

Allah Bakhsh Vs. Karim Bakhsh

Allah Bakhsh Vs. Karim Bakhsh

SooperKanoon Citation : sooperkanoon.com/470270

Court : Allahabad

Decided On : Jun-17-1926

Reported in : AIR1927All95

Appellant : Allah Bakhsh

Respondent : Karim Bakhsh

Judgement :

Banerji, J.

1. This is an application for revision tinder the following circumstances:

2. A suit was instituted for recovery of Rs. 168 in the Court of the Subordinate Judge invested with the powers of a Judge of Small Causes on the 18th September 1924. It was transferred to the file of the first Munsif of Bulandshahr by the order of the District Judge on the 29th September 1924. The transfer was made under Section 24 of the Code of Civil Procedure and the suit remained as a suit of the nature of Small. Causes. On the 28th January 1925, the first Munsif of Bulandshahr, in whose Court the suit was pending, was transferred and another Munsif took over charge, who had no Small Cause powers. On the same date, the District Judge passed an order that all Small Cause suits pending in the first Munsif's Court will be transferred and disposed of as follows:.(3) All the rest will be tried by the first Munsif as regular suits.

3. On the 4th of February, when the suit was put up before the learned first Munsif, who had no Small Cause Court powers, he passed the following order:

According to the order of the District Judge, dated the 30th (sic) January 1928, this case is transferred from the Small Cause Court Side to the regular side of this Court.

4. It was thereafter that all proceedings in the suit took place. The suit was decreed and the defendants went up in appeal before the Subordinate Judge, who has dismissed the claim.

5. Mr. Sanyal, who appears on behalf of the petitioner has argued that no appeal lay to the Subordinate Judge, because any order of transfer by the Judge must be deemed to be an order 'under Section 24, Clause 4, of the Civil Procedure Code, and as the suit was originally instituted in the Court of Small Causes and was then transferred to the Court of an officer who had jurisdiction to try the suit as a Small Cause Court, the trial of the suit by a Second Munsif must be treated as a trial by a Court of Small Cause. In support of his contention he has referred to the cases of Chotey Lal v. Lakhmi Chand-Magan Lal [1916] 38 All. 425, Sukha v. Raghunath Das [1917] 39 All. 214 and Chaturi Singh v. Mt. Rania [1918] 40 All. 525. In all these cases there was no order by the Judge who tried the case transferring the case from the Small Cause Court side to the regular side. Consequently, in my opinion, none of these cases have any application.

6. I agree with the contention of Mr. Sanyal that if there is no order passed by the Court hearing the case transferring it to the regular side, the trial must be deemed to be one on the Small Cause Court side. Here, however, the order of the 4th February 1925, referred to by me, is in my opinion an order passed under Section 35 of the Small Cause Court Act. It is conceded by Mr. Sanyal that if the Munsif had upon the application of the parties or after a notice to them transferred the case from the Small Cause Court side to the regular side, there would be no objection to the case being considered one as having been tried and disposed of on the regular side and there would be an appeal. But Mr. Sanyal argues that, because the Munsif passed the order of the 4th February in consequence of an order of the District Judge this order cannot be treated as one under Section 35. I

am unable to accept this contention of the learned Counsels. In my opinion the case of Sarju Prasad v. Mahadeo Pande [1915] 37 All. 450 is in point. In that case the Munsif passed an order transferring, to the regular side all Small Cause Court suits, which he found pending in the Court, and tried them out as regular suits. It was held that an appeal lay against the decision of the Munsif. I am therefore, of opinion that an appeal was entertainable by the Court below.

7. I dismiss this application but pass no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com