

(1991) 07 KAR CK 0027
In the Karnataka High Court
Case No : Civil Petition No. 530 of 1989

Syndicate Bank

APPELLANT

Vs

K. Gangadhar and others

RESPONDENT

Date of Decision : 24-07-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 15, 24, 25, 37
Suits Valuation Act, 1887 — Section 11

Citation : AIR 1992 Kar 163 : (1992) 1 KarLJ 497

Hon'ble Judges : K.B. Navadgi, J

Bench : Single Bench

Advocate : B.R. Aswatharam, for the Appellant; P. Vishwanatha Shetty, for the Respondent

Judgement

1. This is a petition under S. 24 of the CPC ("the Code") seeking withdrawal of O.S. No, 146/89 pending in the Court the Civil Judge, Chikmagalur, and to retransfer the same to the Court of the Civil Judge, Puttur, for trial and disposal in accordance with law. Sri G. IX Rao, working as Officer in the Zonal Office of the petitioner-Bank, has filed his affidavit in support of the prayer.

2. Sri B. R. Aswatharam, the learned counsel for the petitioner, and Sri P. Vishwanatha Shetty, the learned counsel for respondents Nos. 1, 3 and 5, are heard. Respondents Nos. 2 and 4 are served, but are unrepresented.

3. The matter arises in this way: The petitioner and respondents Nos. 1 to 5 herein are plaintiff and defendants Nos. 1 to 5 in the suit sought to be transferred. They would be referred to as such in the course of this order.

4. The plaintiff filed O.S. No. 38/88 in the Court of the Civil Judge at Puttur in Dakshina Kannada District, seeking a decree against defendants Nos. 1 to 5 for the recovery of a sum of Rs. 4,26,130/- by the sale of mortgaged immovable properties set out in Schedules "A" and "B" forming part of the plaint and for other reliefs. The property mortgaged as security for the repayment of debt, set

out in "A" Schedule, is situated in Relthangady village, whereas the property mortgaged, mentioned in "B" Schedule, is situated in Indubettu village of Belthangady Taluk. Thus, the mortgaged properties are within the territorial jurisdiction of the Court of the Civil Judge at Puttur.

5. Defendants Nos.1 to 5 entered appearance and resisted the suit. Issues were formulated for adjudication. The parties went to the trial.

6. When the determination of the suit was in progress, according to the learned counsel for the plaintiff, another suit was filed by the plaintiff against defendant No. 1 and one K. R. Manjunatha Gowda, seeking a decree for recovery of a sum of Rs. 6,23,237/- in the Court of the Civil Judge, Chikmagalur. The said suit has been registered as O.S. No. 70/ 88 and is pending disposal.

7. When the trial of the suit in O.S. No. 38/88 was mid way and the recording of the evidence during the trial of the suit was to commence, defendants Nos. 1 to 5 came to this Court with a petition registered as C.P. No. 149/89 seeking transfer of O.S. No. 38/ 88 from [he Court of the Civil Judge, Puttur, to the Court of the Civil Judge, Chikmagalur. The defendants sought the transfer on the ground that the parties in both the suits except one defendant were the same; that the defence in both the suits was the same; and that the evidence likely to be adduced in both the suits would be the same. Defendants Nos. 1 to 5 had prayed for a direction for a common trial of both the suits after the transfer.

8. This Court, by the order dated August 30, 1989, allowed the Civil Petition and withdrew O.S. No. 38/88 from the Court of the Civil Judge, Puttur, and transferred it to the Court of the Civil Judge at Chikmagalur (for trial in accordance with law), observing :

"3. When questioned, the learned counsel for the petitioners submitted that the nature of evidence is similar in two suits for the purpose of disposal and substantial evidence required in both the cases are identical. In these circumstances, I do not see anything wrong in the petitioners asking for transfer of the suit from Puttur to Chikmagalur and I also think that no prejudice would be caused to the respondent by such transfer."

9. Sri B. R. Aswatharam, the learned counsel for the plaintiff, submitted that O.S. No. 38/88 has been registered in the Court of the Civil Judge at Chikmagalur in O.S. No. 146/89 and is awaiting its trial.

10. Sri B. R. Aswatharam, the learned counsel for the plaintiff, reading the provisions contained in S. 16(c) of the Code, submitted that the Court of the Civil Judge, Chikmagalur, to which O.S. No. 38/88 has been transferred for disposal in accordance with law, would be having no territorial jurisdiction to try the suit and that this fact was not brought to the notice of this Court when C.P. No. 149/89 was heard and disposed of. Reading the provisions contained in S. 24(1)(b)(iii) of the Code and the relief claimed by the plaintiff in the suit, he submitted that the plaintiff's prayer for retransfer of the suit is justified. According to him,

retransfer is also necessary to obviate any complications arising out of the result of the suit in the Court of the Civil Judge at Chikmagalur in view of the provisions contained in S. 16(c) of the Code.

