	RESPONDENT

Date of Decision : 11-02-1948

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : (1949) ILR (Mad) 94 : (1948) 61 LW 326 : (1948) 1 MLJ 315

Hon'ble Judges : Rajamannar, O.C.J.

Bench : Division Bench

Judgement

Rajamannar, O.C.J.

1. This petition has been posted before a Bench of two Judges because Govinda Menon, J., before whom it came up in the first instance

considered that there was a conflict between rulings of this Court.

2. The first respondent to this petition filed a suit against the petitioner and another originally in the Court of the Subordinate Judge of Bezwada for

the recovery of certain moveables or their price. The suit was transferred by the District Judge of Kistna to the Court of the Subordinate Judge of

Masulipatam where it was re-numbered as O.S. No. 65 of 1943. The suit was dismissed by the Subordinate Judge of Masulipatam, but on appeal

this Court set aside the order of dismissal and remanded the suit for disposal according to law to the lower Court. As the appeal to this Court was

from the Court of the Subordinate Judge of Masulipatam, the decree ran that the suit was remanded to the Court of the Subordinate Judge of

Masulipatam. When the suit was pending before that Court the plaintiff applied to the District Court to have the suit transferred to the Subordinate

Judge's Court at Bezwada and his application was granted. Thereupon the

present petition was filed for a re-transfer of the suit to the Court of the Subordinate Judge of Masulipatam.

3. Mr. Appa Rao, the learned advocate for the petitioner, contends that as this Court by its decree remanded the suit for disposal by the Court of

the Subordinate Judge of Masulipatam, the District Judge had no jurisdiction to re-transfer the suit to any other Court. Reliance was placed on a

decision of Krishnan, J., in *Uthuman Ammal v. Naina Mahomed* (1922) 44 M.L.J. 338. In that case the High Court remanded a case for trial by

the District Munsiff's Court of Madura town. Originally the suit was tried by the Court of the First Additional District Munsiff which was later on

designated as the District Munsiff's Court of Madura taluk. But as it was represented to the High Court that the Court which tried the suit had

ceased to exist, the suit was remanded for trial by the District Munsiff's Court of Madura town. However, by the time the suit went back, the first

Additional District Munsiff's Court had been re-established as the Madura Taluk District Munsiff's Court. The District Court on receiving the

papers from this Court passed them on to the Madura Taluk District Munsiff's Court Krishnan, J., upheld an objection to the jurisdiction of that

Court to try the case. We entirely agree with the decision of Krishnan, J., on the facts of the case before him. The Madura Taluk Munsiff's Court

could have jurisdiction to try the suit after remand, only if it was empowered to do so in one of two ways : (1) by the decree of this Court

remanding the suit for disposal by it; or (2) by an order of the District Court u/s 24 of the Civil Procedure Code. The decree of this Court did not

empower the Taluk Munsiff's Court to try the case and there was no order of the District Court u/s 24 of the CPC transferring the suit to that

Court. Govinda Menon, J., after looking into the printed papers in the case reported in *Uthuman Ammal v. Naina Mahomed* (1922) 44 M.L.J.

338 was inclined to think that there was an order of transfer u/s 24 of the CPC made by the District Court. With respect to the learned Judge we

think he was wrong. We have also gone through the papers in that case. All that we find is that the papers when they were received by the District

Court, were sent by that Court to the Taluk Munsiff's Court (see page 4 of the documents paper in C.R.P. No. 876 of 1921). There is no trace of

any order by the District Court u/s 24 of the CPC transferring the suit to the

Taluk Munsiff's Court, which therefore had no jurisdiction to try the case. On the other hand a decision of a Division Bench of this Court in *Singamuseti Venkatiah v. Bopalla Chiranna* (1914) M.W.N. 317, supports the view that though the decree of the High Court may remand a suit or appeal for disposal by a particular Court, the District Court can exercise the power u/s 24 of the CPC and transfer the suit to any other competent Court for disposal. In that case an appeal was remanded by this Court to be heard by the District Court. The District Judge instead of hearing the appeal himself, sent it down to the Subordinate Judge for disposal. The learned Judges, Sadasiva Aiyar and Spencer, JJ., held that the order of Court could be supported by the comprehensive language of Section 24 of the CPC under which the District Court's powers of transfer were much wider than under the old law. This decision was followed by Somayya, J., in a case reported in *Koya Thangal v. Ravi Varma* (1944) 2 M.L.J. 91, where a suit was remanded by the High Court expressly to the District Court for disposal because the Sub-Court which would have had jurisdiction in respect of the suit had been abolished; but by the time the case went back, the Sub-Court was re-established and therefore the District Judge transferred the suit to that Sub-Court. The learned Judge upheld the order by relying on Section 24 of the CPC as construed by the Division Bench in *Singamuseti Venkatiah v. Bopalla Chiranna* (1914) M.W.N. 317. The learned Judge, if we may say so with respect, rightly distinguished the decision in *Uthuman Ammal v. Naina Mahomed* (1933) 44 M.L.J. 238, on the ground that in that case there was no order of the District Judge u/s 24 of the Civil Procedure Code. We follow with respect the decision of the Division Bench in *Singamuseti Venkatiah v. Bopalla Chiranna* (1914) M.W.N. 317 and the decision of Somayya, J., in *Koya Thangal v. Ravi Varma* (1944) 2 M.L.J. 91. In our opinion there is no conflict between these two decisions and the ruling of Krishnan, J., in *Uthuman Ammal v. Naina Mahomed* (1933) 44 M.L.J. 238. The order of the District Judge in this case was not without jurisdiction. This disposes of the legal objection which made it necessary for the case to be posted before a Division Bench.

4. Different considerations may arise if the order of remand on special grounds indicates a particular Judge to try a case or not to try it but that is

hot the case here.

5. The petition will be posted for final orders before Govinda Menon, J.
6. This petition coming on for final disposal (18th February, 1948) before Govinda Menon, J., the Court made the following.
7. In the order referring the case to a Bench, I have already stated that on the merits, I see no reason to differ from the District Judge.
8. The petition is therefore dismissed with costs.