

**(1950) 04 MAD CK 0018**  
**In the Madras High Court**  
**Case No : C.S. No. 303 of 1947**

V. Ramamirtham, Sole Proprietor, Glorious Pictures

APPELLANT

Vs

Rama Film Service

RESPONDENT

**Date of Decision :** 27-04-1950

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 15, 24, 24(1)  
Madras City Civil Courts Act, 1892 — Section 16, 3A

**Citation :** AIR 1951 Mad 93 : (1951) 2 MLJ 121

**Hon'ble Judges :** Viswanatha Sastri, J; Subba Rao, J; Satyanarayana Rao, J

**Bench :** Full Bench

**Advocate :** A.G. and K.S. Ramamurthy, V. Radhakrishnayya, S. Amudachari and A. Kuppuswami, for the Appellant;

## **Judgement**

Satyanarayana Rao, J.—At the instance of Mack J., two questions have been referred to the F. B. :

1. Whether Section 15, Civil P. C., governs Chartered High Courts, and whether in view of it all suits below Rs. 10,000 in value should not be

instituted direct in the City Civil Court ;

2. Whether the City Civil Court is competent to try or dispose of suits filed in the High Court below Rs. 10,000 in value which were instituted prior

to the enhancement of its jurisdiction from Rs. 8000 to Rs. 10,000 ; if so, can such transfers be legally made either u/s 16, proviso (2), Madras

City Civil Court Act or u/s 24(1), Civil P. C.

This reference was occasioned as Mack J. was of opinion that an earlier decision of Panchapagesa Sastri J. in Mohammed Yusuf Bannay Sahib

and Others Vs. Khadir Badsha Sahib and Others, which held that the H. C. had no power u/s 16 (proviso ?) (2), Madras City Civil Court Act

(VII [7] of 1892) to transfer to the City Civil Ct. suits instituted in the H. C. on its original side before the date of the Notfn. G. O. No. M. S.

4175 Home dated 11-11-1948 required reconsideration. In order to better appreciate the scope of the questions raised in the reference and the contentions urged before us, it is necessary to set out briefly the relevant provisions that have a bearing on the questions.

2. The original jurisdiction of the H. C. is derived under clause 12 of the Letters Patent which empowered the H. C. of Judicature at Madras in the

exercise of its Ordinary Original Civil Jurisdiction to

receive, try and determine suits of every description, if, in the case of suits for land or other immovable property, such land or property shall be

situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained,

in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the

suit shall dwell, or carry on business, or personally work for gain within such limits ; except that the said High Court shall not have such original

jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Madras, in which the debt or damage, or value of the property sued

for, does not exceed one hundred rupees.

The H. C., therefore, has practically unlimited original jurisdiction except that if the debt or damage or the value of the property does not exceed

Rs. 100 and the case is one which falls within the jurisdiction of the Small Cause Court at Madras, the H. C. in its original jurisdiction cannot try

such a suit.

3. In 1882, the Presidency Small Cause Courts Act, 1882 (iv [4] of 1882) was passed to consolidate and amend the law relating to the Courts of

Small Causes established in the towns of Calcutta, Madras & Bombay. In each of the Presidency towns a Court of Small Causes was established

by that Act subject to the superintendence of the H. C. The local limits of the jurisdiction of the Small Cause Court is co-extensive with the

ordinary original civil jurisdiction of the H. C. A Small Cause Court was empowered to try all suits of a civil nature subject to the exceptions

contained in Section 19 of the Act if the amount or value of the subject-matter did not exceed Rs. 2000 and further subject to the conditions

regarding the cause of action and the residence of the defts. contained in Clauses (a) to (c) of Section 18, Section 21 of the Act, however, gave an

option to a pltf. when the amount or value of the subject-matter of the suit exceeded Rs. 1000 to institute the suit either in the H. C. on its original

side or in the Small Cause Court. In 1892 the Madras City Civil Court Act (VII [7] of 1892) was passed by the Legislature which empowered the

Local Govt. by notification in the Official Gazette to establish a Court, to be called the Madras City Civil Court, with jurisdiction to receive, try and

dispose of all suits and other proceedings of a civil nature not exceeding Rs. 2500 in value and arising within the City of Madras, except suits or

proceedings which are cognizable (a) by the H. C. as a Court of Admiralty or Vice. Admiralty or as a Colonial Court of Admiralty, or as a Court

having testamentary, intestate or matrimonial jurisdiction, or (b) by the Ct. for the relief of insolvent debtors, or (c) by the Small Cause Ct. In 1935

the Act was amended by introducing a new section, Section 3-A. It states :

Subject to the exceptions specified in Section 3, if the Provincial Government may, by notification in the Official Gazette, invest the City Court

with jurisdiction to receive, try & dispose of all suits and other proceedings of a civil nature arising within the City of Madras & of such value not

exceeding ten thousand rupees as may be specified in the notification.

Appeals against the decisions of the City Civil Ct. lie to the H. C. & the right of appeal was conferred by Section 15 of the Act. Sub-clause (2) of

that section provides that the period of limitation for an appeal from a decree or order of the City Ct. shall be the same as that provided by law for

an appeal from a decree or order of the H. C. in the exercise of its original jurisdiction. The next section, Section 16, saves the original civil

jurisdiction of the H. C. & also confers a power of transfer on the H. C. of suits pending before it. As the construction of this section is one of the

important points in this case, it is necessary to set it out in extenso :

16. Nothing in this Act contained shall affect the original civil jurisdiction of the High Court : Provided that

1. If any suit or other proceeding is instituted in the High Court which, in the opinion of the Judge who tries the same (whose opinion shall be final,

ought to have been instituted in the City Court, no costs shall be allowed to successful plaintiff and a successful defendant shall be allowed his costs

as between attorney and client;

2. In any suit or other proceeding pending at any time in the High Court any Judge of such Court may at any stage thereof make an order

transferring the same to the City Court if in his opinion such suit or proceeding is within the jurisdiction of that Court and should be tried therein;

3. In any suit or other proceeding so transferred, the Court-fees Act, 1870, shall apply, credit being given for any fees levied in the High Court.

4. The CPC & the Civil Rules of Practice apply to proceedings before the City Civil Ct. By virtue of Section 117, C. P. C. the provisions of the

Code except as provided in Part IX or in Part X or in the rules apply to H. C. Section 120 of the Code excludes the application of Sections 16,

17 & 20 & of the Code to H. Ct. as Clause 12 of the Letters Patent provides also rules for determining the place of suing. Under Order 49 some of

the rules of the various orders including Rule 10 of Order 7 are excluded & are inapplicable to Chartered H. Cts. in the exercise of ordinary &

extraordinary original civil jurisdiction.

5. The pecuniary jurisdiction of the City Civil Ct. was increased in 1935 to Rs. 5000 & by a further Notfn. G. O. No. 4175 dated 11-11-1948 it

was further increased to Rs.10000. The notification is as follows :

In exercise of the powers conferred by Section 3-A, Madras City Civil Court Act, 1892 (Central Act No. 17 of 1892) & in supersession of

Law (General) Dept. Notfn. No. 216, dated 22-8-1933, published at p. 488 of Part I of the Fort St. George Gazette, dated 26-8-1935, His

Excellency the Governor of Madras hereby invests with effect on & from 1st day of Dec. 1948, the Madras City Civil Court, subject to the

exceptions specified in Section 3 of the said Act with jurisdiction to receive, try & dispose of all suits & other proceedings of a civil nature arising

within the City of Madras & of value not exceeding ten thousand rupees.

6. The first of the questions referred to us relates to the applicability of Section 15, C. P. C. to Chartered H. Cts. In other words the question is if

a suit is below rupees ten thousand in value, is the litigant bound to institute it in the City Civil Ct. as the Ct. of the lowest grade competent to try it.