11. As against this, Sri P. Vishwanatha Shetty, the learned counsel for defendants Nos. 1, 3 and 5, contended that as long as the order made by this Court in C.P. No. 149/89 holds the field, this Court, in exercise of its jurisdiction under S. 24 of the Code, cannot retransfer the suit. He nextly contended, reading the provisions contained in S. 24, that notwithstanding the nature of the suit, the Court of the Civil Judge at Chikmagalur having pecuniary jurisdiction to try the suit, the withdrawal of the suit from the Court of the Civil Judge, Puttur, and its transfer to the Court of the Civil Judge at Chikmagalur by this Court would not create any complication as conceived by Sri B. R. Aswatharam, the learned counsel for the plaintiff.

12. Sections 15 and 16 of the Code appear in Part 1 under the title "Suits in General", "Jurisdiction of the Courts and Res Judicata". They appear in Part I under the sub-heading "Place of Suing". The sub-heading governs Ss. 15 to 25. S. 15 provides that every suit shall be instituted in the Court of the lowest grade competent to try it. S. 16 lays down that subject to the pecuniary or other limitations prescribed by any law, suits (a) for the recovery of immovable property with or without rent or profits, (b) for the partition of immovable property, (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property, (d) for the determination of any other right to interest in immovable property, (e) for compensation for wrong to immovable property, (f) for the recovery of moveable property actually under distraint or attachment shall be instituted in the Court within the local limits of whose jurisdiction the property is situate. The last paragraph of the section provides that suits to obtain relief respecting or compensation for wrong to immovable property may be instituted at the plaintiff's choice either in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business or personally works for gain, provided the property is held by or on behalf of the defendant, the relief sought can be entirely obtained through the personal obedience of the defendant and the properties situate in and not beyond India. The proviso is an application of the maxim "equity acts in personam."

13. Clause (c) of S. 16 is explicit in language and imperative in command that the suit shall be instituted only in the Court within the local limits of whose jurisdiction the immovable property forming the subject-matter of the mortgage is situate. The only exception to Cl. (c) of S. 16 is in respect of cases covered by the proviso which is applicable to other clauses of S. 16.

In *Mrs. Rosy Joseph and Others Vs. Union Bank of India, Ernakulam Branch*, dealing with the question as to whether a suit directly covered by Cl. (c) of S. 16 of the Code can be instituted in any Court other than the one within the local limits of whose jurisdiction the mortgaged properties are situate, with the aid of

S. 20, a Division Bench of the High Court of Kerala, noticing the applicability of S. 20 subject to the limitations laid down in Ss. 16 to 19, held that in a case coming within the scope of Cl. (c) of S. 16, S. 20 cannot be called in aid and that it is not permissible for the plaintiff to institute the suit in any Court other than the one within the local limits of whose jurisdiction the mortgaged properties are situate.

14. In the case on hand, the suit filed by the plaintiff is for sale of the property mortgaged as security for repayment of the debt described in detail in Schedules "A" and "B" forming part of the plaint. In other words, the suit is for enforcement of mortgage by sale of immovable properties. There is no dispute that the mortgaged properties are situated within the territorial jurisdiction of the Court of the Civil Judge at Puttur. The suit, it can be said, is directly governed by S. 16(c) of the Code. The suit ought to have been instituted in the Court of the Civil Judge at Puttur and it was rightly instituted by the plaintiff in the said Court. There was no choice left for the plaintiff under the provisions of the Code as to the forum in which the suit had to be instituted except the Court of Civil Judge at Puttur. The suit is obviously not the one falling within the scope of the proviso. In view of the indisputable facts, in my opinion, Sri B. R. Aswatharam, the learned counsel for the plaintiff, is entirely right in telling the Court that it is only the Court of the Civil Judge at Puttur which has the territorial jurisdiction to entertain and try the suit. A reading of the order made by this Court in C.P. No. 149 of 1989 would make it apparent that this aspect of the matter was not brought to the notice of this Court.

