

(1957) 12 KL CK 0001
In the High Court Of Kerala
Case No : A.S. No. 241 of 1954 (M)

Maheswaran Namboodri

APPELLANT

Vs

Chathu Nombiar and Others

RESPONDENT

Date of Decision : 02-12-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : (1958) KLJ 14

Hon'ble Judges : K.T. Koshi, C.J.;M.S. Menon, J

Bench : Division Bench

Advocate : A. Achuthan Nambiar, for the Appellant; V.P. Gopalan Nambiar For Respodent No.11, for the Respondent

Judgement

Koshi, C.J.—This is a plaintiff's appeal against the judgment and decree of the learned Subordinate Judge of Tellicherry dismissing O.S. No. 40 of 1952 on his file. The suit was to set aside a certain order of the Hindu Religious Endowment Board and for a declaration that the plaintiff was entitled to certain precedence in the matter of the conduct of the annual festival of the temple concerned. The proceeding was originally instituted as an Original Petition before the District Court as under the Madras Act II of 1927 that court was the only forum competent to deal with the matter. Pending the suit Act XIX of 1951 was enacted by which the Courts of the Subordinate Judges were constituted the proper forum to deal with such matters. In view of that the learned District Judge transferred the proceeding to the court of the Subordinate Judge, Tellicherry. There first it was registered as an Original Petition and later as an Original Suit. Purporting to follow two Single Bench decisions of the Madras High Court, the learned Subordinate Judge held that the District Judge had no right to transfer the suit to his file and that in as much as the suit had come before him through an improper channel, legally he had not obtained seisin of it and in that view dismissed the suit. Hence the appeal. The two Single Bench decisions which the learned Judge followed are Kunhambu Nair v V.V. Ambu--A.I.R. 1953 Madras 214--and Govindarajaswami Temple v Rukmani Ammal--(1954) 67 Law Weekly

767. In the first case, with respect to a proceeding instituted before a District Court under Madras Act II of 1927, on the enactment of Madras Act XIX of 1951 the District Judge declared that the proceeding stood automatically transferred to the new forum created thereunder and that the proceeding should be deemed to be pending before that court. In revision Basheer Ahamed Sayeed, J. said that there is no such automatic transfer by the new provisions and accordingly set aside the order of the District Judge. Apparently the learned Judge has not indicated which court was competent to deal with the matter after the alteration in the law. The order states inter alia that the legislature omitted to provide for the continuance of the pending proceeding in the existing forums or for their transfer to the newly created forums. In the second case, on the enactment of Act XIX of 1951 the proceeding instituted under the prior Act (II of 1927) was transferred by the District Judge to the Subordinate Judge subject to the question of jurisdiction being decided. The subordinate Judge held that he had no jurisdiction to try the case, but the District Judge again transferred the suit to the Subordinate Judge's file. In the revision filed against that order before the High Court Ramaswami, J. held that the alterations effected by Act XIX of 1951 regarding the jurisdiction of various courts and authorities were only procedural alterations and that therefore they had retrospective operation. According to the learned Judge the District Court should have returned the petition for presentation to the proper court or authority. The order transferring the proceeding was therefore set aside and the petitioner was directed to take his petition back from the court where it lay and present it before the proper court.

2. Both these cases came up for consideration before a Division Bench of the Madras High Court consisting of Govinda Menon and Chandra Reddy, JJ. in *Ganapathy Raja v Commissioner for Hindu Religious and Charitable Endowments--A.I.R. 1955 Madras 378*. There a suit to set aside an order of the Hindu Religious and Charitable Endowments Board instituted under Act II of 1927 was pending before the court of the District Judge of South Malabar when Madras Act XIX of 1951 was enacted. After the new Act came into force the District Judge held that his jurisdiction to try and dispose of suits commenced under the old Act and pending before him at that time, had ceased and in that view directed the return of the plaint to the party for presentation to the proper court. The Division Bench in overruling the two Single Bench Decisions held that a party has a vested right to have a suit tried in a forum in which it was commenced, that such a right is a substantive right and does not belong to the domain of adjectival law. We are in full accord with this view. The learned Judges have fully discussed the authorities bearing on the question and came to the conclusion that by reason of the new Act there was no automatic transfer of the suit to the forum newly created and that it was not proper either to return the plaint for presentation to that forum in as much as the District Court still continued to be the proper forum to try the suit. However in view of the fact that the suit was already registered in the Subordinate Judge's Court, that court was directed to treat the suit as transferred to its file by the District Court, which u/s 24, Civil

Procedure Code, that court was competent to do. It is the procedure indicated there as correct one that the learned District Judge adopted in the case before us now and the Subordinate Judge was therefore thoroughly wrong in dismissing the suit on the ground that he had no jurisdiction to try it. Assuming his view about jurisdiction was correct, he should have reported to the District Court for a retransfer of the case and not dismiss the suit as he chose to do. His decision is therefore set aside and the case is sent back to him for fresh trial and disposal. Costs in the appeal except the institution fee will be costs in the cause. The court-fee if levied on the appeal will be refunded to the appellant.

Order accordingly