Section 15 of the Code directs that every suit shall be instituted in the Ct. of the lowest grade competent to try it. Under Clause 12 of the Letters

Patent, subject to one qualification, the H. C. has unlimited original jurisdiction &

this jurisdiction was saved u/s 16, City Civil Court Act (VII [7] of 1892). Competency contemplated by this section is pecuniary competency & it has been held that this section lays down a rule of procedure & not of jurisdiction. While it enjoins the institution of a suit in the Ct. of the lowest grade competent to try it, it does not oust the jurisdiction of the Ct. of a higher grade. Even if the Ct. of a higher grade tries & disposes of a suit which could have been instituted in a Ct. of a lower grade, the decision rendered is not without jurisdiction is not a nullity--(Sea Nidhilal v. Mazhar Hussain, 7 ALL. 230 : 1885 A. W. N. I F. B.), Matra Mondal v. Hari Mohan, 17 Cal. 155; Krishnasami v. Kanakasabai, 14 Mad. 183 ; (1 M. L. J. 284) and Gowrachandra v. Vikrama Deo, 23 Mad. 367.

7. It has now been decided by the P. C. in Sabitri Thakurain v. Savi, 48 Cal. 481: AIR 1921 P. C. 80) that the C. P. C. of 1908 & the rules contained in the orders apply to proceedings in the H. C. whether original or appellate except so far as the Code expressly provided to the contrary. The question that actually arose for decision in that case was whether the provision in Order 41, Rule 10, C. P. C. of 1908 applied to an appeal under Clause 15 of the Letters Patent as this provision was not expressly excluded by the Code & it was held that an appeal u/s is of the Letters Patent was governed by that provision. The scheme of the Code, according to their Lordships of the Judicial Committee, is to provide generally for the mode in which the H. C. is to exercise its jurisdiction, whatever it may be, while specifically excepting the powers relating to the exercise of original civil jurisdiction, to which the Code is not to apply. It confers a general rule making, power saving only what is excepted in the body of the Code.

It would appear, therefore, that unless there is some other provision which is inconsistent with Section 15 or there is other reason for inferring that the Legislature did not intend by enacting Section 15 in the Code to affect in any manner or to any extent the original civil jurisdiction conferred on the H. C. under Clause 12 of the Letters Patent, Section 15 necessarily would apply. Section 15 occurs in the fascicule of Sections 15 to 20 relating to place of suing. The Calcutta H. C. had occasion to examine the scheme of these sections in order to determine whether Section 21 which is not expressly excluded u/s 120 applied to the original jurisdiction of the

H. C. The view taken by the Calcutta H. C. was that it did not.

Dealing with Section 15 of the Code, Rankin C. J. in *Manindra Chandra Nandy Vs. Lalmohun Roy and Others*, observed that it had no

application either in practice or in substance to the original jurisdiction of the H. C. He, however, expressly stated that he was not considering the

position of the City Civil Ct. in Madras or matters of that kind. The Rangoon H. C. in *Bank of Ghettnad v. Section P. K. V. R. Firm*, AIR 1935

Rang. 517: (160 I. c. 818) was also of opinion that Section 15 did not apply to the H. C. in the exercise of its original civil jurisdiction

notwithstanding that it is not one of the excepted sections mentioned in Section 120 of the Code. The conclusion was based on the arrangement of

the group of sections relating to place of suing most of which were expressly excluded by Section 120 as inapplicable to Chartered H. Cts.

8. In my view there is much to be said in favour of the view taken by the Calcutta & Rangoon H. Cs. in the two decisions above referred to. The

City Civil Court Act expressly saved the original civil jurisdiction of the H. C. & the policy of the Legislature has been not to touch the original

jurisdiction of the H. C. The scheme of the entire group of sections relating to place of suing cannot be made applicable when a self-contained

provision relating to place of suing was laid down in Clause 12 of the Letters Patent. The practice has also been so far not to apply Section 15 to

the original jurisdiction of the High Court.

9. Apart from this in my opinion proviso (1) to Section 16, Madras City Civil Court Act, is clearly inconsistent with Section 15 & does not make it

obligatory on the plaintiff to choose the lowest Ct. of pecuniary jurisdiction to institute a suit when the conflict is between the City Civil Ct. & the H. C.

The only disability which the proviso imposes in a case where a suit which ought to have been instituted in the City Ct. has been instituted in the H.

C. is that the successful plaintiff should be deprived of his costs & the successful defendant, should be allowed his costs as between attorney & client. It

must be remembered that Order 7, Rule 10 was not made applicable to the Chartered H. Cs. & if a plaint which ought to have been filed in a Ct.

of lower pecuniary jurisdiction is in fact filed in the higher Ct., viz., the H. C., the H. C. cannot return the plaint & in such a case the H. C. has the

option of following one of two courses, either to try the suit subject to the

penalties, provided in the first proviso to Section 16 or to transfer the suit under proviso 2 to the said section. Proviso (1) recognises the right of the litigant to institute a suit which ought to have been filed in the City Civil Ct. even in the H. C. & there is no mandatory provision like Section 15 in the City Civil Court Act enjoining upon him the duty of resorting to the Ct. of lowest pecuniary jurisdiction. The proviso (1) to Section 16, in my opinion, clearly negatives the applicability of Section 15 when the City Civil Ct. happens to be the Ct. of the lowest grade competent to try the suit.

10. It was also argued with some force that the gradation contemplated by Section 15 is only the gradation or subordination of Cts provided in Section 8 of the Code. Section 8 says that for the purposes of this Code, the Dist. Ct. is subordinate to the H. C. & every civil Ct. of a grade inferior to that of a Dist. Ct. & every Ct. of Small Causes is subordinate to the H. C. & Dist. Ct. It follows that in the gradation of Cts. contemplated by the Madras Civil Courts Act, i.e., the Munsif Ct. the Sub-Ct., the Dist. Ct. & the H. C. & Small Causes Cts. there are two kinds of gradation. One is the gradation beginning with the Dist. Ct. & ending with the Dist. Munsif's Ct. so far as the institution of the suits is concerned & the H. C. & the Small Causes Ct. constituted another kind of gradation. At the head of all no doubt, is the H. C. but in the chain of gradation of Cts. the City Civil Ct. does not come in & it is possible to assume that for the purpose of the Code, the gradation contemplated is the gradation referred to in Section 3. In this view Section 15 would apply only when there is necessity to choose the forum in the gradations of Cts referred to in Section 3. The lowest Ct. of pecuniary jurisdiction must be the Ct. in which the suit should be instituted. But Section 8 speaks only of subordination of Cts. & defines it whereas Section 15 speaks of the Ct. of the lowest grade "competent" to try & competency in this section can only mean pecuniary competency, .If this view of the section is right, it follows that when there are two Cts. of different pecuniary jurisdiction like the City Civil Ct. & the H. C. exercising original civil jurisdiction, there is no reason for not treating the City Civil Ct. as the Ct. of the lowest grade if the value of the suit is within the pecuniary jurisdiction of that Ct. It is, therefore, difficult to restrict the meaning of Section 15 in the manner contended.

11. But, for the reasons I have already given, I am definitely of opinion that Section 15 has no application to the H. Cts. exercising ordinary original

jurisdiction when there is a conflict between the original jurisdiction of the H. C. & City Civil Ct. constituted under the Madras City Civil Court

Act. The answer, therefore, to the first question referred must, in my opinion, be in the negative.

12. The second question referred to us is expressly restricted to suits instituted in the H. C. of the value of Rs. 10,000 filed prior to the date when

the notification under Section 3-A, City Civil Courts Act took effect i.e., 1-12-1948. Transfer of suits of the said value after the aforesaid date

does not present any difficulty as such suits can undoubtedly be transferred to the City Civil Ct. u/s 16, proviso 2. In the arguments before us by

the learned advocates representing the bar & the Advocate-General, contentions were urged against the power of transfer & none in support of

this power. This is apparently because the bar is interested in retaining the suits, about; 434 in number, on the original side of the H. C. We had

therefore, to rely on the results of our research in order to resolve the difficulty in interpreting the proviso.

