

**Karur Jai Hind Pictures Represented by Its Partner Periasami Goundar Vs. A.M. Shahul Hameed**

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**Court :** Chennai

**Decided On :** Apr-15-1955

**Reported in :** AIR1955Mad625

**Judge :** Govinda Menon, ;Basheer Ahmed Sayeed and ;Ramaswami, JJ.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 24(4)

**Appeal No. :** Civil Revn. Petn. Nos. 1477 and 10321 of 1954

**Appellant :** Karur Jai Hind Pictures Represented by Its Partner Periasami Goundar

**Respondent :** A.M. Shahul Hameed

**Advocate for Def. :** A. Sundaram Aiyar, Adv.

**Advocate for Pet/Ap. :** N.S. Raghavan, Adv.

**Judgement :**

ORDER

Mack J.

1. The petitioner in this revision petition was the defendant in a small cause suit No. 2737 of 1953 in the Sub-Court, Tiruchirapalli, filed by the respondent for recovery of Rs. 825-9-9-, the balance of a deposit of Rs. 1,000 under an alleged contract for screening, a picture. The petitioner filed a suit, O. S. No. 411 of 1952, in the District Munsif's Court, Tiruchirapalli, claiming substantial damages on the same contract. The District Judge, under Section 24, C.P.C., transferred the small cause suit to be tried along with the original suit by the District Munsif, who gave the respondent a decree in the small cause suit, but dismissed the original suit filed by the petitioner.

The petitioner has filed A.S. No. 356 of 1954 against that dismissal in the Additional Sub-Court, Tiruchirapalli, and in C.M.P. No. 10321 of 1954 asks for a transfer of that appeal to this court to be heard along with C.R.P. No. 1477 of 1954, which he has filed against the decree against him in the suit originally filed as a small cause suit.

2. As regards the procedure to be adopted in these cases, there is a difference of judicial opinion. In -- 'Kandaswami Mudaliar in re', : AIR1951Mad275 (A), I took the view that a small cause suit loses its character as such when withdrawn to the original side and tried along with an original suit in a common trial in which a common issue or issues arise for determination.

The learned advocates in that case both agreeing, a direction was given to the District Court to admit three civil revision petitions arising out of three small cause suits, on being properly stamped with ad valorem court-fee and to give them a disposal along with the main regular appeal in the original suit pending on its file.

3. A different view was taken by Raghava Rao J. in -- 'Gopalarao v. Seetharamiah', : AIR1953Mad582 (B), in which, following a Bench decision in -- 'Sankararama v. Padmanabha', AIR 1916 Mad 891 (C) he held that in such a case only a revision petition and not an appeal would lie from the decree passed in a suit originally filed as a small cause suit. That was a case in which a small cause suit filed in the District Munsif's Court at Eluru was transferred by the High Court to the Subordinate Judge's court at Eluru for disposal along with two other original suits.

4. In AIR 1916 Mad 891(C), Sundara Aiyar and Sadasiva Aiyar JJ, considered a case in which a suit which was instituted as a small cause suit in a subordinate court was transferred by the District Court to the District Munsif's Court for trial as an original suit and was again transferred to another District Munsif's court for trial and disposal. It was held that the decree passed by the latter District Munsif's Court was a decree of a Court of Small Causes and that no appeal lay against such a decree. Section 24, Clause 4 does create a difficulty of interpretation and application in cases of this kind.

It lays down that 'the court trying any suit transferred or withdrawn under this section from a court of small Causes shall, for the purposes of such suit, be deemed to be a court of small causes.'

5. In -- 'Murugesu Mudaliar v. Kesavalu Chetti : AIR1929Mad513 , Ananthakrishna Aiyar J. explained and distinguished this Bench decision in holding that an order of transfer passed under Section 24(4), C.P.C. cannot invest a court not having small cause jurisdiction with it, and that such an order did not enable a Judge having small cause jurisdiction up to a particular limit to try as a small cause suit a suit exceeding that limit and, therefore, the High Court had no power to transfer a small cause suit pending in the file of a Subordinate Judge to the court of a District Munsif where the small cause jurisdiction of the District Munsif is less than the value of the small cause suit.

