

(1949) 02 MAD CK 0054
In the Madras High Court

Mohammed Yusuf Bannay Sahib and Others	APPELLANT
Vs	
Khadir Badsha Sahib and Others	RESPONDENT

Date of Decision : 15-02-1949

Acts Referred:

Citation : (1950) ILR (Mad) 448 : (1949) 62 LW 290 : (1949) 1 MLJ 503

Hon'ble Judges : Panchapagesa Sastri, J

Bench : Division Bench

Judgement

Panchapagesa Sastri, J.—These suits are posted before me for orders as to whether they can be transferred to the City Civil Court, Madras, u/s 16(2) of the Madras City Civil Court Act VII of 1892.

2. In G.O. No. Ms. 4175 (Home) dated 11th November, 1948, the Government of Madras made the following notification:

In exercise of the powers conferred by Section 3-A of the Madras City Civil Courts Act, 1892 (Central Act VII of 1892) and in supersession of Law (General) Department Notification No. a 16, dated the 22nd March, 1935, published at page 488 of Part I of the Fort St. George Gazette, dated the 26th March, 1935, His Excellency the Governor of Madras hereby invests with effect on and from 1st day of December, 1948, the Madras City Civil Court subject to the exceptions specified in Section 3 of the said Act, with jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature arising within the City of Madras and of value not exceeding ten thousand rupees.

Consequent on this notification and the increase in the pecuniary limits of the jurisdiction of the City Court, the question has arisen whether the suits wherein the value of the subject-matter is between Rs. 5,000 and Rs. 10,000 and now pending in the High Court could be validly transferred to the City Court. Section 16(2) of Act VII of 1892 provides that, in any suit or other proceeding pending at any time in the High Court, any Judge of such Court may at any stage thereof make an order transferring the same to the City Court if in his opinion such suit

or proceeding is within the jurisdiction of that Court and should be tried therein.

3. The transfer cannot be made unless the suit to be transferred is within the jurisdiction of the City Court. That jurisdiction is provided for in Sections 3 and 3(a) of the Act. The City Court has jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature (subject to certain exceptions,) arising within the City of Madras and of value not exceeding Rs. 10,000. At the time when these suits were instituted in this Court, the City Court had no jurisdiction to receive, try and dispose of them, as the pecuniary limits of that Court were then limited to Rs. 5,000. Section 16(2) is intended to provide for transfer of suits from the High Court to the City Court, because notwithstanding the creation of the Madras City Civil Court, the jurisdiction of the High Court was not ousted in such suits and this High Court continued to have concurrent jurisdiction. The City Court would have jurisdiction to receive, try and dispose of such suits where the value of the subject-matter is between Rs. 5,000 and Rs. 10,000 only on and from 1st day of December, 1948. The jurisdiction is confined to suits and proceedings arising within the City of Madras and of value not exceeding Rs. 10,000. This would indicate that suits and proceedings, which had already been instituted prior to 1st December, 1948 and which had arisen already, could not be tried by the City Court. It is therefore not possible to hold that these suits are within the jurisdiction of the City Court within the meaning of Section 16(2) of the Act. In my opinion, therefore, these suits cannot be transferred for trial to the City Civil Court.

4. Even if there is such a power, the question would still remain whether it is desirable to make an order of transfer. The members of the Bar who argued the question before me in these suits, as well as others interested in similar suits likely to be transferred, were all unanimous in objecting to such transfer. Several points of view were submitted urging the undesirability of such transfers. I must admit there was considerable force in the same and, if this Court has power, those considerations will have to be borne in mind in ordering transfers in individual cases on the merits thereof. In view, however, of my decision on the main question, it is unnecessary to refer to this aspect of the matter at greater length.

5. If it is intended that relief should be given to this Court by empowering it to transfer such suits as above to the City Court, suitable legislation may have to be enacted somewhat on the lines of Section 18 of the Bombay City Civil Courts Act XL of 1948. So also if concurrent jurisdiction of this Court is to be taken away, legislation is necessary. It is ordered accordingly that these suits should be posted in the usual course for trial and disposal by this Court.