

V.S.A. Krishna Mudaliar Vs. V.S.A. Sabapathi Mudaliar

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Court : Chennai

Decided On : Oct-09-1944

Reported in : (1945)1MLJ14

Appellant : V.S.A. Krishna Mudaliar

Respondent : V.S.A. Sabapathi Mudaliar

Judgement :

Alfred Henry Lionel Leach, C.J.

1. Upto the 17th September 1941 the appellant, the respondent and their brother V.S.A. Arumugha Mudaliar, who constituted a joint Hindu family, carried on business in cloth at Chennimalai (Coimbatore), Coimbatore, Kumbakonam, Tiruppur and Jaffna in Ceylon. On that date they divided and by a deed of partition the respondent was allotted the businesses at Chennimalai and at Jaffna. To the appellant fell the business at Tiruppur where the family carried on a ginning factory, and a sum in cash. Arumugha was given the businesses at Coimbatore and Kumbakonam.

2. In 1942 the Government of India passed an Ordinance which established control over the export from India of cotton piecegoods to Ceylon and other countries and piecegoods merchants were informed that applications for licences permitting the export of such goods would be considered only on their furnishing statements of their exports during 1941-1942. It has been stated in the course of

the arguments that the effect of this notification was that only those persons who had exported piecegoods during the period mentioned were allowed to possess export licences.

3. As the respondent had been allotted the Jaffna business he applied for a licence permitting him to export a quota based on the total export business of the family before its partition, and his application was granted. The appellant and Arumugha themselves then applied for licences with the object of exporting piecegoods to Ceylon. Their applications were refused and they were referred by the Controller to a Civil Court for the establishment of their rights. Thereupon the appellant filed O.S. No. 101 of 1944 in the Court of the Subordinate Judge of Coimbatore for a declaration that he was entitled to a one-third share in the export quota based on the business of the family before partition and for an injunction restraining the respondent from obtaining a licence for more than one-third of that quota. The respondent was made the first defendant in the suit and Arumugha Mudali the second defendant. This suit was filed on the 14th April 1944 the day before the Subordinate Court was due to close for the summer vacation. Along with the plaint was filed an application (I.A. No. 357 of 1944) asking for an interim injunction restraining the first defendant from obtaining a licence for more than one-third share. This application was granted ex parte on the following day. Notice of the application had not been served on either of the defendants. In fact the second defendant was not made a party to the application for a temporary injunction.

4. As the Subordinate Court was then closed the first defendant was not in a position to appear before the Subordinate Judge and ask him to vacate the interim order under the provisions of Order 39, Rule 4 of the Civil Procedure Code and consequently on the 16th May, 1944, he filed an application on the Original Side of this Court asking for an order (i) transferring the suit and the application for a temporary injunction to this Court, (ii) vacating the interim injunction, (iii) directing the hearing of the application for an interim injunction by this Court and, (iv) then the re-transfer of the suit to the Subordinate Court. The application purported to be made under Clause 13 of the Letters Patent, Order 39, Rule 4 and Section 151 of the Civil Procedure Code. It was heard by Byers, J., who granted all the

respondent's prayers. The learned Judge was apparently of the opinion that the deed of partition entitled the respondents to an export quota based on the business of the family in 1941-42. This is an appeal from the judgment of the learned Judge. In the first place it came before Mockett and Kuppaswami Ayyar, JJ., who referred it to a Full Bench as they considered it raised a point of practice of the greatest importance, a practice which had been followed since the decision of this Court in *Jamna Bai v. Ramanathan Chetti*¹.

5. In *Jamna Bai v. Ramanathan Chetti*,¹ Ramesam, J., held that, where a suit is pending in a moffussil Court which is closed for the summer recess, the High Court has power under Clause 13 of the Letters Patent to transfer the suit to itself and pass an interim order therein. The application for transfer should, he said, be made on the Original Side of the High Court and should ask for an injunction or other interlocutory relief and then apply for the re-transfer of the whole proceedings to the moffussil Court. The application which the respondent made was obviously based on this judgment.

6. The first question is whether Clause 13 of the Letters Patent can legitimately be read in this way. The clause gives the High Court, power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, a suit being within the ordinary jurisdiction of a Court subject to its superintendence, when it thinks proper to do so. But does this mean that it can under this clause withdraw a suit from a subordinate Court and having quashed an objectionable interim order, then send the suit back to the original Court for trial? If we are to have regard to the wording of the clause, as one must, it seems to us merely to contemplate the removal of a case filed in a moffussil Court to this Court for trial and determination.

7. But this does not mean that Byers, J., had not the power to entertain the application which was filed by the respondent on the 16th May, 1944. Section 24 of the Civil Procedure Code was not referred to in the application; but, we are informed by Sir Alladi Krishnaswami Ayyar that the attention of Byers, J., was drawn to it in the course of hearing. The section gives power to the High Court to transfer a suit to this Court and afterwards re-transfer it for trial to the Court in which it was originally filed. It states that on the application of any of the parties

and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may transfer a suit, appeal or other proceeding pending before it for trial or disposal to (a) a Court subordinate to it competent to try it, or withdraw a suit, appeal or other proceeding pending in a Court subordinate to it and then (1) to try or dispose of it, or (2) transfer it for trial or disposal to a Subordinate Court or (3) re-transfer it for trial or disposal to the Court from which it was withdrawn. The section appears to us to give full power to this Court to do what was done by Byers, J., in this matter. It must, however, be observed that the section requires notice to be given to the parties and an opportunity of being heard. The learned Judge did not cause notice to be given to the second defendant in the suit, which he should have done.

8. We have now to decide whether the learned Judge was right, in holding that the plaintiff was not entitled to an injunction. We think that on the material before him he should not have gone to this length. There was no evidence before the Court that the Jaffna business was supplied with piecegoods from the Chennimalai branch alone. It may be that goods were sent to Jaffna from, the other branches of the firm, in which case a clearer complexion would be put on the case. Then there is the fact that the application was heard by the learned Judge on the 23rd May, and the Subordinate Court was due to reopen on the 17th June. In these circumstances and bearing in mind that the second defendant had not been served with notice of the application for an interim injunction, we think that it would have been better if the learned Judge had not adopted the course which he did, but had directed that the matter be disposed of by the Subordinate Judge on the reopening of his Court after due notice to all the parties to the suit. The application for an interim injunction could not properly be decided on the evidence then before the Court.

9. It follows that we consider that the application should be reheard by the Subordinate Judge, after notice to all parties and after giving them an opportunity of letting in the evidence they require. Accordingly we allow the appeal and direct the Subordinate Judge to take this course. He will hear the application as soon as possible, and we imagine that the parties will be able to agree to the order on the

application being the order in the suit. The whole question is, left open for decision by the Subordinate Judge after the further hearing.

10. Costs in this Court, before Byers, J., and before us will be made costs in the case.

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