6. In the case before me, the District Munsif clearly had no small cause jurisdiction to try this suit instituted as a small cause suit in the Sub-Court. What then is the procedure to be adopted when there are two suits pending in two different courts, one a small cause suit and the other an original suit, both, raising common issues on the same evidence between the same parties? The view that took in : AIR1951Mad275 (A) was that in such cases, the small cause suit loses its small cause character when transferred for disposal along with the original suit on this ground, and that Section 24(4) had application to this type of case.

In view of the conflict between my decision in : AIR1951Mad275 (A) and that of Raghava Rao J. in : AIR1953Mad582 (R) and the difficulty of reconciling the decision of Ananthakrishna Aiyar J. in : AIR1929Mad513 with this type of case, I think the difficulty should be resolved by a reference to a Full Bench so that the correct procedure to be adopted in such cases which are not of infrequent occurrence may be indicated.

When once two suits like these have been tried and decrees passed on the footing of a single judgment, it seems to be necessary that appeals and revision petitions arising out of the common judgment should be heard by one and the same court, the alternatives learned advocates stressed before me being either that the appeal should be withdrawn to be heard along with the civil revision petition or that the civil revision petition be sent down for disposal as a first appeal along with the connected appeal.

Opinion of the Full Bench

Govinda Menon J.

7. In the view of Mack J. a small cause suit transferred to another court not having power to try that suit as a court of small causes, when tried along with a connected original suit loses its character as a small cause suit and the decree passed in such a suit is appealable under Section 96, C.P.C., and no revision lies to the High Court under Section 25 of the Provincial Small Cause Courts Act. This is the view expressed by him in : AIR1951Mad275 (A). The view of Raghava Rao J. in : AIR1953Mad582 (B) is to the contrary, and we have now to

decide which of the two views is correct.

The judgment in : AIR1951Mad275 (A) was delivered at the admission stage of three civil revision petitions which arose out of three small cause suits filed originally in a court of small causes but withdrawn to be tried along with an original suit in the District Munsif's Court of Vellore where the District Munsif tried all the four suits together on common evidence and gave a decree jointly in favour of the plaintiffs and some of the defendants against some Other defendants. An appeal was filed against the decree in the original suit before the District Court, Vellore, and revision petitions under Section 25 of the Provincial Small Cause Courts Act were filed before the High Court against the decrees in the Small Cause suits.

When these revision petitions came up for admission the learned Judge directed the papers to be returned to the advocate so that the same may be re-presented after affixing proper court-fee as appeals before the District Judge, for in the opinion of Mack J. before whom these revision petitions came up for admission a small cause suit loses its character as such immediately it is withdrawn to the original side and tried along with an original suit. He also rested his decision on common sense and practical view. With due and profound respect to the learned Judge we are tumble to agree, with the view taken by him.

Sub-section 4 of Section 24, C.P.C. lays down

'that a court trying any suit transferred or withdrawn under the provisions of the earlier clauses in the section from a court of small causes shall for the purposes of such suit, be deemed to be a court of small causes'.

No reference has been made to this statutory provision in the judgment of Mack J. for apparently it was not brought to his notice. We find it impossible to agree with the learned Judge in the opinion expressed by him in view of Sub-section (4) of Section 24, C.P.C. When a small cause suit is transferred to a court which as in the present case, does not have jurisdiction to try it as a small cause, even if the trial is proceeded with along with an original suit, still the court which tries it shall be deemed to be a court of small causes for the purpose of the transferred suit alone. That being so, if it is a court of small causes then the decree passed by it cannot be a decree in an original suit.

If we compare Section 24, C.P.C., with, Section 35 of Provincial Small Cause Courts Act the difference becomes clear and explicit. Under Section 24(4), C. P. C., if a case is transferred from the existing court of small causes to another ordinary civil court such a suit has to be dealt with as a small cause suit and the court of transfer must be deemed to be a court of small causes. But under Section 35, Provincial Small Cause Courts Act, where a court of small causes has ceased to exist or ceases to exercise such powers, in such a case, without any order of transfer the suit goes to the court which would have jurisdiction to try it if the suit had been filed after the cessation of the Small Cause court.