15. The first contention urged by Sri P. Vishwanatha Shetty, the learned counsel for defendants Nos. 1, 3 and 5, has not commended itself for acceptance by me. A bare reading of S. 24 would make it absolutely clear that on the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard or of its own motion without such notice, the High Court or the District Court may at any stage (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same or (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it and (i) try or dispose of the same or (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same or (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

16. In the instant case, the plaintiff wants retransfer of the suit to the Court of the Civil Judge, Puttur from which it was withdrawn and transfer to the Court of the Civil Judge at Chikmagalur on the ground that the transferee Court is not competent to try or dispose of the same in view of the nature of the suit and the subject-matter of the suit not being within the local limits of the jurisdiction of the said Court and also on the ground that if a suit were to terminate in a decree as prayed for, it will have to be transferred to the Court of Civil Judge, Puttur for execution in view of the fact of the mortgaged properties are situate within the territorial jurisdiction of the said Court involving lengthy and cumbersome

procedure and entailing avoidable delay in realising the fruits of the decree bringing unnecessary hardship. In my considered view, the existence of an order made by this Court in C.P. No. 149/89 cannot circumscribe or limit the jurisdiction of this Court in granting the prayer, a jurisdiction clearly confided in this Court by the Legislature by enacting sub-clause (iii) to Cl. (b) of sub-sec. (1) of S. 24 of the Code. In my considered view, absence of a review of the order made in C.P. No. 149/89 on an appropriate and proper motion by the plaintiff cannot be an impediment or hurdle in granting the prayer, provided the plaintiff makes out a case for retransfer.

17. Sri P. Vishwanatha Shetty nextly contended, placing considerable emphasis on the expression "competent to try or dispose of the same" appearing in Cl. (b) (ii) of sub-sec. (1) of S. 24 of the Code and relying on the two decisions of the High Court of Judicature, Madras, in Karupiah Ambalam Vs. Ayya Nadar, and P. Madhavan Unni Vs. M. Jayapandia Nadar, that the Court of the Civil Judge at Chikmagalur, having unlimited pecuniary jurisdiction under the provisions of the Karnataka Civil Courts Act, 1964, is competent to try or dispose of the suit transferred to it and that the general power of this Court under S. 24 of the Code is untrammelled and unfettered by any limitations appearing in S. 16 of the Code.

18. Indeed, it is true, the High Court or the District Court, in exercise of the power and jurisdiction under S. 24 of the Code, may either on the application of the parties or ex debito justitiae, transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same and it can withdraw any suit, appeal or other proceeding pending in any Court subordinate to it and try or dispose of the same or transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same.

19. The meat of the matter is, whether the Court of Civil Judge at Chikmagalur would be competent to try or dispose of the suit notwithstanding the fact that it would be having no territorial competency and jurisdiction to try and determine the suit.

20. To decide the question, it may be necessary to advert to the legislative history of S. 24 of the Code. The first CPC was Act 8 of 1859. The next CPC was Act 10 of 1877 which repealed that of 1859. That was amended by Ads of 1878 and Act 12 of 1879. It was then superseded by the CPC 1882 (Act 14 of 1882). That was amended from time to time between 1882 and 1895 and then superseded by the present Code.

21. Under S. 25 of Act 14 of 1882, the predecessor of S. 24 of the Code, the High Court and the District Court had been given power to transfer a suit pending in a subordinate Court to any other subordinate Court :

"competent to try the same in respect of its nature and the amount or value of the subject-matter."

22. It would be clear from the language of the relevant part of S. 25 of Act 14 of 1882 extracted above, that the condition required to be satisfied for transfer of a suit pending in a subordinate Court to any other subordinate Court was that the transferee Court should have pecuniary jurisdiction to try the suit.

23. In S. 24 of the Code, we have the words "competent to try or dispose of the same."

24. In Black's Law Dictionary with Pro-nunciations, Fifth Edition, the expression "Competent Court" has been defined as "A Court either Civil or Criminal having lawful jurisdiction." The word "jurisdiction" as is understood in legal parlance is a term of large and comprehensive import and would embrace every kind of judicial action. Broadly stated, it is the legal right, power or authority by which the Courts and Judges take cognizance of and decide cases. It means the extent of authority of a Court to administer justice not only with reference to the subject-matter of the suit, but also to the territorial and pecuniary limits of its jurisdiction.

25. The expression "competent to try or dispose of the same" appearing in S. 24(1)(b)(ii) has reference to the jurisdiction of a Court within the meaning of the word just referred to.

26. As early as 1920, the question regarding the meaning of the word "competent" appearing in S. 24(1)(b)(ii) came up for consideration before the Patna High Court in Jannat Husain v. Gulam Kutubuddin Ahmad AIR 1920 Pat 29 The learned Chief Justice (the Hon^{ble} Mr. Justice Dawson Miller) formulated the question for determination as under :

"What is the meaning of the word "competent" in the section just referred to"?

The learned Chief Justice answered the question as under :

"In my opinion, the Court is not competent to try the suit unless it has jurisdiction to do so. The jurisdiction of a Court depends not merely upon the nature or subject-matter of the suit but also, in the case of most subordinate Courts, upon the pecuniary value of the suit, and in the case of all upon the local limits of their jurisdiction."