13. It is objected that Section 3-A of the Act & the power delegated thereunder is a legislative power, the delegation of which is not permissible

under law in view of the recent decision of the AIR 1949 175 (Federal Court) & a decision of this In Re: Kalyanam Veerabhadrayya, . From an

examination of Section 3-A it will be seen that the Local Govt. is authorised by it by a notification in the Official Gazette to invest the City Civil Ct.

with jurisdiction to receive, try and dispose of suits & other proceedings of a civil nature arising within the City of Madras of the value not

exceeding Rs. 10,000 which may be specified in the notification. In other words, the Local Govt. was empowered by this section to fix the

pecuniary jurisdiction of the City Civil Ct. within a limit not exceeding Rs. 10,000. That a legislative power cannot be delegated has been settled by

the decision of the F. C. above referred to. The question, therefore, is, is the power of fixing the pecuniary jurisdiction of the City Civil Ct. within

the limit prescribed by Section 3-A a legislative power or merely an executive or administrative act. In my judgment In Re: Kalyanam

Veerabhadrayya, , I pointed out the difficulty in drawing the line between a legislative power & a non-legislative power. In that decision 1

examined the cases on either side of the line & pointed out that if the Legislature had exercised its will & judgment regarding all matters such as the place, the person or the laws & powers but merely entrusted to some other authority the power of determining the time of commencement of the Act & the places to which it should be applied, it is not a delegation of a legislative power at all. Following the view of the F. C. I was of opinion that the power of extending the life of an Act was really a legislative power as in substance & in effect such a power was to bring the Act itself into existence for a further period. The decision of the P. C. in *Empress v. Burah*, 4 Cal. 172: (5 I. A. 178 P.C.) & AIR 1945 48 (Privy Council) are instances where a power to extend an Act which removed the jurisdiction of the ordinary civil Ct. & criminal Cts. & vested such power in officers to be appointed by an outside authority & a power to constitute special criminal Cts. with power to determine the class of cases to be tried by such Cts. were treated as non-legislative powers. In the light of those decisions, it is difficult to hold that in an Act which is complete in itself a power to constitute & establish a Ct. as u/s 3, City Civil Court Act by notification & a power to fix the pecuniary jurisdiction of such a Ct. within stated limits as u/s 8A of the Act cannot be considered a legislative power the delegation of which is prohibited. I do not propose to enter into a detailed examination of the cases on the point as in my judgment already referred to I had considered them fully. For the reasons given in that judgment & in the light of the principles contained therein, I have no doubt that the delegation under Section 3A of the Act is perfectly valid.

14. It was next contended relying on the expression "'arising within the City of Madras'" in Section 8A & in the notification that suits instituted after

1-12-1948 alone could be transferred under the second proviso to Section 16. but not suits. filed prior to that date. It is said that the expression

used in the section as well as in the notification is "'arising'" & not "'arose'" & therefore it is contended that it is a clear indication that the power to

transfer is restricted to suits instituted after 1-12-1948. This was the view which was accepted by Panthapagesa Sastry J. in *Mohammed Yusuf*

*Bannay Sahib and Others Vs. Khadir Badsha Sahib and Others*, . Under the second proviso to Section 16, the H. C. is empowered to transfer a

suit or proceeding pending at any time & at any stage if in the opinion of the Ct. such suit or proceeding is within the jurisdiction of that Ct. &

should be tried therein. Under this proviso, therefore, when the H. C. wishes to exercise the jurisdiction to transfer all that it has to see is whether on the date of the proposed transfer the suit or proceeding is or is not within the jurisdiction of the City Civil Ct. & unlike the language in the first proviso, the ground of the transfer under the second proviso is not that the suit ought to have been instituted in the City Civil Ct. but was wrongly instituted in the H. C. The power of transfer is on the ground that in the opinion of the Judge, the suit or proceeding is at the moment of transfer, within the jurisdiction of that Ct. It follows, therefore, that even at the date of the institution of the suit in the H. C. the City Civil Ct. had no pecuniary jurisdiction to try the suit but as subsequently by the notification the jurisdiction is increased to RS. 10,000 so as to bring the particular suit within the jurisdiction of the City Civil Ct. the H. C. has, in my opinion, an undoubted power to transfer the suit to the City Civil Ct. In my opinion, the use of the language "suit or proceeding is within the jurisdiction of the Court," by the Legislature is deliberate & is intended to enable a H. C. to transfer suits if the City Civil Ct. by the date of such transfer acquired pecuniary jurisdiction to try such suit or proceeding. Even if the meaning of the expression "arising" in Section 3A of the Act & in the notification is to be understood as indicative of suits instituted after the said date, that would not in my view, prevent the H. C. from exercising the power of transfer under the second proviso.

15. In my opinion, the expression "suit or proceeding of a civil nature arising within the city of Madras" is used to denote the class of suits over which the jurisdiction to receive, try & dispose of was intended to be conferred upon the City Civil Ct. by the Legislature. They must be suits or proceedings which arise within the city of Madras & not outside it. The expression "arising" is not indicative in the context of a point of time, past or future; but is part of the description of a class of suits. I am, therefore, unable with great respect to accept the interpretation placed upon it by Panohapagesa Sastri J.

16. It was also argued that a suitor had a vested right to have the suit validly instituted in a Ct. of competent jurisdiction, to have it tried & disposed of in that Ct. & that any subsequent legislation or notification issued in pursuance of a power conferred by a statute could not defeat that right nor

take away the jurisdiction of that Ct. to try & dispose of the suits. No exception can be taken to the proposition & authority in support of it is to be

found in the judgment of the AIR 1943 24 (Federal Court) particularly in the judgment of Varadachariar J.--See also C.P. Bannerjee Vs. B.S.

Irani, . It is also settled law that when a suit is instituted, it carries with it the implications that the rights of appeal then in force are preserved to it

throughout its career unaffected by a subsequent alteration unless the Legislature has expressly abolished the Ct. to which an appeal then lay or

has, expressly or by necessary implication, made the legislation retrospective in effect. This principle is established by the well-known decision in

the Colonial Sugar Refining Co. Ltd. v. Irving, (1905) A. C. 369 : (74 L. J. P. C. 77), which was applied by a F. B. of this Ct. In re Vasudeva

Samiar, 52 Mad. 361 : (A.I.R. 1929 Mad. 381 , in the case of Letters Patent appeals, against the decisions of a single Judge in second appeals.

The vested right to continue an action in a Ct. in which it was instituted can be made subject to a power of transfer by the very Act which

constituted & established the Ct. or in cases governed by C. P. C., under Section 24. So long as the power of transfer in cases in which such a

power exists is not exercised, the action would undoubtedly continue its course in the Ct. in which it was originally instituted. The very institution of

the suit in a Ct. under a procedure which recognises a power of transfer makes the vested right subject to the power of transfer. In a suit in which

the pecuniary jurisdiction is below Rs. 10,000 in view of my opinion on the first question, when the suit arises in the City of Madras, the pltf. is

entitled to institute it either in the City Civil Ct. or in the H. C. If the suit is instituted in the H. C. it is subject to the power of transfer under the

second proviso to Section 16. If the H. C. does not choose or does not think it proper in a given case to transfer the suit to the City Civil Ct. but if

it is really a suit which ought to have been instituted in the City Civil Ct. power is given to the H. C. under the first proviso to impose a special

penalty. It cannot, therefore, be said that because a person has a right & a vested right to have a suit tried in a particular Ct. the power of transfer

recognised in the statute is abrogated. The vested right is always subject to the overriding power of the Ct. subject to the restrictions contained in

the statute to transfer to another Ct. competent to try the same. It is unnecessary for me to examine in detail the decisions that have been cited on

this part of the case as I have stated succinctly the principles deducible from those decisions. The very case in C.P. Bannerjee Vs. B.S. Irani,

recognised the fact that in the legislation under examination in that case there was no power of transfer which shows that if there was a power of

transfer, the Ct. would have transferred it & the vested right could be to that extent affected.

