

**(1933) 08 AHC CK 0078**  
**In the Allahabad High Court**

Raja Yuvraj datt Singh

APPELLANT

Vs

Kuar TejDattSingh alias Chhotey Lalji and Others

RESPONDENT

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**Date of Decision :** 22-08-1933

**Acts Referred:**

**Citation :** (1933) 08 AHC CK 0078

**Final Decision :** Allowed

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### Judgement

1. These are two applications u/s 23, Civil Procedure Code, made by Raja YuvrajDattSingh and Thakur Bhairon Singh respectively, who are defendants in a suit pending in the court of the Subordinate Judge, Aligarh. The suit was brought by the opposite party Madho Singh. The subject-matter of the suit is Oel Estate in Oudh which belonged to Raja Krishna datt Singh, who died on December 15, 1932, leaving him surviving his widow Thakurain An and Kunwar, who is also a defendant to the suit, a son Thakur Tej datt Singh and Yuvraj Singh, one of the applicants before us, who claims to be a son of Ram datt Singh, a predeceased son of Raja Krishna datt Singh and to be entitled to succeed under a will alleged to have been executed by the late Raja. It is not disputed that Tej datt Singh is the legitimate son of Raja Krishna datt Singh but there is controversy between the parties as to whether he is suffering from congenital idiocy.

2. The plaintiff Madho Singh claims to be an agnate several degrees removed from Raja Krishna datt Singh and to be entitled to succeed to the estate on the allegation that Tej datt Singh is excluded from inheritance owing to congenital idiocy, that Yuvraj datt Singh is not the legitimate son of Ram datt Singh, a predeceased son of Krishna datt Singh, and that the will set up by Yuvraj datt Singh and alleged to have been executed by Krishna datt Singh does not, on a proper construction being placed upon it, confer a title upon him in respect of Oel Estate. It is further alleged by the plaintiff in his plaint that Raja Krishna datt Singh was not of a sound disposing mind when he is said to have executed the will. As regards Thakurain Anand Kunwar, who in ordinary circumstances would exclude an agnate like the plaintiff, it is alleged by the latter that she

relinquished all her rights in the estate of her deceased husband. The suit was instituted on February 28, 1933. No written statements were filed by the defendants before the present applications were made to this Court for the determination of proper forum for the trial of the suit as all the principal parties are residents of Oudh and the entire property in dispute, except a temple and 64 bighas of land which are situate in Aligarh, is in Oudh and within the jurisdiction of the Chief Court at Lucknow.

3. The application by Yuvraj datt Singh was not preceded by a notice to the plaintiff as contemplated by Section 22, Civil Procedure Code, while that of Bhairon Singh (No. 190 of 1933) was made after a notice to the plaintiff intimating his intention to move this Court for determination as to which of the two courts, namely, the Chief Court of Oudh on the original side or the Subordinate Judge's Court at Aligarh, is the proper forum. A preliminary objection has been taken by the learned Advocate for the plaintiff, opposite party, that the application of Yuvraj datt Singh is not maintainable in view of the requirements of Section 22, Civil Procedure Code. It is pointed out that, according to that section:

Any defendant after notice to the other parties, may at the earliest possible opportunity and in all bases where issues are settled at or before such settlement, apply to have the suit transferred to another court, and the court to which such application is made, after considering the objections of the other parties (if any) shall determine in which of the several courts having jurisdiction the suit shall proceed

4. Both the applications proceed on common grounds, and even if we give effect to the contention as against Yuvraj datt Singh, the application. of Bhairon Singh cannot fail, unless it is not maintainable on the merits or on some other, ground. In these circumstances we do not consider it necessary to decide whether absence of notice contemplated by Section 22, Civil Procedure Code, is fatal to the application. We proceed to determine the questions raised by both the applications on their merits.

5. Before determining in which of the two courts having jurisdiction the suit should proceed, we would dispose of another objection to the maintainability of the applications taken by the learned Advocate for the plaintiff opposite party. It is contended that as the Chief Court, is not subordinate to any High Court Section 23 does not apply.

6. The material part of Section 22 has been quoted above. Section 23 runs as follows:

(1)there the several courts having jurisdiction are subordinate to the same Appellate Court, an application under s 22 shall be made to the Appellate Court

(2) Where such courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court,

(3) Where such courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the court in which the suit is brought is situate.

