

(1961) 09 MAD CK 0020

In the Madras High Court

Case No : Civil Revision Petition No. 2187 of 1960

Ratilal U. Shah

APPELLANT

Vs

G. Subramania Pillai

RESPONDENT

Date of Decision : 29-09-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 151
Limitation Act, 1963 — Section 14

Citation : AIR 1962 Mad 249 : (1962) ILR (Mad) 637 : (1962) 75 LW 124 :
(1962) 1 MLJ 83

Hon'ble Judges : S. Ramachandra Iyer, C.J

Bench : Single Bench

Judgement

(1) This petition arises out of the order of the Additional District Munsif, Tirunelveli, declining to return the plaint as prayed for by the plaintiff. The

Plaintiff is the holder of a promissory note, dated 17-12-1952. He had an option of filing the suit at Bombay or at Tirunelveli. On 2-12-1955, he

filed a suit under the promissory note in the City Civil Court at Bombay. That court took the view that it had no jurisdiction and returned the plaint

for presentation to the proper court. The petitioner contested the correctness of the order returning the plaint by appeal to the High Court at

Bombay. In the meantime, he also took a return of the plaint and presented the same to the District Munsif, Court, at Tirunelveli, which duly

registered the same as a suit. As stated earlier. The Tirunelveli court admittedly had jurisdiction to entertain the plaint. On 3-8-1959 the Bombay

High Court set aside the order of the City Civil Court returning the plaint, holding that the Bombay Court had jurisdiction to entertain the suit.

Thereupon the plaintiff applied to the lower Court to return the plaint to enable him to present the same to the Bombay Court. The learned District

Munsif had declined to grant the request Hence this revision petition.

(2) I am of opinion that the learned District Munsif was correct when he held that the court had no jurisdiction to return the plaint. Order 7 Rule

10. C.P.C., which deals with the return of plaint, states that the plaint shall be returned at any stage of the suit to be presented to the court in which

the suit should have been instituted. Under the rule, the court which is returning the plaint should have no jurisdiction to entertain the suit. In the

present case, the District Munsif had jurisdiction to entertain the suit and therefore, the provisions of order 7 Rule 10 will not apply.

Mr. P.N. Appuswami Aiyar, learned counsel for the petitioner, made an earnest appeal to me to exercise the powers under S. 151 C.P.C and

thus enable the petitioner to agitate his cause in the court of his first choice. I am afraid that request cannot be acceded to. Section 151 is intended

to prevent an abuse or process of court. It cannot be stated that the entertainment of a suit by a court competent to entertain the same is an abuse

of process of court. That court was the choice of the petitioner himself, though it might be that it was only his second choice. It was perfectly open

to the petitioner not to have presented the plaint to the Tirunelveli Court and waited for the decision of the Bombay High Court. Even if the

decision of the Bombay High Court were to go against him, he could certainly have obtained an exclusion of the period spent in the Bombay courts

under S. 14 of the Limitation Act, in the computation of the period of limitation when he presented the plaint to the proper court. But in the present

case, the petitioner had a choice between two courts. He first exercised his choice by filing the suit in the Bombay Court. He found some

impediment; so, he himself decided to exercise a second choice. The court at Tirunelveli, which has been properly seized of the suit, cannot now he

asked to return the plaint on the ground that the party now chooses to go back to Bombay.

(3) Mr. Appuswami Iyer relied on the decisions in *Nanumal v. Firm Shibba Mal Nand Kishore*. AIR 1939 Lah 18 and AIR 1930 207 (Nagpur) .

In the former case it was held that the plaintiff, to whom the plaint was returned for presentation to the proper court, could present the plaint to the

latter court, and, at the same time prosecute the appeal from the order returning the plaint. In that case, only one of the two courts had jurisdiction

to entertain the suit, and the question did not arise in the form in which it does now. The second case relied on is also to the same effect. Neither of

the two cases deals with a case where the plaintiff, having a choice between two forums first instituted a suit in one forum and after having got

return of the plaint albeit under an order of court, presented the same to the other forum, could get the plaint back so as to enable him to go to the

first of the two courts. To recognise such a power in the party will be to enable him to play with the court at his whim or caprice and that cannot be

allowed. The learned District Munsif was right when he declined to return the plaint as prayed for by the plaintiff.

(4) The civil revision petition fails and is dismissed. There will be no order as to costs.

(5) Petition dismissed.