17. It was then pointed out if such a power of transfer is recognised the litigant in the suit would be deprived of the valuable right of instituting suits

contemplated by Order 7 of the Original Side Rules, what are usually described as under Chapter suits. There is no doubt a difference between

suits under the summary procedure under Order 37, C. P. C., and Order 7, Original Side Rules, both regarding the period of limitation & also the

nature & the class of suits that could be instituted. If a suit under Order 7, Original Side Rules of the value below Rs.10,000 was instituted on the

original side of the H. C. taking advantage of the favourable provisions under Order 7, it would not be competent for the H. C. to transfer it to the

City Civil Ct. as the second proviso to Section 16 empowers the Ct. to transfer the suit or proceeding only if the suit or proceeding is within the

jurisdiction of that Ct. A suit which is triable as an under Chapter suit under Order 7, Original Side Rules, cannot be tried by the City Civil Ct. as

an under Chapter suit under a summary procedure under Order 37, having regard to the difference in the subject matter of the two suits. I do not

think, therefore, that a Judge in making an order of transfer under the second proviso to Section 16 would overlook these considerations &

transfer the suit automatically to the City Civil Ct. The Judge has to be satisfied before making an order of transfer, that in his opinion the suit or

proceeding is within the jurisdiction of the City Civil Ct. & that it could be tried by that Ct. I do not think, therefore, that this difficulty pointed out in

the course of the arguments really affects the power of transfer recognised under the second proviso.

18. The third proviso to Section 16 provides for the levy of the court-fees under the Court-fees Act after giving credit to fee already paid where a

proceeding is transferred to the City Civil Ct. There can, therefore, be no hardship if a suit is transferred to the City Civil Ct. as the party gets

credit to what he had already paid on the original side of the H. C., as court, fees & would be called upon to pay only the difference. I am,

therefore, clearly of opinion that the suits instituted before 1-12-1948 & of the value below Rs. 10,000 can be transferred to the City Civil Ct. &

that the City Civil Ct. is competent to try such suits when so transferred. It is unnecessary therefore to answer the question whether the H. C. has

or has not the power of transfer u/s 24(1), C. P. C. This is my answer to the second question.

Subba Rao, J.

19. I intended to deliver a separate judgment in view of the importance of the question referred to us. But after perusing the judgments prepared by

my learned brethren, I feel that anything I may add would merely be a repetition. I am content to express my respectful agreement with the

conclusions arrived at by them.

Viswanatha Sastri, J.

20. There are three Gts. of different grades having original civil jurisdiction within the City of Madras, namely, the H. C. of Madras, the Madras

City Civil Ct. & the Presidency Small Cause Ct. The classes of suits triable by these Cts. & the minimum & maximum limits of their pecuniary

jurisdiction vary. A short analysis of the relevant statutory provisions constituting these Gts. & investing them with jurisdiction to try suits is

necessary.

Clauses 11 & 12 of the Letters Patent of the H. C. of Madras invested it with ordinary original jurisdiction to receive, try and determine suits of

every description subject to limitations as to the situation of the property, the arising of the cause of action & the residence of the deft, within the

local limits of the City of Madras. The H. C. has unlimited pecuniary jurisdiction, the lower limit, however, being prescribed by Clause 12 in these

terms :

The said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Madras, in which the

debt or damage or value of the property sued for does not exceed Rs. 100.

All small cause suits above this pecuniary limit & all suits not cognizable by the Small Cause Ct. are cognizable by the H. C. in the exercise of its

ordinary original jurisdiction. In pursuance of the authority vested in it by Clause 37 of the Letters Patent, the H. C. has framed rules for the

purpose of regulating suits & proceedings instituted on the original side of the Ct. The provisions of the Letters Patent are amenable to modification

by the appropriate Legislative authority in India.

21. Acting under Section 8, Madras City Civil Court Act (VII [7] of 1892), an Act of the Central Legislature, the Provincial Govt. by notification

established the City Civil Ct. with jurisdiction to receive, try & dispose of all suits & other proceedings of a civil nature not exceeding Rs. 2500

in value & arising within the City of Madras, other than suits & proceedings cognizable by the H. C. in the exercise of its admiralty, testamentary,

matrimonial & insolvency jurisdiction & suits triable by the Small Cause Ct. u/s 2 of Madras Act V [5] of 1916, suits cognizable by the Ct. of

Small Causes whereof the amount or value of the subject-matter exceeds Rs. 1000 may, at the option of the pltl. be instituted in the City Civil Ct.

Section 3-A, Madras City Civil Court Act (VII [7] of 1892) inserted by Madras Act I [1] of 1935, empowered the Provincial Govt. by

notification in the Official Gazette, to invest the City Civil Ct. with jurisdiction to receive, try & dispose of all suits & proceedings of the kind

specified in Section 8 of such value not exceeding Rs. 10,000 as may be specified in the notification. By G. O. No. 1018 dated 22-3-1935, the

Provincial Govt. extended the limit of the pecuniary jurisdiction of the City Civil Ct. to Rs. 5000 & by a further G. O. no. 4175 dated 11-11-1948

to Rs. 10,000. Section 14 of the Act recognised the power of the H. C. to transfer to itself a suit filed in the City Civil Ct. acting under Clause 13

of the Letters Patent & a. 25, C. P. C. (Section 24 of the C. P. C. of 1908). Section 15 provides that the H. C. is authorised to hear appeals from

the City Ct. Section 16 expressly declares that nothing in the Act shall affect the original jurisdiction of the H. C. Proviso (1) to Section 16 requires

a Judge of the original side of the H. C. to disallow costs to the successful pltf., if, in the opinion of the Judge, the suit is one which ought to have

been instituted in the City Civil Ct. Proviso (2) to Section 16 empowers any Judge of the H. C. at any stage of any suit or proceeding, to transfer

the same to the City Ct. if, in his opinion, such suit or proceeding is within the jurisdiction of that Ct. & should be tried therein. Though Section 8 of

Act VII [7] of 1892 requires the City Civil Ct. to administer the law for the time being administered by the H. C. in the exercise of its ordinary

original civil jurisdiction, the procedure in suits & other proceedings in the City Civil Ct. is governed by C. P. C. : See Khumchand Dulaji v.

Gomraj Fate Chand, 68 M. L. J. 205: (A.I.R. 1935 Mad. 219).

22. Section 19, Madras Presidency Towns Small Cause Courts Act (xv [15] of 1832) bars the jurisdiction of the Small Cause Ct. constituted

under that Act, to try the various classes of suits enumerated in the section, irrespective of the value of the subject-matter. Section 18 of the Act

invests the Small Cause Ct. with jurisdiction to try suits of a civil nature arising " within the City of Madras other than those exoepted u/s 19 where

the amount or value of the subject-matter does not exceed Rs. 2000. Section 21 of the Act gives a suitor the right to file a suit of a small cauae

nature on the original side of the H. C. if the amount or value of the subject-matter exceeds Rs. 1000. Section 2 of Madras Act V [5] of 1916

gives the suitor an option to tile a suit of the nature cognizable by the Ct. of Small Causes in the City Civil Ct., if the amount or value of the subject-

matter exceeds Rs. 1000. u/s 22, Presidency Towns Small Cause Courts Act (xv [15] of 1882), the H. C. in the exercise of its original jurisdiction

is required to disallow costs to a successful pltf., if he obtains a decree for less than Rs. 1000-- in the case of a suit founded on contract & in case

of any other suit of a small cause nature, a decree for less than Rs. 300 unless the Judge of the H C. trying the suit certifies that it was a fit one to

be brought in the H. C. This section proceeds on the basis that the H. C. has jurisdiction to try on its original side, suits of a small cause nature of

the value of over Rs. 200 as provided for in Clause 12 of the Letters Patent. u/s 39 of the Act, the H. C. is empowered to remove a suit from the

Small Cause Ct.. to its own file & try it, in the exercise of its original jurisdiction if the value of the subject-matter exceeds Rs. 1000, & the deft,

applies for a transfer. This section again proceeds on the basis that H. C. has concurrent jurisdiction with the Ct. of Small Causes in such suits. By

Section 8 of Madras Act v [5] of 1910, the H. C. to which an appln. is made u/s 39 (1), Presidency Towns Small Cause Courts Act may either

remove the suit to its own file or transfer the same to the Madras City Civil Ct. Uuder Section6, Presidency Towns Small Cause Courts Act xv

[15] of 1892, the Small Cause Ct. is a Ct. subordinate to the H. C. It may be observed that Act xv [15] of 1882 is a self-contained enactment,

Order 51, C. P. C. merely extending a few of the provisions of the Code to suits & proceedings in the Small Cause Court.

