

(1989) 12 KL CK 0017
In the High Court Of Kerala
Case No : M.F.A. NO. 531 of 1985

Sri Ramalingeswara R and B Rice Mill Contractors	APPELLANT
Vs	
M/s Leelalam Shevaram India (Pvt) Ltd	RESPONDENT

Date of Decision : 13-12-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 22, 23(3)

Citation : (1990) 1 KLJ 141

Hon'ble Judges : K.P. Radhakrishna Menon, J; B.M. Thulasidas, J

Bench : Division Bench

Advocate : M.R. Parameswaran, for the Appellant; N.P. Samuel and P.V. Chandramohan, for the Respondent

Judgement

Radhakrishna Menon, J.—While considering the question as to whether this appeal is, maintainable u/s 5 (1) of The Kerala High Court Act, a Division Bench of this court made the following observations:-

We are prima facie satisfied that the application for transfer u/s 22 read with Section 23 (3) of the C.P.C. is an original proceeding and the impugned order is appealable u/s 5 of the Kerala High Court Act. It is appropriate that a final decision on the question of maintainability of the appeal is taken only after notice to the opposite party.

This question thus has come up before us. Section 5 of the High Court Act (leaving out unnecessary parts thereof) reads:-

An appeal shall lie to a Bench of two Judges from (i) a judgment or order of a single Judge in the exercise of original jurisdiction

The plain and unambiguous words employed in the Section make it clear that a judgment or order of a single Judge, provided the same is pronounced in the exercise of "original jurisdiction", is an appealable order. The question therefore is; Is the order, in dispute, one passed by the learned single Judge in exercise of "original jurisdiction"?.

2. The expression "original jurisdiction" is not defined in the High Court Act. It has therefore become necessary to give the expression a meaning. A reference in this connection to the meanings given in Dictionaries is relevant. The expression as such has been defined in Black's Dictionary. It reads:-

Jurisdiction in the first instance; jurisdiction to take cognizance of a cause at its inception, try it, and pass judgment upon the law and facts. Distinguished from appellate jurisdiction.

The "original jurisdiction" therefore can be defined as a jurisdiction, an authority would exercise in the first instance. To put it differently this jurisdiction enables an authority to take cognizance of a cause at its inception, try it, and pass judgment upon the law and facts. This is a jurisdiction distinguished from appellate jurisdiction, extra-ordinary jurisdiction etc. The view expressed by Raman Nayar, J. in *Ouseph v. Pylee* (1957 KLT 1221) construing the expression "original jurisdiction" under the Travancore High Court Act supports the above view expressed by us. In the light of what is stated above, we are of the view that the order in dispute, is one passed by the learned single judge in exercise of "original jurisdiction."

3. The learned counsel for the respondent however submitted that the order under challenge is one passed in exercise of this court's appellate/revisional jurisdiction. In support of this argument he made reference to the following observations contained in the decision in *S. Narayana Swami v. Padma* (1972 KLT 7):-

And the learned Judge made a distinction between an order passed in the exercise of original jurisdiction and an order in the nature of an original order passed in the exercise of appellate jurisdiction. When we apply this distinction, which appeals to us, to the case before us, what follows is that an order of the High Court transferring or refusing to transfer a case from the file of one magistrate to the file of another magistrate may be an order in the nature of an original order, but it is only an order passed in the exercise of appellate or revisional jurisdiction and not one passed in the exercise of original jurisdiction of the High Court not an order passed as a court of first instance.

There cannot be any controversy about this observation. The case to which the above principle would apply is a case where a party seeks an order transferring a proceeding from one court to the other both within the jurisdiction of the same High Court. In such cases, it may be that the jurisdiction exercised by the High Court can be said to be either the revisional or appellate. Could this observation be said to govern the case where the relief "sought for is to have the case transferred from a court within the jurisdiction of this High Court to a court which admittedly is situated within the jurisdiction of another High Court? This court in such circumstances cannot be said to have either appellate or revisional jurisdiction in any event, in regard to the case which is pending before the court within the jurisdiction of another High Court. But for the provisions contained in

Section 23 (3) C.P.C. the High Court cannot entertain a petition for transfer of a case from a court within its jurisdiction to a court admittedly within the jurisdiction of another High Court. This court under such circumstances, in our view is exercising original jurisdiction" in contra distinction to revisional, appellate or any other jurisdiction. If that be so, the above argument of the learned counsel is liable to be rejected. To put it pithly, the order, the High Court would pass on a petition u/s 23(3) C.P.C. shall be treated as an order passed in the exercise of its "original jurisdiction." That being the position in law, the order disposing of the application u/s 23(3) is appealable and an appeal can be filed u/s 5(1) of the Kerala High Court Act.