The learned Chief Justice further proceeded to observe :

"...The Courts to which the District Judge may transfer a case for trial under S. 24, Civil P.C., must be Courts competent to try the same, that is, Courts having jurisdiction to do so, and the mere fact that the District Judge transferred a case for trial from one Court subordinate to his jurisdiction to another similar Court does not confer jurisdiction upon the Court to which the case is transferred, unless it were competent originally to try the suit. I can find nothing either in the CPC or in Act 12 of 1887 which confers any such powers upon the District Judge....."

27. In Ram Das and Another Vs. Habib Ullah, the question for consideration

before the Allahabad High Court was, whether the High Court or the District Judge, acting under S. 24 of the Code, has power to transfer a suit pending in one subordinate Court to another subordinate Court which has pecuniary but not territorial jurisdiction to try that suit. Though the question did not strictly arise in Ram Das's case, a Division Bench of the Allahabad High Court presided over by the learned Chief Justice (the Hon'ble Mr. Justice Sulaiman), in view of the contention canvassed by the learned Advocate for the applicant on merits of the question, expressed the view following the decision in Jannat Husain's case AIR 1920 Patna 29 (supra) and gave directions to the District Judge to bear that view in mind.

28. The question again came up before a Division Bench of the Allahabad High Court in Kishore Lal Vs. Balkishan, presided over by the learned Chief Justice. The learned Chief Justice, who had concurred with the judgment rendered by Bajpai, J., in Ram Das's case held with which Kendall, J., the other Hon'ble Judge on the Bench concurred, that it is open to the High Court or a District Judge to transfer a case pending in a subordinate Court to another Court which has pecuniary jurisdiction to try the suit, although it may not at the moment possess territorial jurisdiction to try it. The learned Chief Justice, in support of the view that the observations made in Ram Das's case, in which his Lordship had concurred, did not lay down the correct law, stated :

"Under S. 25, Act 14 of 1882, the High Court and the District Court were given power to transfer a suit pending in a subordinate Court to any other subordinate Court

"competent to try the same in respect of its nature and the amount or value of its subject-matter.

These words have been slightly altered, and in their place we now have in S. 24 the words "competent to try or dispose of the same." Under the old section there could be no doubt that all that was required of the subordinate Court to which the case was to be transferred was that it should have pecuniary jurisdiction to try the suit. The deletion of those words from the new section may prima facie suggest that the competence of the Court now required may be either pecuniary or territorial. If the words were to be taken literally, it might be open to argument that the word "competency" includes both pecuniary and territorial jurisdiction. Although the change in the words in the section was not emphasized, this view was certainly expressed by the learned Chief Justice of the Patna High Court in the case of Jannat Hussain v. Ghulam Kutubuddin Ahmad AIR 1920 Pat 29 : 57 Ind Cas 522 . He was of opinion that the word "competent" was very wide and included both kinds of jurisdiction. The head-note of the case did not show that the other learned Judge had expressed some doubt as regards this view and had reserved his opinion. The unfortunate omission of the words which appeared in the old section have made the new section somewhat ambiguous, but on reconsideration I am satisfied that the words have been deleted because they were considered redundant or unnecessary by the legislature. To hold that it

is necessary that the Court to which the case is transferred must have territorial jurisdiction would make it impossible for a High Court to transfer a case pending in the Court of a District Judge to that of the District Judge of another district, for these District Judges would not have concurrent territorial jurisdiction. The section would therefore be nullified if the interpretation put upon it in the case of Ram Das and Another Vs. Habib Ullah, were to be accepted. In order not to render the section useless, I am constrained to hold that the word "competent" must be taken to refer to pecuniary jurisdiction only.

Cases of concurrent jurisdiction where two Courts have both pecuniary and territorial jurisdiction to try a suit are dealt with in S. 22. The same words "competent to try the suit" occur in S. 11, Civil P.C., as also in S. 15. It is quite clear that for purposes of res judicata it is not necessary that the two Courts must have concurrent territorial jurisdiction which depends entirely on the subject-matter in dispute. The provision in S. 15 would point to the same conclusion. It may also be pointed out that a distinction has been drawn in the Code as regards territorial jurisdiction, and S. 21 provides that no objection as to the place of suing shall be allowed, unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been a consequent failure of justice. On a reconsideration I am therefore of opinion that the observation made in the last portion of the judgment in Ram Das and Another Vs. Habib Ullah, in which I concurred did not lay down the correct law."