23. The result of the foregoing statutory provisions as regards the pecuniary jurisdiction of Cts. established for the trial of the civil suits in the City

of Madras, is as follows : (1) Over certain suits and proceedings, the H. C. has exclusive jurisdiction, irrespective of the value of the subject-

matter, as for instance, matrimonial, testamentary, admiralty & insolvency proceedings. (2) Over certain suits the H. C. has no original jurisdiction,

that is to say, suits triable by the Ct. of Small Causes where the value of the claim does not exceed Rs. 100. (8) The pecuniary jurisdiction of the

H. C. is otherwise unlimited. (4) The City Civil Ob. has no jurisdiction over suits & proceedings falling under head (1) or over suits and

proceedings cognizable by a Small Cause Ct. of a value not exceeding Rs. 1000. Subject to a maximum of Rs. 10,000 the City Civil Ct. has

concurrent jurisdiction with the H. C., (a) in suits cognizable by the Small Cause Ct. exceeding Rs.1000 in value, & (b) in all suits & proceedings

not cognizable by the Small Cause Ct. other than those referred to under head (1) supra as being exclusively cognizable by the H. C. It has

concurrent jurisdiction with the Small Cause Ct. in suits of a small cause nature exceeding Rs. 1000 but not Rs. 2000. (5) The Presidency Small

Cause Ct. has exclusive jurisdiction over suits of a small cause nature not exceeding RS. 100 in value & concurrent jurisdiction with the H. C. in

suits exceeding Rs. 100 but not exceeding Rs. 2000. It has concurrent jurisdiction with the City Civil Ct. in suits exceeding Rs. 1000; but not

exceeding Rs. 2000, provided the suits are of a small cause nature.

24. This somewhat anomalous overlapping of jurisdiction is due to the piecemeal character of the legislation. u/s 375, Const. Ind. "All Courts shall

"continue to exercise their respective functions subject to the provisions of this Constitution.

25. In these circumstances" the question for consideration is, whether Section 15, C. P. C. applies to the H. C. in the exercise of its original

jurisdiction, & whether all suits below Rs 10,000 other than suits specially exempted from the jurisdiction of the City Civil Ct. u/s 3, Madras City

Civil. Courts Act (VII [7] of 1892), should be instituted in the City Civil Ct. Eankin C. J. in Manindra Chandra Nandy Vs. Lalmohun Roy and

Others, & Braund J. in Bank of Ghettnad v. S. P. K. V. B. Firm, A. I. R. 1985 Rang. 517 : (160 I. c. 818) & Mookett J. in P.K. Kandasami

Chetti v. Arumuga Naicker, c. Section 53 of 1940 expressed the opinion that Section 15, C. P. C. had no application to suits instituted on the

original side of the H. C. The practice of this Ct. has also been in conformity with this view. The opposite view might be put in a form which much

resembles a syllogism. Unlike Sections 16, 17 & 20, Section 15 is not excluded from application to the original side of the H. C. by Section 120,

C. P. C. There is also nothing in the Original Side Rules of the H. C. displacing Section 15, C. P. C., Order 1, Rule 3, Original Side Rules

recognises that the provisions of the C. P. C., would be applicable to suits & proceedings on the original side unless a contrary provision is made

in the rules. Section 15, C. P. C. requires a suitor to file his suit in the Ct. of the lowest grade competent to entertain it. The City Civil Ct is a Ct. of

a lower grade than the H. C. because its pecuniary jurisdiction is limited to RS. 10,000 while the jurisdiction of the H. C. is unlimited & because

appeals lie from the City Civil Ct. to the H. C. Though the City Civil Ct. might not come within the hierarchy of Cts. specified in Section 8, O.P.C.

which contemplates Cts. established under the Madras Civil Courts Act (III [3] of 1873) still it is a Ct. of a grade lower than the H.C. within the

meaning of Section 15, C.P.C. Section 15 would, therefore, seem to apply to the H. C. & compel a suitor to file his suit for less than Rs. 10,000 in

the City Civil Ct. even though both the H. C. & the City Civil Ct. might have concurrent jurisdiction.

26. The object of Section 15, C. P. C. is to prevent superior Cts. being flooded or overcrowded with suits triable by Cts. of inferior grade. The

section merely regulates procedure & not jurisdiction. It does not deprive Cts. of superior pecuniary grade of their jurisdiction to try suits which

should ordinarily be tried by Cts. of inferior grades. Sections 12 and 13, Madras Civil Courts Act (III [3] of 1873) do not fix the lower limit of the

pecuniary jurisdiction of Dist. Munsifs, Subordinate Judges and Dist. Judges. Section 6, C. P. C. merely deprives a Ct. of an inferior grade, of!

jurisdiction to try a suit the subject-matter of which exceeds the pecuniary limit of its jurisdiction, this limit being imposed under the Madras Civil

Courts Act & the Madras City Civil Court Act. Section 15 itself recognises that Cts. of more than one grade would have jurisdiction to try a suit

by the use of the expression ""Court of the lowest grade"" which would have no meaning if only one Ct. had exclusive jurisdiction to try the suit.

Consequently it has been held that a Ct. of a superior grade does not act without jurisdiction in trying a suit which, u/s 15 might & ought, by reason

of its valuation, to have been tried by an inferior Ct. See *Nidhilal v. Mazar Hussain*, 7 ALL. 230 : (1885 A. W. N. 1 F.B.), *Krishnasami v.*

*Kanakasabai*, 14 Mad. 183 : (I M. L. J. 284), *Matra Mondal v. Harimohan*, 17 Cal. 155, *V. Ramaswami Aiyar and Another Vs. Veerarayan Raja*

*alias Kuttunni*, the present *Eralpad Raja and Another*, .

27. Clause 12 of the Letters Patent expressly confers jurisdiction on the original side of the H. C. to try all suits other than suits of a small cause

nature of the value of Rs. 100 & below. Not only has this jurisdiction not been taken away by subsequent legislation, but the course of subsequent

legislation has recognised & proceeded on the basis that the jurisdiction of the H. C. even in small cause suits of the value of over RS. 100 is

concurrent with that of the Small Cause Ct. See Sections. 21, 22 & 39, Presidency Small Cause Courts Act (Xv [15] of 1882). u/s 21 of that Act,

a suitor has the right to file a suit of a small cause nature exceeding Rs. 1000 in value in the H. C. The only penalty imposed on a suitor who brings

a suit in the H.C. which could properly have been filed in the Small Cause Ct. is the disallowance of costs u/s 22 of that Act. Section 16, Madras

City Civil Court Act (VII [7] of 1892) leaves intact the original jurisdiction of the H. C. Proviso (1) to Section 16 is significant & provides the

penalty for instituting in the H. C. a suit which could have been filed in the City Civil Ct. in the shape of a disallowance of costs to the successful

plbf. The second proviso to Section 16 empowers a Judge of the H, C. to transfer any pending suit or proceeding to the" City Civil Ct. if the suit

or proceeding is otherwise competent to be tried by that Ct. This proviso gives a discretion to a Judge of the H. C. to try the suit himself or to send

it for trial to the City Civil Ct. Section 15, C. P. C requires a suitor to file his suit in the Ct. of the lowest grade competent to try it & Order 7 Rule

10 is the machinery or sanction provided for enforcing or compelling compliance with Section 15. The language of Order 7. Rule 10 is mandatory

and the superior Ct. is bound to return the plaint to the Ct. of the lowest grade where it should have been instituted. There is no provision in the

Original Side Rules corresponding to Order 7, Rule 10, C. P. C. Order 49, Rule 3, C. P. C. expressly excludes the application of Order 7, B. 10,

C. P. C. to the H. C. in the exercise of its original jurisdiction. Under the two provisos to Section 16, Madras Civil Courts Act, the H. C. can

either try a suit which should have been, but was not instituted in the City Civil Ct. mulcting the pl'tfs. in costs, or transfer the suit to the City Civil

Ct. at any stage. The result is that the peremptory direction given to the suitor by Section 15, C. P. C. to file his suit in the Cb. of the lowest grade

competent to try it & the imperative provision in Order 7, Rule 10 requiring the superior Ct. at any stage to return the plaint to the Ct. of the lowest

grade where it should have been filed, are not applicable to the original side of the H. C. In such cases the H. C. has only the limited power of

disallowing costs in case it tries the suit, or of transferring the suit to the City Civil Ct. This is the effect of the two provisos to Section 16, Madras

City Civil Courts Act. The object of Section 15, C. P. C. has been achieved to a limited extent by the power of transfer given to the H. C. by the

second proviso to Section 16 & the power to mulct the unruly or irresponsible litigant in costs given by the first proviso. Similar provisions with

reference to suits of a small cause nature would be found in Section 22, Presidency Towns Small Cause Courts Act & in Section 3 of Madras Act

v [5] of 1916.