7. It is argued that Sections 22 and 23 contemplate only that class of cases in which the several courts having jurisdiction to try the suit are subordinate to one or more than one "High Courts" and that they do not provide for cases in which one of the courts having jurisdiction to try the suit is a High Court on its original side. It may be conceded that the expression "High Court" in Section 23 includes the Chief Court of Oudh. Reliance is placed in support of this contention on several cases, In Messrs.

8. *Pragji Soorji & Co., v. Messrs, Kalu Mai Shori Mai & Co. of Amritsar* 69 Ind Cas 772 : A.I.R 1924 Lah 306 decided by a learned single Judge of the Lahore High Court it was held that Sections 22 and 23 of the Civil Procedure Code, deal with cases where a party to a suit instituted in a Court subordinate to an Appellate Court wishes to secure the transfer of the suit to another Court subordinate either to the same Appellate Court or to the same High Court or to another High Court and that they do not provide for a case where transfer to the original side of a High Court from a Court subordinate to another High Court is desired. In that case the suit had been instituted in a Court subordinate to the Lahore High Court and one of the defendants applied that the plaintiff may be directed to institute it on the original side of the Bombay High Court which also had jurisdiction. Similarly it was held in *Hindustan Assurance and Mutual Benefit Society Ltd., v. Mulraj* 27 Ind Cas. 455 : 27 M.L.J 645 that Section 23 of the CPC does not apply where the court in which the suit had been instituted was not a Court subordinate to a High Court. The same view appears to have been taken in *Hyat Mahomed and Others Vs. Shaikh Mannu and Others*, , in which however, the precise point now raised was not considered. It was argued that a Judge sitting on the original side of the Calcutta High Court should be considered to be the Presiding Officer of a "District Court," and therefore, subordinate to the High Court. This contention was repelled.

9. In the case before us the suit is triable on the original side of the Chief Court which was constituted by the Oudh Courts Act of 1925, Section 7dof which lays down that the "Chief Court" shall have jurisdiction to hear and determine any suit or original proceeding of which the value is not less than five lacs of rupees. It is not disputed that the value of the subject-matter of the suit in the present instance is much above rupees five lacs. It is to be observed that Section 7 confers jurisdiction to hear a suit of which the valuation exceeds five lacs on the "Chief Court." Accordingly when a Judge of that court tries an original suit, he is the Chief Court. The question is whether since an appeal lies from his decision to a Division Bench of the Chief Court u/s 12 of the Oudh Courts Act, he should be considered to be subordinate to such Bench which again represents the whole court. It seems to us that Section 23, Civil Procedure Code, proceeds on the assumption that every court having jurisdiction to try an original civil suit is

subordinate to some High Court or a court having co-ordinate jurisdiction. At the same time it cannot in terms apply to a case in which one of several courts having jurisdiction to try a suit is not "subordinate" to any High Court or a court equivalent thereto.

10. It may be contended that these sections contemplate subordination only so far that the decision of the judge hearing an original suit is open to appeal to a higher tribunal and that in this sense a judge sitting on the original side of a High Court or of the Chief Court should be considered to be subordinate to the tribunal entitled to hear an appeal from his decisions. This argument involves the anomaly that the Chief Court or the High Court is subordinate to itself, as ex hypothesi a Judge sitting on the original side as much represents the Chief Court or the High Court as the Division Bench empowered to hear an appeal from his decision.

11. We have been referred to *V. F. R. M. E. Ramanathan Chetty v. V.E.R.M. N. R. Ramanathan Chetty* 77 Ind. Cas 408 : A.I.R 1923 Rang. 22 : 11 L.B.R 446. in which it was held that Section 23 read with Section 22 implies, where a case is triable by a Judge of the High Court on the original side, subordination in the sense that appeals lie to a Division Bench of the same High Court which is consequently empowered to hear an application u/s 22, Civil Procedure Code. It was observed that

even though the Court may not be a subordinate Court for administrative purposes, we are of opinion that the present application lies and we have jurisdiction to deal with it if a suitable case is made out for ordering a transfer.

