

(1992) 10 KL CK 0002
In the High Court Of Kerala
Case No : C.M.C. No. 4 of 1992

Krishnankutty Nair @ U.K. Nair

APPELLANT

Vs

Rajamma and others

RESPONDENT

Date of Decision : 29-10-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24, 24(1)(a), 3(1)
Constitution of India, 1950 — Article 226, 227

Citation : (1993) 1 KLJ 496

Hon'ble Judges : P. Krishnamoorthy, J

Bench : Single Bench

Advocate : V. Ghitambaresh, for the Appellant;

Judgement

P. Krishnamoorthy, J.—This petition u/s 24 of the CPC is for transfer of O. S No. 19 of 1110 M.E. from the District Court, Trichur to the Munsiff's Court, Chittur Palghat, in the interests of justice. Petitioner was the 12th defendant in O S. No 19 of 1110 M.E on the file of the District Court, Talohur. The said suit was for partition of the properties situate in Chittur Taluk which is now part of Palghat District. A preliminary decree for partition was passed on 22-7-1940 and it has become final. According to the petitioner, on the formation of the Kerala State on 11-1-1956, the case ought to have been transferred to the Court of the Munsiff of Chittur, Palghat, because the properties fell within the pecuniary and territorial jurisdiction of the said Court.

2. Petitioner filed I. A. No. 1970 of 1991 before the Munsiff's Court, Chittur for passing a final decree in terms of the preliminary decree. At the case records have not been transmitted to the Munsiff's Court, Chittur from the District Court, Trichur, the learned Munsiff directed the petitioner to move the District Court, Trichur to transmit the records. Petitioner then preferred I. A. No. 1528 of 1991 in O S. No. 19 of 1110 M B. before the District Court, Trichur. The District Court dismissed the application on 8-8-1991 observing that the District Court has no power to transfer a case from one district to another under Sec. 24 and that the

remedy of the petitioner is to move this Court under Sec. 24. Accordingly the present petition is filed for transfer of O. S. No. 19 of 1110 M. E. on the file of the District Court, Trichur to the file of the Munsiff's Court, Chittur.

3. In spite of notice, respondents have not entered appearance.

4. I felt a doubt as to whether a suit which could have been filed only in the District Court at the time of its filing could be transferred to a lower court, a Munsiff's Court, simply because of the fact that under the present Civil Courts Act the Munsiff's court has jurisdiction to try such a suit now and accordingly counsel placed before me a decision of the Allahabad High Court as also a decision of the Rajasthan High Court, the former reported in Sarjudei Vs. Rampati Kunwari, and the latter reported in Bhanwar Lal Vs. Moti Lal and Others, The decision in Sarjudei Vs. Rampati Kunwari, was considered by their Lordships of the Supreme Court in Lakshmi Narain Vs. First Additional District Judge, Allahabad, The Supreme Court decision mentioned above was considered by the Rajasthan High Court in the decision referred to above and it was distinguished by a learned single Judge of that Court. After going through these decisions I am clearly of the opinion that the decision in Lakshmi Narain Vs. First Additional District Judge, Allahabad, will govern the situation and that this Court, in exercise of its power under Sec. 24 C. P. G., cannot transfer a case from a District Court to the Munsiff's Court, if on the date of filing of the suit the transferee court had no jurisdiction to entertain such a suit.

5. The present suit was instituted in 1110 M.E when the District Court Trichur alone had Jurisdiction to try the suit. At that time the Munsiff's Court had no jurisdiction. Counsel for the petitioner wants a transfer of this case to the Munsiff's Court, Chittur on the ground that under the provisions of the Civil Courts Act as it now stands, the Munsiff's Court has jurisdiction to try such a suit. Their Lordships considered the identical question in Lakshmi Narain Vs. First Additional District Judge, Allahabad, In that case, the plaintiff instituted a suit in the Court of the Civil Judge, Mathura on 26th January, 1949. That suit was dismissed on 27-11-1951. The unsuccessful plaintiff preferred a First Appeal to the High Court of Judicature at Allahabad on 8th February, 1952. The First Appeal aforesaid remained pending until 23rd April, 1952, when it was transferred to the Court of the District Judge, Allahabad, by an order of the learned Chief Justice in Chambers, u/s 24(1) (a) of the Code of Civil Procedure. The validity of the above order was challenged in a proceeding under Art. 226 and 227 of the Constitution of India and a learned single Judge dismissed the petition following the decision in AIR 1961 Allahabad 503. Though the plaintiff preferred an appeal before a Division Bench, the Division Bench also summarily dismissed the appeal, following the decision in AIR 1962 Allahabad 503. It was in these circumstances that, an appeal was filed before the Supreme Court by Special Leave.

6. The transfer of the case was made in that case on the amendment of Sec.21 of the Bengal, Agra and Assam Civil Courts Act (Act 12 of 1887). By the said amendment, the appellate Jurisdiction of the District Judge was raised from Rs.

5,000/- to Rs. 10,000/-. The High Court took the view that as on the date of the order of transfer the District Court had Jurisdiction to hear appeals having valuation upto Rs. 10,000/-, the transfer under Sec 24 was with jurisdiction and it was the correctness of that view that came up for consideration before the Supreme Court. In considering that question, reversing the decision of the Allahabad High Court, the Supreme Court observed as follows :-

Now, giving full effect to the words just quoted of S.3 (1) of the Act, the High Court and the District Court alone would be competent to hear and decide the appeals pending before it. In other words, the District Courts were not competent to hear such appeals, and, therefore, the High Court could not have transferred those appeals to be heard by the District Judge or Additional District Judge, inasmuch as S.24 postulates that the Court to which the suit or appeal or other proceeding is transferred should be competent to try or dispose of the same. On the date the appeal in question was preferred in the High Court, the District Courts were not competent to hear such a case. The competency of those Courts to hear such cases arises by virtue of the amendment to S. 21 of the Civil Courts Act, aforesaid.

(Underlining is mine)

From the above observations of the Supreme Court it is clear that while considering an application for transfer under Sec. 24, the competency of the transferee-court has to be determined not with reference to the date of transfer but as on the date of the Institution of the suit. The view taken in AIR 1971 Rajasthan 242 is directly against the decision of the Supreme Court referred to above and I am unable to agree with the reasoning in the Rajasthan decision to the effect that the Supreme Court has not said so. I respectfully dissent from the view expressed by the Rajasthan High Court and hold that the competency of the court under Sec.24 has to be determined not as on the date of the order of transfer but as on the date of institution of the proceedings.

7. If the aforesaid principle is to be applied, it is clear that the Munsiff's Court, Chittur had no jurisdiction to entertain the suit on the date when the suit was instituted and accordingly a suit pending before the District Court, Trichur cannot now be transferred to the Munsiff's Court, Chittur solely on the ground that the Munsiff's Court has at present jurisdiction to entertain such suits in view of amendment of the Kerala Civil Courts Act. This Court has no jurisdiction to transfer the case and as such the application for transfer, has only to be dismissed.

8. It will be open to the petitioner to file an application for passing of a final decree before the District Court, Trichur, if he is otherwise entitled to. The CM. C. is dismissed. No costs.