28. I am aware that it has been authoritatively decided by the Judicial Committee in *Sabitri Thakurain v. Savi*, 48 Cal. 481 : (A.I.R. 1921 P. C. 80)

that the C. P. C. applies to proceedings on the original side of the H. C., save & so far as the C. P. C. or the Original Side Rules of the H. C.

expressly provide the contrary, & that there is nothing in the Original Side rules expressly excluding the operation of Section 15, C. P. C. to suits

on the original side of the H. C. It is also true that the C. P. C. is a consolidating enactment intended to be of wide & general application. All the

same, can it be said that the general language of Section 15, C. P. C. has, by implication, repealed the special provisions of the Letters Patent, the

provisions of the Presidency Towns Small Cause Courts Act & the Madras City Civil Court (Act?) already referred to? It is a question of

construction whether Section 15, C. P. C. has by necessary implication taken away a right of procedure provided for by these special enactments

by substituting another procedure or left the procedure sanctioned by the special enactments unaffected. If there was an intention on the part of the

Legislature to repeal the special enactments by enacting Section 15, C. P. C., it could have been declared in express terms. No palpable absurdity

results if both the provisions coexist & there is no compelling reason why Section 15, C. P. C. should not be interpreted as applying to cases &

Cts. not dealt with by the special enactments. In *Barker v. Edgar*, (1898) A. C. 748 : (67 L. J. P. c. 115), the Judicial Committee observed :

When the Legislature has given its attention to a separate subject & made provision for it, the presumption is that a subsequent general enactment

is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect

according to its own subject-matter & its own terms.

29. If Section 15, C. P. C. were held to apply to suits on the original side, it would pro tanto deprive the parties interested of their right to have

their suits instituted & heard on the original side in the exercise of the jurisdiction conferred on the H. C. by Clause 12 of the Letters Patent.

Where power is given to a suitor to take proceedings in different Cts. he has a choice of the forum & his remedy is also subject to the *lex fori*. A

suitor has a longer period of limitation for the institution of summary suits & the execution of decrees & a more expeditious remedy in some suits, if

he were allowed to sue on the original side of this Ct, then he would have if the suit were instituted in the City Civil Ct. Unless the Ct. is driven to

adopt such a construction, a repeal by implication of the special provisions conferring jurisdiction on the original side of the H. C. & a choice of

forum on the suitor, is not to be assumed. The omission of a reference to Section 15 in Section 120, C. P. C., which excludes Sections. 16, 17 &

20 from application to the original side of the H. C., is not a sufficient ground for implying that all the other provisions not so expressly excluded by

Section 120 must be held to apply to suits on the original side. It seems to me that the only reasonable construction is to hold that Section 15, C.

P. C. , as well as Clause 12 of the Letters Patent stand together, the subject-matter of Clause 12 of the Letters Patent not being dealt with by

Section 15, C. P. C. It may be observed that the language of Section 15, C. P. C. of 1882 was the same as that of Section 15, C. P. C. of 1908.

During all these years this Ct. as well as the other H. Cts. have consistently taken the view that Section 15, C. P. C., does not govern suits on the

original side of the H. C. & does not override the provisions of the Letters Patent & the Presidency Towns Small Cause Courts Act & the Madras

City Civil Court Act. I recoil from overruling a construction of statutory provisions so long & so invariably acted upon by the Cts. for over half a

century, a construction which presumably reflected the intention of the Legislature & was therefore left unaffected by any amendment of the law.

Having regard to the provisions of Clauses 11 & 12 of the Letters Patent, Section 16, Madras City Civil Court Act, & Sections 21, 22 & 39,

Presidency Towns Small Cause Courts Act, I am constrained to hold Section 15, C. P. C., does not fit into this scheme of legislation & is

therefore inapplicable to suits filed on the original side of the H. C. This is my answer to the first of the questions referred to us.

30. The second question referred to us has been answered in the negative by Panchapagesa Sastri J. in Mohammed Yusuf Bannay Sahib and

Others Vs. Khadir Badsha Sahib and Others, . The suit under reference which was for damages for Rs. 7500, was properly instituted on the

original side of the H. C, & could have been instituted only on the original side, for, on the date of its institution the pecuniary jurisdiction of the City

Civil Ct. did not extend beyond Rs. 6000. By G. O. NO. 4175 dated 11-11-1918, issued u/s 3A, Madras City Civil Court Act, the pecuniary

jurisdiction of the City Civil Ct. was raised to Rs. 10,000, the relevant portion of the G. O. being as follows:

His Excellency the Governor of Madras hereby invests, with, effect on & from 1-12-1948, the Madras City Civil Court, subject to the exceptions

specified in Section Section 3 of the Act (VII of 1892) with jurisdiction to receive, try & dispose of suits & other proceedings of a civil nature

arising within the City of Madras & of value not exceeding Rs. 10,000.

If the suit now in question had been instituted after 1-12-1948, the City Civil Ct. would have had jurisdiction to entertain it. A valid transfer of a

suit or other proceeding can be made from one Ct. to another only if the Ct. which transfers the suit or proceeding had initially the jurisdiction to

entertain it, & the Ct. to which the suit or proceeding is transferred has jurisdiction under the law to try & dispose of the suit or proceeding. The

question is, whether these two conditions are satisfied in any given case. If the H. C. had the jurisdiction to entertain the suit when it was filed & the

City Civil Ct. had not then the necessary pecuniary jurisdiction but acquired it during the pendency of the suit in the H. C., is the jurisdiction of the

City Civil Ct. as it stood at the date of the institution of the suit or is it its jurisdiction as it stands on the date of the order for transfer, the criterion of

its competency to receive & try the transferred suit ? I am of the opinion that the competency of the transferee Ct.--to use a compendious

expression--must be judged with reference to the state of things as they exist on the date when the suit or other proceeding is transferred. Section

8A, Madras City Civil Court Act (VII [7] of 1892) as well as G. O. no. 4175 dated 11-11-1948 issued thereunder, empower the City Civil Ct.

to receive, try and dispose of all suits of a value not exceeding Rs. 10,000." The City Civil Ct. may "receive" a suit not only by receiving the plaint

in the first instance directly from the pltf., but also by transfer from the H. C., of a suit instituted on its original side if on the date of the transfer it

had pecuniary jurisdiction to entertain & try the suit. The City Civil Ct. gets seisin of the suit only by & as a result of the order of transfer by the H.

C. in the exercise of its power under Proviso 2 to Section 16, Madras City Civil Court Act & its jurisdiction & competency to try the suit on the

date of the transfer would alone be material. The fact that it had no jurisdiction to entertain the suit on the date it was actually instituted is not, in my

opinion, material. Panchapagesa Sastri J. relies on the use of the word "arising" in Sections. 3 & 8-A & in G. O. No. 4175, which reproduces the

language of the sections. The argument is that the use of the word "arising" points to suits filed & proceedings started after 11-12-1948, when the

G. O. came into force. The word "arising" is in juxtaposition to, & may be read with, the words "within the City of Madras" both in the section & in

the G. O. In the context, the word "arising" is not, in my opinion, used as denoting futurity & has no reference to the time factor, but to the place

where the lis has its source or origin. The words "suits arising within the City of Madras" are descriptive of the nature of the suit & do not connote

the future tense so as to be applicable only to suits instituted after the date of the G. O. The limits of territorial jurisdiction prescribed by Sections.