29. In Karuppiah Ambalam Vs. Ayya Nadar, a decree had been passed in an original suit by the Sub-Court, Dindigal in the Madurai District. The execution proceedings had been initiated in that Court. Since the property to be proceeded against was situated within the jurisdiction of the Sub-Court, Sivaganga in the Ramanathapuram District, the decree had been transferred to the Sub-Court, Sivaganga following the procedure indicated in S. 39 read with O. 21, Rr. 5 and 8 of the Code. Thereafter some allegations had been made about the propriety of the execution being continued in the Sub-Court, Sivaganga because of the manner in which adjournments had been granted by the subordinate Judge while dealing with the execution petition. The decree-holder had filed a petition before the District Judge, Ramanathapuram u/s 24 of the Code for transfer. After hearing both the parties, the learned District Judge had transferred the execution petition to the Sub-Court, Ramanathapuram at Madurai for further execution and disposal. The property sought to be proceeded against was situated within the jurisdiction of the Sub-Court, Sivaganga and no part of it was situated within the jurisdiction of the Sub-Court, Ramanathapuram. The judgment-debtor had assailed the order made by the District Judge by filing a Civil Revision Petition before the High Court. Two contentions had been urged. The first contention was under S. 24, the District Court had no jurisdiction to transfer to another Court execution proceedings pending in one subordinate Court after transfer to it under S. 39. The second contention was that even if under S. 24 the District Court had power to transfer execution proceedings, the transfer could be made only to a

Court which had jurisdiction over the property or the person against whom execution was sought. The Division Bench of the High Court of Judicature at Madras after making a reference to the relevant provisions in the Code dealing with the matter, the object and purpose of investing power on two superior Courts, viz., the High Court and the District Court in the matter of withdrawal or transfer, held that there was no reason why execution proceedings should be excluded from the scope of "other proceeding" mentioned in the section,

As regards the second contention, the Division Bench held as under :

"(5) Next, to restrict the meaning of the words competent to try or dispose of the same used in S. 24(1)(b)(ii), C.P.C. to territorial jurisdiction over the property of the judgment-debtor or the residence qualification of the judgment-debtor would lead to grave anomalies and failure of justice. Thus, if the Presiding Officer of the executing Court happens to be the judgment-debtor himself and owns the property in his jurisdiction which is being proceeded against, or if he has taken a prejudicial attitude to one party, and that is urged as a ground for transfer of the execution proceeding, it will be impossible to transfer the execution proceeding to any other subordinate Court, if the restricted meaning above sought to be given to the word competency, is to be accepted. It appears to us that the word competence used in the above section cannot be used to restrict the power of the District Court or the High Court under S. 24, C.P.C. to transfer the execution proceeding only to a Court which has territorial competency, or jurisdiction over the place where the judgment-debtor resides or works for gain. It has to be given a sufficiently wide interpretation to include each and every Court within the jurisdiction of the superior Court, empowered to deal with such execution application."

31. In the case of P. Madhavan Unni Vs. M. Jayapandia Nadar, the appellant had obtained a money decree against the respondent in an original suit on the file of the District Munsiff's Court, Ottapalam. The respondent-judgment-debtor had owned properties in Tirunelveli District. On the application of the appellant-decree-holder, the decree had been transferred to the District Court, Tirunelveli for execution. In the District Court, Tirunelveli, the appellant-decree-holder had filed E.P. No. 14 of 1952 and had attached certain properties lying within the territorial jurisdiction of Tirunelveli judicial District. Subsequent to the attachment, the execution petition had been transferred to the Sub-Court, Tirunelveli for further execution and the execution petition had been numbered as E.P. 12 of 1953 on the file of the Sub-Court, Tirunelveli. Three plots had been sold on 13-11-1953. But the sale had not been confirmed. The properties had been proclaimed for sale again on 25-6-1954. But no sale had been held under the execution petition and finally the application had been dismissed as not pressed on 30-6-1955, keep* ing alive the attachment for a period of three months. Within the period of three months, the appellant-decree-holder had filed E.P. 145 of 1955 and had brought to sale and had sold some of the properties already attached including some of the items lying beyond the territorial

jurisdiction of the Sub-Court. For realising the balance due under the decree, the appellant-decree-holder again had filed E.P. 99 of 1960 on the file of the Sub-Court, Tirunelveli and had sought the sale of the items lying beyond the territorial jurisdiction of the Sub-Court, Tirunelveli. The appellant had filed a suit for a declaration that the execution proceedings in E.P. 99 of 1960 in regard to sale of the properties outside the jurisdiction of the Sub-Court, Tirunelveli, was void.

32. The defence to the suit was (1) that the Sub-Court, Tirunelveli, being a transferee Court, the order of transfer having been made by the District Judge, Tirunelveli under S. 24 of the Code had ample jurisdiction to proceed with the execution and to sell the properties lying within the judicial District of Tirunelveli, though beyond the territorial jurisdiction of the Sub-Court, Tirunelveli; and (2) that the plaintiff was estopped from questioning the jurisdiction of the Sub-Court of Tuticorin, he having never raised the objection in the execution proceedings and that he was incompetent to raise the objection and that the remedy of the plaintiff if at all was to have objected to the execution proceedings before the Executing Court and that S. 47 precluded the plaintiff from maintaining the suit.

