

**Sanganbhat Vs. Vasudev and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/372133](http://sooperkanoon.com/372133)

**Court :** Karnataka

**Decided On :** Feb-18-1976

**Reported in :** ILR1976KAR992; 1976(2)KarLJ60

**Judge :** G.K. Govinda Bhat, C.J. and ;M.N. Venkatachaliah, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 24; Karnataka High Court Act, 1961 - Sections 1 and 4

**Appeal No. :** O.S.A. No. 10 of 1975

**Appellant :** Sanganbhat

**Respondent :** Vasudev and ors.

**Advocate for Def. :** S.K. Kulkarni, Adv.

**Advocate for Pet/Ap. :** K.S. Savanur, Adv.

**Judgement :**

G.K. Govinda Bhat, C.J.

1. This is an -appeal purported to be one tinder Section 4 of the Karnataka High Court Act, 1961

(Against Judgment of Jagannatha Shetty I in C. P. No. 81 of 1975 D/- 31-7-1975).

(hereinafter called the Act). It is directed against the Order dated 31-7-1975 made by Jagannatha Shetty, J., in C. P. No. 81 of 1975 dismissing the appellant's petition for withdrawal of Regular Appeal No. 97 of 1971 pending on t the file of the Court of Civil Judge, Bijapur to this Court, to be heard and disposed of with Regular Second Appeal No. 1486 of 1973.

2. The office raised an objection regarding the in maintain ability of this appeal tinder Section 4 of the Act. When the objection came up for orders before the Admission Court, it was directed that the objection should be beard at the time of the disposal of the appeal. Accordingly, the appeal was registered as Original Side Appeal No. 10 of 1975, and this is how this matter has come up for hearing before us.

3. At the every outset, we asked Sri K. S. Savanur as to how the order made under Section 24 of the Code of Civil Procedure is appealable under Section 4 of the Act. Section 4 of the Act reads:

'4. Appeals from Decisions of a single Judge of the High Court - An appeal from a judgment, decree, order or sentence passed by a single judge in the exercise of the original jurisdiction of the High Court under this Act or under any law for the time being in force, shall lie to and be heard by a Bench consisting of two other judges of the High Court.'

(underlining is ours)

4.The question is whether an order made by a single Judge of the High Court allowing or dismissing an application under Section 24 of the Code of Civil Procedure is one made in the exercise of the original

jurisdiction of the High Court under the Act or under any law for the time being in force, This High Court has no original civil jurisdiction. In its extraordinary jurisdiction it exercises power tinder Articles 226 and 227 of the Constitution; matters tinder the Companies Act are also heard and decided under the special original jurisdiction conferred under the said Act; at) order made by a single judge under Article 226 of the Constitution is appealable under Section 4 of the Act; so

also judgments, decrees or orders made by a single judge in exercise of the original jurisdiction under the Companies Act.

5. The Civil Procedure Code does not provide for an appeal against an order made under Section 24 of the Code. The power under Section 24 of the Code can be exercised by the High Court or a District Court. Sri Savanur does not dispute that when an order is made by the District Court allowing or dismissing an application under Section 24 of the Code, such an order is not appealable under the Act or any other law. His sole submission is that when an order under Section 24 of the Code is made by a single judge of the High Court, such an order is appealable by virtue of Section 4 of the Act. As stated earlier, this High Court has no ordinary original civil jurisdiction.

6. The appellant in the petition filed by him under Section 24 has prayed for withdrawal of a regular appeal pending in the Court of the Civil judge, Bijapur, to the file of this Court to be heard along with the second appeal. If the appeal is withdrawn, it has to be heard and disposed of with the second appeal. When the matter that is sought to be withdrawn is not an original suit or an original proceeding, the withdrawal can be only to this High Court exercising appellate jurisdiction. This is made clear by Raja Malular, C. J., in *Srirangam Municipality v. R. V. Palaniswami Pillai* : AIR 1951 Mad 807 . This is what the learned Chief justice has stated-

'4. It was argued that the application for transfer must have been made to the Original Side of this Court by means of an original petition bearing the proper Court-fee. 11 The application was made under Sections 24 and 151 C. P. C. In the cause title the application was described as a Civil Miscellaneous Petition in this Court. Learned counsel relied on a ruling in *Srinivasa v. Balakrishna* : (1912) 22 MLJ 187 and certain observations of Ramesain J. in *Jumna Bai v. Rama Nathan Chettiar*, ILR 52 Mad 52 = (AIR 1929 Mad 29), in support of his contention that the application should have been made to this Court on its original side. In our opinion there is nothing in the mind that of Section 24 C. P. C. to indicate on which side of this Court the application should be made. In dealing with this question it is important to bear in mind that Section 24 C. P. C. gives the power of transfer and

withdrawal not only to this Court but also to the District Court and it gives such power of transfer and withdrawal not only in respect of suits but also in respect of appeals and other proceedings pending in any Court subordinate to it. It would therefore be certainly wrong to say that every application under Section 24 when made to this Court should be made in the original side. Obviously an application to withdraw an appeal pending before a sub ordinate Court to this Court or to transfer it to any other subordinate Court cannot be made to the Original Side of this Court. It is also obvious that an application to transfer any suit pending in a Subordinate Court to another Subordinate Court for trial cannot be made to this Court on the Original Side because the subordination of Courts can only be to this Court as such and not to the Original Side of this Court. There is nothing in Section 24 to confine its application to Chartered High Courts which alone have ordinary and extraordinary original civil jurisdiction. According to us, the correct position is that an application under Section 24 C. P. C. should be made to this Court as such in the same manner as it might be made to the District Court and such an application can be validly heard and disposed of by any judge of this Court deputed by the Chief justice to hear such applications. We find actually in the appellate side Rules that an application under Section 24 for transfer of any suit, appeal or other proceedings or in execution of a decree from one civil court subordinate to the High Court to another such Court or to the High Court can be disposed of by a single judge. As a matter of practice. it is the learned judge sitting in the Admission Court who deals with these applications. It may be true, as was held in *Subba Reddi v. Narayanaswami Reddi* : AIR1949 Mad283 , that an application under Section 24 is in the nature of an original proceeding to which Sec. 141, C. P. C. may apply; but to say that, is far from saying that the application is one made on the Original Side of this Court.'

7. We are in respectful agreement with the above statement of the law by the learned Chief justice of Madras High Court. That fully answers the argument of Sri K. S. Savanur, learned counsel for the appellant. Since this is not an order made by a Single judge in the exercise of the original jurisdiction. of the High Court, no appeal under Section 4 of the Act lies. It was argued by Sri Savanur that the words 'in the exercise of the original jurisdiction of the High Court' are restricted to the exercise of the power of the High Court under the Act and not to the exercise of

the power under any law for the time being in force. This argument has to be stated only to be rejected. If the learned counsel's argument is accepted, then every order made by a single judge of this High Court under Section 115 of the Code would be open to appeal under the Act. We are not prepared to hold that Section 4 is intended to confer a right of appeal against an order made by the High Court in the exercise of its revisional jurisdiction. Therefore, we hold that the appeal is not competent. Accordingly, it is rejected as not maintainable, The appellant will pay the costs of the respondents.

8. Appeal dismissed

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