16, 19 & 20, C. P. C. which apply to the City Civil Ct., are compendiously referred to by the use of the words, "arising within the City of Madras

in Sections. 8 & 8-A & the G. O. above referred to. On a literal reading of the language of these sections & G. O. No. 4175 it can be said that

the H. C. has power to transfer a suit instituted on the original side to the City Civil Ct., where the value of the suit is below Rs. 10,000 & the

suit is not exempted by Section 3, Madras City Civil Court Act from the cognizance of the City Civil Ct., even though at the time when the suit was

first instituted it was beyond the pecuniary jurisdiction of the City Civil Ct.

31. It is, however, contended that there are certain well-established principles of statutory construction, which have to be taken into account in

arriving at a conclusion as to whether this power of transfer can be exercised in respect of suits pending in this Ct. which were beyond the

pecuniary jurisdiction of the City Civil Ct. at the date of their inception. Mr. K. S. Ramamurthi, who argued this part of the case, cited (with?) great

rapidity a large number of Indian decisions. The rule of construction applicable to cases of this kind is clearly & concisely stated by Wright J. in In

re Athlumney, (1898) 2 Q. B. 547 at pp. 551, 552 : (67 L. J. Q B. 935), in those terms :

No rule of construction is more firmly established than this : that a retrospective operation is not to be given to a statute so as to impair an existing

right or obligation, otherwise than as regards a matter of procedure, unless that effect cannot be avoided without violence to the language of the

enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as retrospective only.

32. If an enactment deals merely with the procedure in an action & does not affect the rights of the parties it will prima facie apply to all actions,

pending as well as future, for, no one is considered as having a vested right in any course of procedure. The line of demarcation between what is a

matter of right or remedy & what is a matter of procedure is difficult to draw in many cases.

The questions whether a person is entitled to maintain a particular action or to do so in a particular form, & what defences are open to the defendant,

cannot be affected by any statute passed after its institution. Ramakrishna v. Subbaraya, 38 Mad. 101 : (A.I.R. 1916 Mad. 607).

If at the date of its institution in this Ct., the City Ct. had no jurisdiction over the suit, & this Ct. had no power to transfer it, is the suitor, who had

the right to have his suit tried by this Ct., to be deprived of such right because the pecuniary jurisdiction of the City Civil Ct. happened to be

enlarged by a notification of the Govt. pending the suit ? So ran the argument. The substitution of an inferior forum for a superior tribunal where an

action is pending, is no doubt an interference with the right of the suitor & is a different thing from regulating mere procedure. The right is analogous

to a right of appeal to a superior Ct. which was the subject of decision in *Colonial Sugar Refining Co. v. Irving*, 1905 A. C. 869 : (74 L. J. p. c.

77). In that case, pending an action in the S. C. of Queensland, the right of appeal from that Ct. to the Judicial Committee was taken away & a

right of appeal to the H. C. of Australia was substituted by the Judiciary Act of 1903, which came into force before the action was decided by the

S. C. It was held by the Judicial Committee that the right of appeal to the Judicial Committee was a right vested in the suitor when the action was

brought & was not affected by the Judicature Act, which became law pending the action. The relevant portion of the judgment is as follows :

The Judiciary Act is not retrospective by express enactment or necessary intendment. And, therefore, the only question is, was the appeal to His

Majesty in Council a right vested in the applt. at the date of the passing of the Act, or is it a mere matter of procedure? It seems to their Lordships

that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of

right is a very different thing from regulating procedure. In principle their Lordships see no difference between abolishing an appeal altogether &

transferring an appeal to a new tribunal. In either case there is an interference with existing rights, contrary to the well known general principle that

statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested.

33. The law, as laid down in *Colonial Sugar Refining Co. v. Irving*, 1905 A.c. 369: (74 L.J.P.C. 77) has invariably been accepted & acted upon in

India, see *Daivanayaga Reddiar and Others Vs. Renukambal Ammal*, , *Ramakrishna, Aiyar v. Seethi Ammal*, 48 Mad. 620: ( AIR 1925 Mad.

911: 27 cr. L.J. 91 ), AIR 1927 242 (Privy Council) . Notwithstanding that a suit & all appeals from the decree made therein are, according to the

procedural law of India, to be regarded as one legal proceeding or as steps in a series of proceedings ""connected by an intrinsic unity,"" it is now

settled law that the right of a litigant to enter, a superior Ct. by way of appeal is not a mere matter of procedure, but is a right, which for the

present purpose, is deemed to accrue or arise to him at the date of the institution of the suit & before any decision is given by the trial Ct. The

presumption against impairing vested rights by the retrospective operation of an enactment is not confined to substantive rights, but extends equally

to remedial rights or rights of action including rights of appeal. In two P. B. decisions, one of this Ct. in *In re Vasudevaswamiar*, 52 Mad. 361 :

(A.I.R. 1929 Mad. 381 ), & the other of the *Sadar Ali and Others Vs. Doliluddin Ostagar*, it was held that the amendment of Clause 16 of the

Letters Patent making the judgment of a single Judge of the H. C. in a second appeal appealable only with the leave of the Judge, did not apply

retrospectively to second appeals pending at the time of the amendment. *Coutts-Trotter C. J.* in delivering the judgment of the F. B. of this Ct.,

observed :

The institution of the suit carries with it the implication that all appeals then in force are preserved to it through the rest of its career, unless the

Legislature has either abolished the Court to which an appeal lay, or has expressly "or by necessary intendment given the Act a retrospective

effect.

It will be observed that the right of appeal was not taken away altogether by the amendment of Clause 15 of the Letters Patent, but the leave of the

Judge who decided the second appeal was interposed as a condition of the maintainability of an appeal from his judgment. The result of the leading

cases above referred to is, whether a statutory provision takes away an existing right of action or appeal, or whether it imposes an onerous

condition for the exercise of such a right, it is not to be given retrospective effect unless the language of the statutory provision is quite clear & no

other interpretation is possible.

34. We are here concerned with a suit properly instituted on the original side of the H. C., at a time when it was the only forum open to the pltf. It

13 true that at the moment when the suitor entered this Ct., he was not liable to be ejected therefrom by the exercise of this Ct.'s power of transfer

under the second proviso to s, 16, Madras City Civil Court Act, & he had a right to have his suit tried & decided by this Ct. itself. That the

principle of the decision in Colonial Sugar Refining Co. v. Irwing, 1905 A. C. 369: (74 L. J.P. C. 77) with reference to a right of appeal applies

equally to a right to continue a suit to its termination in a Ct. in which it was properly filed, has been held by the AIR 1943 24 (Federal Court) ,

where Varadaohariar J. in delivering the judgment of the Ct., observed:

Colonial Sugar Refining Co. v. Irwing, 1905 A. C. 369 : (74 L. J. P. C 77) was sought to be distinguished on behalf of the applt. on the ground

that a right of appeal against a decree stands on a different footing from a right to continue a suit to its normal termination. This may be a difference

in the facts, But we are unable to see any distinction in principle between the two cases,

Their Lordships' pronouncement emphasises the limitation to be placed upon the rule, some times broadly stated, that all alterations in procedure

are retrospective unless there is some good reason to the contrary. The general principles referred to above must yield to the express language or

the necessary intendment of legislative enactments.