33. The trial Court had upheld the jurisdiction of the Sub-Court, Tirunelveli to proceed against the properties within the judicial District of Tirunelveli although beyond the territorial jurisdiction of the Sub-Court, Tirunelveli. It had dismissed the suit. The decision had been confirmed in appeal by the Subordinate Judge at Tuticorin. There was second appeal against the judgment. A learned single Judge had allowed the appeal and had decreed the suit. The appeal before the Full Bench was Letters Patent Appeal. The main contention was that by reason of the transfer made by the District Judge under S. 24, the Sub-Court, Tirunelveli was competent to bring to sale the properties lying even beyond its territorial jurisdiction though they were within the jurisdiction of the judicial District of Tirunelveli. The Full Bench referred to the relevant provisions in the Code, namely, S. 24, Ss. 37 to 46 and the relevant rules contained in O. 21, Rr. 3 to 9 and held that a close scrutiny of the decisions cited before it revealed the distinction between the powers of the Court to which an execution proceeding has been transferred under S. 39 of the Code for disposal and those which deal with the power of the superior Court under S. 24 to transfer the suit or other proceeding to any Court. The Full Bench referred to the cases cited before it that fall under S. 39 of the Code and the decisions which relate to the power of transfer of suits, appeals and other proceedings under S. 24. The Full Bench took the view that a proceeding in execution would undoubtedly fall under the expression "other proceeding" occurring in S. 24(1)(a) of the Code. Referring to the decision in *Rajagopala Pandarathar and Others Vs. Tirupathia Pillai and Another*, the judgment rendered by the learned Chief Justice in *Kishore-lal's* case (*supra*) and to the observations made in two other decisions of that Court, referred to in paragraphs 9-A and 9-B of the judgment, the Full Bench agreed with the observations made in *Karuppiiah Ambalam Vs. Ayya Nadar*, and held that the power of transfer under S. 24 of the Code, of a suit, appeal or other

proceeding by a High Court or a District Court to a Court within their respective jurisdiction is a very effective remedy and no fetter should be placed upon it on grounds of want of territorial jurisdiction of the transferee Court.

34. The question as to whether a proceeding in execution would fall under the expression "other proceeding" occurring in S. 24(1)(a) of the Code is no more available for debate. In view of substitution of sub-sec. (3) by 1976 Act for the purpose of S. 24, proceeding includes a proceeding for the execution of a decree or order.

35. The mortgaged properties, the subject-matter of the suit, sought to be retransferred are within the territorial jurisdiction of the Civil Judge at Puttur. The suit is for the enforcement of mortgage by sale of immovable properties, it is obviously not the one falling within the scope of the proviso to S. 16 of the Code. 11 is directly governed by S. 16(c) of the Code. It was the Court of Civil Judge at Puttur which was the proper Court in which the suit ought to have been instituted and which, as a matter of fact, was instituted. It is the Court which has jurisdiction with reference to the subject-matter of the suit and also the territorial jurisdiction to entertain and try the suit. There was no choice left for the plaintiff in the matter of the choice of the forum.

36. Section 16(c) of the Code lays down that subject to the pecuniary or other limitations prescribed by any law, suits for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property shall be instituted in the Court within the local limits of whose jurisdiction the property is situated. Cl. (c) is explicit in language and imperative in command.

37. Section 24(1)(h)(ii) of the Code provides that on the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard or of its own motion without such notice, the High Court or the District Court may at any stage withdraw any suit, appeal or other proceeding pending in any Court subordinate to it and transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same.

38. It is obvious from the facts that the Court of Civil Judge at Chikmagalur has no jurisdiction both with reference to the subject-matter of the suit and also to the territorial limits of its jurisdiction.

39. The jurisdiction of a Court depends not merely upon the nature or subject-matter of the suit, but also upon the pecuniary value of the suit and the local limits of its jurisdiction. The expression "jurisdiction" refers to the authority of a Court to dispense justice not only with reference to the subject-matter of the suit but also to the territorial and pecuniary limits of its jurisdiction. If the expression "competent to try or dispose of the case" appearing in S. 24(1)(b)(ii) of the Code is to be understood, adopting the rule of literal construction the golden rule for the interpretation, it would be clear that the general power of High Court or District Court under S. 24 to withdraw any suit, appeal or other proceeding in any Court subordinate to it and transfer the same for trial or disposal to any

Court subordinate to it can be exercised by transferring a suit, appeal or other proceeding only to a Court subordinate to it and competent to try or dispose of the same, that is having jurisdiction - having authority to try or dispose of the suit, appeal or other proceeding with reference to subject-matter of the suit, and territorial and pecuniary limits of its jurisdiction.