12. The application for transfer was disposed of by a Division Bench which was entitled to hear an appeal from the decree of the Judge sitting on the original side. We have carefully read the judgment of the learned Judges and it seems to us that the basis of the decision is not so much the right interpretation of Sections 22 and 23 as the expediency of a Division Bench having the power to transfer a case pending before a judge on the original side to some other court having jurisdiction.

13. Having carefully considered the language of Sections 22 and 23, Civil Procedure Code, and the authorities cited before us, we are of opinion that those sections do not apply to a case in which the question is whether a suit should be tried by a court sub-ordinate to a High Court or by a High Court or the Chief Court of Oudh. We think that a case like the one before us is not covered by any provision of the CPC specifically dealing with the question. At the same time it cannot be denied that cases may frequently occur in which it is necessary to determine which of the two courts having jurisdiction should try a particular case, one of such courts being a High Court or the Chief Court. It cannot be reasonably contended that a plaintiff making an improper choice of forum is immune from having his choice questioned even by the highest Court. We are clearly of opinion that in the absence of a rule of law applicable to a case of this

kind, the aid of Section 151 of the Civil Procedure Code, can be invoked in a proper case and it is open to a High Court to exercise powers similar to those contemplated by Sections 22 and 23, Civil Procedure Code. If it appears that the plaintiff has chosen a forum in utter disregard of the convenience of both parties, for some ulterior object, and in abuse of his position as dominus lites the High Court can, in the exercise of its inherent power, determine which of the two courts having jurisdiction should try the suit.

14. In the case before us all the parties reside in Oudh. As already stated, the entire estate with the exception of a temple and a few big has of land is situated in Oudh. According to the applicants before us, almost all the witnesses, who can give relevant evidence in the case, will be from Oudh. The plaintiff opposite party has, however, controverted this fact in his affidavit and it is alleged on his behalf that a number of witnesses will be from Nepal, Benares, Allahabad, Rajputana and even England. It will be observed that even according to the plaintiff, no witness residing in the Aligarh district is likely to be examined. Assuming that the plaintiff is desirous of examining witnesses from the places mentioned above, it will be perfectly immaterial for him whether the suit is tried in Aligarh or in Lucknow. Indeed, it is probable that for witnesses coming from those places Lucknow will be a more convenient place. As regards witnesses residing in Oudh, and it is said on behalf of the defendants that most of the witnesses will be from Oudh, it will be decidedly more convenient for both the parties that their evidence should be taken in Oudh. Aligarh will be found to be more than two hundred miles from the residence of most of this class of witnesses and their attendance in court cannot be enforced. Their evidence shall have to be taken on commission which will be highly undesirable. The trial of a suit of this nature by a learned Judge of the Chief Court will be more satisfactory than by a subordinate Judge in this province who is less familiar with the working of Oudh Estates Act which presumably applies to the case.

15. The affidavit filed on behalf of the plaintiff in reply to that of the defendants does not disclose facts justifying the inference that it will be more convenient to the plaintiff or conducive to the ends of justice that the suit should be tried in Aligarh. Some insinuations were made in paragraph 7 of the affidavit in reference to the Chief Court. We considered the allegation to be improper and directed the plaintiff either to delete that paragraph or to make definite allegations. The plaintiff has wisely chosen the former alternative. The affidavit as it now stands does not disclose any circumstances which can justify the plaintiff's choice. On the materials before us we have no hesitation in accepting the defendants' view that the balance of convenience overwhelmingly lies in favour of the suit being tried, on the original side of the Chief Court and that the plaintiff is actuated by some ulterior motive in avoiding the Chief Court of Oudh.

16. We may note that in taking action u/s 151 of the Civil Procedure Code, the question whether the application of Yuvraj datt Singh is not maintainable for want of a previous notice to the plaintiff as required by Section 22, Civil

Procedure Code, becomes immaterial.

17. The result is that these applications succeed. We hold that the suit should be tried by the Chief Court of Oudh on the original side. Accordingly, we stay all proceedings before the Subordinate Judge of Aligarh. It will be open to the plaintiff to apply to the Subordinate Judge of Aligarh for the return of his plaint with a view to presenting it before the Chief Court of Oudh. The applicant Bhairon Singh will have his costs from the plaintiff opposite party. The applicant Yuvraj datt Singh will pay his own costs.