35. Wholly different considerations govern the present case. When the suit was filed on the original side of this Ct., there were the following

statutory provisions to which the suitor & his suit were already subject, namely, Section 3A & the second proviso to Section 16, Madras City Civil

Gourds Act, & Section 24, C. P. C. u/s 3A, the Legislature had fixed a maximum limit for the pecuniary jurisdiction of the City Ct. at Rs. 10,000,

& had also empowered the Provincial Govt. by notification to invest that Ct, with pecuniary jurisdiction upto Rs. 10,000. The second proviso to

Section 16, with its sweeping & all-embracing language, empowered any Judge of this Ct. at any time in any suit & at any stage of that suit, to

transfer it to the City Ct. if the suit was within its pecuniary jurisdiction. It is not a requisite of proviso (2) to Section 16 that: the suit should have

been within the jurisdiction of the City Civil Ct. at the time when it was instituted. Indeed, the proviso was enacted with a view to prevent this Ct.

being overcrowded with suits over which this Ct. & the City Civil Ct. had concurrent jurisdiction. All that is required by the second proviso to

Section 16 is that, at the time of the transfer by this Ct. to the City Civil Ct., the latter should have pecuniary jurisdiction to receive & try the suit.

The City Civil Ct. acquired an extended pecuniary jurisdiction upto Rs. 10,000 on

1-12-1948, in consequence of G. O. No. 4175 of 1948.

There, after a transfer by this Ct. of a suit the value of whose subject-matter is below Rs. 10,000, to the City Civil Ct., would be within the

authority conferred on this Ct. by the second proviso to Section 16. Section 24(a), C. P. C. empowers the H. C. at any stage to transfer any suit

pending before it for trial or disposal to any Ct. subordinate to it & competent to try or dispose of the same. Even here the competency of the

subordinate Ct. to receive & try a suit transferred to it is its competency on the date of the transfer of the suit by this Ct. As already pointed out,

the City Civil Ct. is a Ct. subordinate to the H. C., though it may not be in the hierarchy of Ct. established by the Madras Civil Courts Act in [3]

of 1878 & contemplated by Section 3, C. P. C. That Section 24, C. P. C. applies to the City Civil Ct. is recognised by Section 14 of the Madras

City Civil Courts Act. That Section 24 empowers the H. C. to transfer a suit on the original side for trial to a subordinate Ct. which would have

jurisdiction to try the suit had been held by a F. B. of this Ct. in *Krishna Mudaliar v. Sabapathi Mudaliar*, ILR 1945 Mad. 389 : (A.I.R. 1945

Mad. 69 ). It was subject to these statutory provisions that the suitor filed his suit on the original side of the H. C. This is not a case where a right,

which inhered in a suitor at the time of the suit, is taken away by subsequent legislation. The incident of liability to be transferred to another

competent tribunal at any stage of the suit attached to it from its very inception. The language of the second proviso to Section 16, Madras City

Civil Court Act, & Section 24, C. P. C., is explicit & empowers this Ct. to transfer pending suits not exceeding Rs.10,000 in value to the City

Civil Ct., even though the suits had been instituted prior to 1-12-1948 the date when the City Civil Ct. acquired an extended pecuniary juris-

diction. That, in my opinion, is the inescapable effect of the statutory provisions above referred to. The fact that some of the privileges of a suitor

are affected or impaired by the exercise of the power of transfer is a matter for consideration by the Judge in this Ct. in exercising his discretion to

transfer, & does not exclude the power of transfer conferred by the express language of Section 24, C. P. C. & by the necessary intendment as

well as the express language of the second proviso to Section 16, Madras City Civil Court Act. For these reasons, I would answer the second

question referred to us in the affirmative. The transfer of suits can legally be made either u/s 16, proviso (2), Madras City Civil Court Act, or u/s

24(1), C. P. C.

36. Lastly, it was argued by Mr. Alladi Kuppaswami, the learned advocate for the deft., that G. O. no. 4176 of 1948 was ultra vires on the

ground that there was a delegation of a legislative power to the Provincial Govt. u/s 3-A, Madras City Court Act, which, according to him, was

impermissible. This argument was answered by the Judicial Committee in *Empress v. Burah*, 4 Cal. 172: (5 I. a. 173 P.C.) In these words:

It is no uncommon thing to find legislation conditional on the use of particular powers, or on the exercise of a limited discretion entrusted by the

Legislature to persons in whom it places confidence.

The limitations on the powers of the Legislature in enacting what has been styled "delegated", "subordinate", or "conditional" legislation have been

the subject of discussion in recent times. I do not propose to cite the whole range of authority, & I am content to say that, looking at the terms of

Section 3-A, Madras City Civil Court Act, I find no abdication, surrender, delegation or transfer by the Legislature of its legislative power and

responsibility to the executive. It is merely an example of the common legislative arrangement now widely prevalent both here & in other countries,

by which a provision of a legislative enactment is authorised by the Legislature itself to be applied to a particular case, according to the judgment

of a local administrative body as to its necessity or propriety. It cannot be disputed that it is open to the Legislature to appoint a subordinate

agency & confer upon it powers which need not be wholly administrative but also legislative in character. Conditional legislation of this kind is both

convenient & common & is not delegated legislation at all. Such exercise of power by a subordinate agency or authority entrusted by the

Legislature with discretion to exercise it has been variously styled as subordinate or subsidiary or conditional legislation. AIR 1945 48 (Privy

Council) *Russel v. Reg*, (1882) 7 A. C. 829: (61 L. J. P. C. 77). Section 3-A, Madras Civil Courts Act does not delegate any legislative power to

the Provincial Govt. It fixes the amount of the pecuniary jurisdiction of the City Civil Ct. & contains the whole of the legislation on that point. "The

legislative policy has been laid down by the Legislature & the carrying out of that

policy alone has been left to the Provincial Govt. The expression that the Provincial Govt. may by notification ""invest the City Ct. with Jurisdiction"" found in Section 3-A is, perhaps, unhappy. The Legislature itself has created & invested the City Ct. with jurisdiction over suits not exceeding the value of Rs. 10,000. The Legislature has exercised its judgment & will in enhancing the pecuniary jurisdiction of the City Civil Ct. to RS. 10,000. But the provision is to come into operation on a notification by the Provincial Govt, whose only function is to fix the date from which the higher jurisdiction is to be exercised by the City Civil Ct. The Legislature itself has provided for the jurisdiction of the City Ct. which follows upon a condition being fulfilled. The decision of the majority of the F. C. in *Jatindranath v. Province of Bihar* 1949-2 M. L. J. 356 : (A. I. R. 1949 P. C. 175 : 50 Or. L. J. 897) does not really touch the present case for, there, an Act which seriously affected the personal freedom of citizens & whose life was statutorily limited by the Legislature to a period of one year, was extended by a notification of the Provincial Govt. in the exercise of the power conferred by Section 1, Sub-section (3), Bihar Maintenance of Public Order Act, 1947. In those circumstances, the Ct. held that Section 1, Sub-section (3) amounted to a wholesale delegation of legislative power, which was bad. The distinction between conditional legislation & delegation of legislative authority is fine & no accurate line of demarcation can be drawn. The whole topic is exhaustively discussed & the relevant authorities are assembled in the judgment of my learned brother, Satyanarayana J. in *In Re: Kalyanam Veerabhadrayya*, & there is no need for me to travel along that weary road when I find that the problem now presented to us is easily soluble by resort to practical considerations of commonsense & the authoritative exposition of the law by the Judicial Committee in the three cases above cited.

37. After this long & tedious marshalling of the relevant considerations, I have come to the decision that the contention of the learned Advocates who appeared before us should not prevail. I cannot, however, take leave of the case without expressing, my regret that so much time has had to be spent in unravelling a tangle which could easily have been straightened out by the Legislature & I hope that an early opportunity will be taken of placing the original jurisdiction of the three Cts. which are functioning within the

City of Madras on an easily workable basis, so as to avoid overlapping & confusion.

38. As I was about to deliver my judgment the recent decision of the Bombay H. C. in *Narottamdas Jetkabei v. Aloysious Pinto Phillips, C. S.*

No. 240 of 1950, holding that the provisions of Section 4, Bombay City Civil Courts Act, 1948, were ultra vires the Provincial Legislature was

placed before me. I respectfully but firmly dissent from the opinion of the learned Judges in the case cited.