
(1950) 11 MAD CK 0020

In the Madras High Court

Case No : Letters Patent Appeal No. 44 of 1948

Srirangam Municipality

APPELLANT

Vs

R.V. Palaniswami Pillai

RESPONDENT

Date of Decision : 02-11-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : AIR 1951 Mad 807 : (1951) ILR (Mad) 897 : (1951) 64 LW 327 : (1951) 1 MLJ 281

Hon'ble Judges : Rajamannar, C.J; Viswanatha Sastri, J

Bench : Division Bench

Advocate : V.V. Srinivasa Iyengar, for the Appellant; T.M. Krishnaswami Iyer and N. Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—This is an appeal against the order made by our learned brother, Satyanarayana Rao on 25-5-1948 as one of the

vacation Judges during the summer recess of that year in the following circumstances.

2. The Srirangam Municipality which is the applt. before us, issued a notice to the resp. purporting to be u/s 182, Madras District Municipalities

Act directing him to deliver possession of an extent of 30 cents of land in T. S. No. 1513 on the northern & eastern side of T. S. No. 1509 & to

remove the fence he had put up thereon on the ground that the resp. had encroached on land belonging to the Municipality. This notice was served

on the resp. on 25-2-1948. He thereupon filed a suit O. S. No. 250 of 1948 in the Ct. of the Dist. Munsif of Trichinopoly against the Municipality

represented by its Comr. for a declaration of his title to & for the maintenance of

his possession of the land in dispute. Along with the plaint he filed an appln. for an interim injunction restraining the Comr. of the Municipalities from interfering, with his possession pending disposal of the suit.

Notice of the appln. for interim Injunction was ordered by the learned Dist. Munsif & it was served on the Comr. on 24-4-1948. The petn. itself was posted for hearing on 12-6-1948 evidently because the Ct. of the Dist. Munsif was closed meanwhile for the summer recess. After receipt of this notice from the Ct. the Comr. had the fence & the trees on the disputed land cut out & removed on 27-4-1948. As the Dist. Munsif's Ct. was closed, the resp. filed two applns. to this Ct. In C. M. P. N 3114 of 1948 he prayed that this Ct. may be pleased to transfer the suit to this Ct. & to retransfer the same after granting him the necessary relief. In C. M. P. No. 3115 of 1948, he prayed for an order directing the Comr. of the Municipality to put back the fence in its original state & to restore the "status quo ante" pending disposal of the suit. Both the applns. were disposed of finally by Satyanarayana Rao J. on 25-5-1948. He ordered a transfer of the suit to the file of this Ct. & after hearing both sides, granted a mandatory injunction directing the Comr. of the Municipality to restore the fence to a length of 355 feet within a period of ten days from the date of his order failing which the resp. herein was given liberty to move the Ct. to have the order carried out & to recover the cost of such execution from the deft. Municipality. As the petn. for injunction had been disposed of & as it was unnecessary to keep the suit pending in this Ct., the learned Judge retransferred it to the Dist. Munsif's Ct. for disposal. The appeal before us is against the order granting the mandatory injunction.

3. Mr. V.V. Srinivasa Aiyangar, learned counsel for the applt. before dealing with the merits, raised certain objections to the maintainability of the petns. before Satyanarayana Rao J. & certain procedural defects in the applns. We may mention at the outset that none of these objections was raised before the learned Judge himself. Some of the objections particularly those which were procedural, could have easily been met, if they had any substance, by appropriate amendments by the resp. We do not think it is open to the applt. to raise these objections for the first time in the appeal. However as the objections relate to matters of some general importance, especially to the practice now obtaining during the vacation of

this Ct., we shall briefly deal with the several points raised by him.

4. It was argued that the appln. for transfer must have been made to the Original Side of this Ct. by means of an original petition bearing the proper

Court-fee. The appln. was made under Sections 24 & 151, C. P. C. In the cause title the appln. was described as a Civil Miscellaneous Petn. in

this Ct. Learned counsel relied on a ruling in "Srinivasa v. Balakrishna", 22 M L J 187: 13 IC 860 & certain observations of Ramesam J. in *Jumna*

Bai Vs. S. Rm. M. Rm. Ramanathan Chettiar represented by guardian ad litem *Muthayee Achi alias Chittal Achi and Another*, in support of his

contention that the appln. should have been made to this Ct. on its original side. In our opinion there is nothing in the language of Section 24, C. P.

C. I to indicate on which side of this Ct. the appln. should be made. In dealing with this question it is important to bear in mind that Section 24, C.