40. Admittedly, the Court of Civil Judge at Chikmagalur would not be competent originally to try the suit as it would be having no competence both with reference to the subject-matter and also to the territorial limits of its jurisdiction. The transfer of the suit by this Court cannot confer jurisdiction on the Court of Civil Judge at Chikmagalur since it is not competent originally to try it. That the intention of the Legislature in incorporating the words "and competent to try or dispose of the same" is that the Court to which the suit, appeal or other proceeding could be transferred under S. 24(1)(b)(ii) of the Code must be competent to try or dispose of the case, in the sense that in addition to pecuniary jurisdiction, it should have territorial jurisdiction is amply made clear by omission of the words "competent to try the same in respect of its nature and amount or value of its subject-matter" that appeared in S. 25 (Act 14 of 1882) and insertion of the words "and competent to try or dispose of the same". If the intention of the Legislature was that the transfer can be made to a subordinate Court having pecuniary jurisdiction to try the suit, the Legislature would have retained the words that appeared in S. 25 (Act 14 of 1882) without inserting the words "and competent to try or dispose of the same." Non-retention of the words coupled with insertion of new words, adverted to earlier, in S. 24 would prima facie suggest that the competence of the Court now required has to be both pecuniary and territorial jurisdiction. That would be the meaning of the expression "and competent to try and dispose of the same" appearing in S. 24(1)(b)(ii) of the Code if the literal construction is to be placed.

41. It was the view expressed by the learned Chief Justice of the Patna High Court in the case of Jannat Husain AIR 1920 Pat 29 (supra), though the view does not highlight and emphasise the deletion and insertion of the words. The literal construction accords with the definition of the competent Court given in Black's Law Dictionary with Pro-nunciations, Fifth Edition, and the meaning of the word "jurisdiction" as understood in legal world.

42. The deletion of the words and in their place the substitution of the words referred to earlier cannot be said to have been resorted to by the Legislature without any intent or purpose. It is difficult to hold that the words have been deleted because they were considered redundant or unnecessary by the Legislature.

43. If the word "competent" appearing in S. 24(1)(b)(ii) is to be interpreted as both including pecuniary and territorial jurisdiction, it may not nullify the power and render the section useless.

44. If the High Court or the District Court were to find that any suit, appeal or

other proceeding pending in any Court subordinate to it should be transferred and if it cannot be transferred for trial or disposal to any Court subordinate to it for want of competence to try or dispose of the same, it can try or dispose of the same itself under S. 24(1)(b)(i) of the Code.

45. Section 11 deals with the doctrine of *res judicata*, that is a matter adjudicated upon or a matter in which judgment has been pronounced. It bars the trial of a suit or an issue in which the matter directly and substantially in issue has already been adjudicated upon in a previous suit. In order that a decision in a former suit may operate as *res judicata* in a subsequent suit, it is necessary that the Court which tried the former suit must have been a Court competent to try the subsequent suit. The doctrine as embodied in S. 11 of the Code does not render the interpretation of the word "competent" in S. 24(1)(b)(ii) as including both pecuniary and territorial jurisdiction, in any way unsound.

46. The object of S. 15 in requiring a suitor to bring his suit in the Court of the lowest grade competent to try it is to relieve the Courts of higher grades from congestion and overcrowding with suits. The section is a rule of procedure, not of jurisdiction.

47. In *Mulla on the Code of Civil Procedure, Fourteenth Edition*, by J. M. Shelat, formerly Judge of the Supreme Court of India, at page 179, dealing with the meaning of the word "competent" appearing in S. 15, this is what the learned author has observed :

"3. Jurisdiction-- The word "competent" used in this section has reference to the jurisdiction of a Court. Jurisdiction means the extent of the authority of a Court to administer justice not only with reference to the subject-matter of the suit but also to the local and pecuniary limits of its jurisdiction. Thus, a Presidency Small Cause Court has no jurisdiction to try suits in which the amount or value of the subject-matter exceeds the prescribed monetary value; this is said to be the jurisdiction of a Court as regards its pecuniary limits. Nor can it try suits for specific performance of contracts or for an injunction or for a dissolution of partnership; this is said to be the jurisdiction of a Court as regards the subject-matter of a suit. Nor can it try a suit on a cause of action that has arisen beyond the local limits of the original civil jurisdiction of the High Court; this is said to be the local limits of its jurisdiction."