P. C. gives the power of transfer & withdrawal not only to this Ct. but also to the Dist. Ct. & it gives such power of transfer & withdrawal not only

in respect of suits but also in respect of appeals & other proceedings pending in any Ct. subordinate to it. It would therefore be certainly wrong to

say that every appln. u/s 24 when made to this Ct. should be made on the original side. Obviously an appln. to withdraw an appeal pending before

a subordinate Ct. to this Ct. or to transfer it to any other subordinate Ct cannot be made to the Original Side of this Ct. It is also obvious that an

appln. to transfer any suit pending in a Subordinate Ct. to another Subordinate Ct. for trial cannot be made to this Ct. on the Original Side because

the subordination of Cts. can only be to this Ct. as such & not to the original side of this Ct. There is nothing in Section 24 to confine its application

to Chartered H. Cs. which alone have ordinary & extraordinary original civil jurisdiction. According to us, the correct position is that an appln. u/s

24, C. P. C. should be made to this Ct. as such in the same manner as it might be made to the Dist. Ct. & such an appln. can be validly heard &

disposed of by any Judge of this Ct. deputed by the Chief Justice to hear such applns. We find actually in the Appellate Side Rules that an appln.

u/s 24 for transfer of any suit, appeal or other proceedings or in execution of a decree from one civil Ct. subordinate to the H. C. to another such

Cts. or to the H. C. can be disposed of by a single Judge. As a matter of practice, it is the learned Judge sitting in the Admission Ct. who deals

with these applns. It may be true, as was held in Alla Subbareddi Vs. Lankireddi Narayanaswamireddi and Others, that an appln. u/s 24 is in the

nature of an original proceeding to which Section 141, C. P. C. may apply; but to say that, is far from saying that the appln. is one made on the

(Original Side of this Ct.

5. In "Srinivasa v. Balakrishna", 22 MLJ 187: 13 IC 860 the learned Judges dealt with an appln. there made for the transfer of a suit from the

Presidency Ct. of Small Causes to this Ct. for trial & disposal as an appln. falling under Clause 13 of the Letters Patent. Obviously an appln. under

that clause must be made to the H. c. on the Original Side because it Invokes the extra-ordinary original civil jurisdiction conferred on this Ct. by

that clause. No doubt there is an observation in the course of the judgment that Section 24, C. P. C. has nothing to do with the question whether

the H. C. should exercise the power as a Ct. of original or appellate jurisdiction. That is true, but it is equally true to say that the section viz.,

Section 24, does not indicate that the H. C. should exercise the power on its original side. The appln. before the learned Judges in that case clearly

fell Within Clause 13 of the Letters Patent. It was an appln. "simpliciter" for the transfer of a suit from the Presidency Small Causes Ct. to this Ct.

to be heard & disposed of on the Original Side. There was no appln. there for a retransfer which could not be made to the Original Side of this Ct.

We do not think this decision should be deemed to be an authority for the position that an appln. u/s 24, C. P. C. should be made on the Original

Side of this Ct.

6. The observations of Ramesam J. in Jumna Bai Vs. S. Rm. M. Rm. Ramanathan Chettiar represented by guardian ad litem Muthayee Achi alias

Chittal Achi and Another, were made on the assumption that Clause 13 of the Letters Patent would enable this Ct. to transfer a suit pending in the

mofussil to the file of this Ct. & to retransfer it after passing appropriate interim orders. It is one thing to say that when the appln. for transfer is

granted & the suit itself is withdrawn to the file of this Ct. then it should be tried on the Original side of the H. C.; but it is quite a different thing to

say that the appln. for such a transfer should be made to the Original Side of this Ct. u/s 24(1)(b) what this Ct. does is to first withdraw any suit,

appeal or other proceeding pending in any Ct. subordinate to it & then decides to

do one of three things. If it decides to try & dispose of the same, obviously such a trial or disposal would be on the original side of this Ct. If it decides to either transfer it to any subordinate Ct. or to retransfer it to the Ct. from which it was withdrawn, obviously there is no necessity to send the suit to the Original Side of this Ct. There is an observation in *Manindra Chandra Nandy Vs. Lalmohun Roy and Others*, , that Section 24, C. P. C. confers certain powers on the H. C. in its original Jurisdiction. But we do not understand the learned Chief Justice to mean that, therefore, the appln. has to be made to the H. C. on its Original Side. As an appln. u/s 24, C. P. C. is a substantive appln. made Ear the first time in this Ct. it is true to say that it is an original proceeding as we have already said. But that does not necessarily imply that the appln. must be made to the Original Side of this Ct. in "*Krishna Mudaliar v. Sabapathi Mudaliar*", ILR 1945 Mad 389: AIR 1945 Mad 69 . Leach C. J. delivering the judgment of the F. B. clearly pointed out the difference between the powers conferred on the H. C. by Clause 13 of the Letters Patent & those conferred by Section 24, C. P. C. The learned Chief Justice disagreed with Ramesam J. in so far as he held that Clause 13 of the Letters Patent would enable an appln. for transfer to be made on the Original Side of the H. C. along with an appln. for an injunction or other interlocutory relief with another appln. for a retransfer of the entire proceedings back to the mofussil Ct. We hold that the appln. need not have been made to the Original Side of this Ct.