48. Indeed, it is true, Section 21 of the Code makes a distinction as regards territorial jurisdiction. In *Seth Hiralal Patni Vs. Sri Kali Nath*, the Supreme Court held that the objection to the local jurisdiction of a Court does not stand on the same footing as an objection to the competence of a Court to try a case; that competence of a Court to try a case goes to the very root of the jurisdiction; and that where it is lacking, it is a case of inherent lack of jurisdiction. The Supreme Court held that, on the other hand, the objection to the local jurisdiction of a Court can be waived and this principle has been given a statutory recognition by enactments like Section 21 of the Code. We have to remember that the policy

underlying Sections 21 and 99 of the Code and Section 11 of the Suits Valuation Act is the same, namely, that where a suit has been tried by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds. The policy of the Legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by the appellate Court unless there has been prejudice on the merits. As a general rule, neither consent nor waiver nor acquiescence can confer jurisdiction on a Court otherwise incompetent to try the suit. Section 21 provides an exception and a defect as to the place of suing, that is to say, the local venue for suits cognizable by the Courts under the Code may be waived under S. 21. The waiver is limited to objection in the appellate and revisional Courts. Section 21 is a statutory recognition of the principle that the defect as to the place of suing under Ss. 15 to 20 may be waived.

49. In the instant case, the question of waiver does not arise for consideration. The suit is sought to be retransferred on the ground that the Court to which it has been transferred has no territorial competency to try and dispose of the same. Far from waiving objection to the territorial jurisdiction, which is referred to be done by the defendant the plaintiff has sought retransfer on the ground that the transferee Court has no territorial jurisdiction to try or dispose of the suit.

50. While Section 21 lays down that no objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Trial Court at the earliest opportunity, S. 21(A), inserted by Amendment Act 1976, does not expressly provide as to whether such an objection can be permissible in a separate suit challenging the decree. It gives effect to the view taken by Madras, Lahore, Nagpur High Courts and the Chief Court of Oudh to the effect that if the defendant did not object to jurisdiction and allowed a decree to be passed against him, he would not in a subsequent suit set aside the decree for want of jurisdiction. In my considered view, neither Section 21 nor Section 21(A) can be called in support of the proposition that the word "competent" in Section 24(1)(b)(ii) refers to pecuniary jurisdiction only.

51. Section 22 confers a power on the defendant to apply for transfer subject to the conditions mentioned therein. Section 23 specifies the Court to which the application should be made. Both the sections are complementary to each other. They in no way support the construction to be put on the word "competent" as meaning only pecuniary jurisdiction.

52. If the literal construction is followed, it may not lead to grave anomalies and failure of justice nor it will in any manner circumscribe or restrict the wide power given to High Court and District Court u/s 24.

53. In a situation of the kind stated in *P. Madhavan Unni Vs. M. Jayapandia Nadar*, the High Court or District Court can divert the course of justice by taking a cause on its file for trial and disposal.

54. Indeed, it is true that Section 24 confers a very wide power on High Court and District Court and this conferment is intended to enable the two superior Courts in their general power of superintendence over subordinate Courts or in the interest of justice to redistributing of civil work of whatever nature pending in subordinate Courts for the purpose of disposal. The power can be used where the interests of justice require that a particular cause should not be tried in a particular subordinate Court and should be transferred from that Court. If the interpretation on the word "competent" put in Jannat Husain's case, supra, is accepted it would not introduce any fetters on the exercise of wide power by High Court or District Court, the superior Courts, confided in them u/s 24 of the Code. With this interpretation, the two superior Courts mentioned in Section 24 can effectively and meaningfully exercise the power.

55. For the reasons aforesaid, I hold, following the decision of the Patna High Court in Jannat Husain's case AIR 1920 Pat 29 (supra) that the word "competent" appearing in Section 24(1)(b)(ii) of the Code includes both pecuniary and territorial jurisdiction and a High Court or a District Court in exercise of the power under S. 24(1)(b) cannot transfer a suit, appeal or other proceeding pending in a Court subordinate to it to any other Court subordinate to it for trial or disposal of the same if the transferee Court has no territorial competency to try or dispose of the suit.

56. Having regard to the explicit and clear mandate in Section 16 of the Code, it is my considered view that the general power of High Court or District Court u/s 24 stands circumscribed in respect of suits directly governed by Section 16 of the Code. I, therefore, hold that the first ground urged by Sri B. R. Aswatharam, the learned counsel for the plaintiff, for retransfer is acceptable. The retransfer sought for also appears to be justified on the second ground to which a reference has been made in paragraph-16 of the order.

57. In the result, for the reasons aforesaid, I proceed to pass the following order :

The petition is allowed with costs. O.S. No. 38/88, numbered as O.S. No. 146/89 in the Court of Civil Judge at Chikamagalur and now pending in the said Court, (withdrawn and transferred to it by this Court in C.P. No. 149/89), is hereby retransferred to the Court of Civil Judge at Puttur, from which it had been withdrawn, for trial and disposal in accordance with law. The transferee Court shall proceed with the suit as it goes to it. Advocate's fee is fixed at Rs. 200/-.

58. Petition allowed.