7. Learned counsel next contended that an appln. for transfer of a suit pending in any Subordinate Ct. to this Ct. should only be made when it is intended that the suit should be tried & disposed of in this Ct. & not to enable this Ct. to pass an interim order & to retransfer it immediately after passing of that order. It is obvious that after the ruling of the P. B. in "*Krishna Mudaliar v. Sabapathi Mudaliar*", ILR 1945 Mad 389: AIR 1945 Mad 69 this contention cannot prevail. In that case which was an appeal from the order of Byers J. passed during the vacation, the learned Judge entertained applns. exactly similar to the applns. before our learned brother Satyanarayana Rao. There was an appln. for transfer, an interlocutory appln. for injunction & for retransfer immediately after disposal of the interim injunction appln. The F. B. held that Section 24, C. P. C. gave power

to the H. C. to transfer a suit to this Ct. & afterwards retransfer it for trial to the Ct. in which it was originally filed after passing an interim order.

8. It was next urged by Mr. Srinivasa Aiyangar that such a procedure was an abuse of the process & a fraud on the power conferred on the H. C.

We entirely disagree. The Cts. in this land including this Ct. which is the highest in the State are intended to give adequate redress to aggrieved

litigants. If on account of the closure of the Subordinate Ct., it becomes impossible for a litigant to obtain relief which is urgently needed, we do not

see why it should be an abuse of process or fraud on the power, if the litigant approaches this Ct to exercise the power certainly conferred on it by

Section 24, C. P. C.

9. There was one other minor point incidentally raised which had probably some substance at the time of the hearing of the appln. by

Satyanarayana Rao J. but is of mere academic interest hereafter. This related to the Court-fee which would be payable on a suit withdrawn to &

taken on the file of this Ct. In cases where Court-fee less than the minimum Court-fee payable on the Original Side of this Ct. had been paid by the

pltf. who files an appln. u/s 24, C. P. C. he must be made to pay the difference. That might have been so; but after the recent amendment under

which there is no difference in the Court-fee charged on plaints presented to the Original Side of this Ct. & the plaints presented in mofussil Cts.

there can be no occasion when a party would have to pay an excess Court-fee. We are, therefore, of opinion that the applns. made to

Satyanarayana Rao J. in this case were all competent & in any event, it is not open to the applt. to urge these objections before us In appeal.

10. On the merits, we are emphatically of opinion that there can be no other conclusion than that arrived at by our learned brother on the facts of

this case. The action of the Comr. in destroying the fence & cutting away the trees on the land in dispute three days after receipt of the notice of the

appln. for interim injunction was very highhanded. There was obviously no such special urgency as would justify such hasty action especially when

the appln. itself was posted for hearing immediately after the reopening of the Dist. Munsif's Ct. It appears to us clear that the Comr. actually took

advantage of the fact that the Dist. Munsif's Ct. was closed & acted in that arbitrary manner. In the circumstances, the least that the resp. was

entitled to was a restoration of the "status quo ante" in so far as such restoration was possible & that is what our learned brother has directed. In

view of the ruling in "Kandaswami v. Subramania Chetti", 41 Mad 208: AIR 1918 Mad 588, learned counsel for the applt. did not challenge the

jurisdiction of the learned Judge to grant a temporary mandatory injunction; but he complained that the order should not have been made when in a

few days the Dist. Munsif's Ct. would reopen. This argument does not come with grace from a party who, three days after receipt of the notice

from the Dist. Munsif's Ct. would not wait till the reopening & during the vacation would take such precipitate action as to destroy a fence & cut

down trees on lands as regards the title to which there was dispute.

11. We therefore see no reason to interfere with the order of Satyanarayana Rao J. and we dismiss the appeal with costs.

12. We wish however to mention one thing. In dealing with the appln. for mandatory injunction, the learned Judge naturally had to find out whether

the resp. pltf. made out a "prima facie" case. He therefore went into such evidence as was placed before him & arrived at a finding that the pltf.

had established a "prima facie" title in him in respect of the suit land. It is obvious that this finding was only for the purpose of the appln. & should

not have any value more than is necessary. It should not in any manner influence or embarrass the trial Ct. in arriving at a finding on a consideration

of the entire evidence placed before it at the trial.