Therefore the decision by the court to which the small cause suit is transferred is not open to appeal but the decision of the court to which the case gets transferred under Section 35, Provincial Small Cause Courts Act is appealable. The view taken by Mack J. is opposed to the trend of authorities in this regard.

8. In AIR 1916 Mad 891 (C) the matter has been elaborately discussed by Sundara Aiyar and Sadasiva Aiyar JJ., and it has been held that where a suit which was instituted as a small cause suit in a subordinate Judge's court was transferred by the District Court to a District Munsif's Court for trial as an original suit and was again transferred to - another District Munsif's Court for trial and disposal it was held that the decree parsed by the latter District Munsif's Court was a decree of a court of small causes and no appeal lay to the District Court against such a decree.

The learned Judges observed that by the operation of Section 24(4), C.P.C., the court to which a small cause suit is transferred becomes a court of small causes for the purposes of the suit even if it is not a small cause court. As Sundaja Aiyar pointed out at page 894:

'The legislature has thought it proper to give finality to the decisions not only of small cause courts and courts

invested with small cause jurisdiction but to decisions of a third class of courts, namely, of courts to which a suit of small cause nature is transferred.'

It was further observed that a district court in transferring a small cause suit to a court not having small cause jurisdiction of the requisite amount had no power to direct that the suit should be tried as in original suit. There is nothing wrong in trying an original suit and a small cause suit together where the evidence is the same and the question for decision is also identical but each of the suits retains its character as when instituted which cannot by put an end to by transfer to another court.

We are in entire concurrence with this decision, which has not been seriously assailed for nearly forty years though there is an 'obiter dictum' of Krishnan Pandalai J. at p. 685 in -- 'Chockalinga v. Palaniappa AIR 1932 Mad 683 (E) where the learned Judge observes thus:

'Therefore, where a suit is transferred to a Small Cause Court there is nothing in the sub-section which requires that Suits of higher value when transferred should be tried as small cause suits or that there shall be no appeal therefrom. This point, however, does not arise in the present petition which only raises the question of the, power of transfer to a Court which has small cause jurisdiction of a suit of higher value than such jurisdiction.'

The learned Judge has not dissented in so many words from the observation in AIR 1916 Mad 891 (C) though Jackson J. who was the other Judge of the Bench referred to that decision in another connection and approved of it.

9. Ananthakrishna Iyer J. in : AIR1929Mad513 takes the view that an order of transfer passed under Sub-section (4) of Section 24, G. P.C., cannot invest a court not having small cause jurisdiction 'with one; or can such an order enable a Judge having small cause jurisdiction upto a particular limit to try a small cause suit exceeding that limit. Therefore the High Court has no power to transfer a small cause suit pending on the file of the court of a Subordinate Judge to the court of a District Munsif where the small cause jurisdiction of the District Munsif is less than the value of the small cause suit.

The learned Judge distinguished the case AIR 1916 Mad 891 (C) on the ground that in that case the order of transfer itself directed the suit to be tried as an original suit. It is somewhat difficult to appreciate the distinction made by Ananthakrishna Aiyar J. Sub-section (4) of Section 24, G.P.C. presupposes want of small cause jurisdiction in the court to which the small cause suit is transferred. That is why the words 'Be deemed to be a court of Small Causes' are used. If in fact the court is actually one of small causes there is no necessity for the words 'deemed to be'.

In these circumstances when a small cause suit is transferred to a court not having small cause jurisdiction for the purpose of the trial of that suit the court shall be deemed to be a court of small causes. That is, whatever is done in the trial of that suit by that court would be considered as done by a court of small causes. It is as if for the trial of that particular suit, the court is invested with small cause powers of the requisite pecuniary limit. This is what follows from the decision in AIR 1916 Mad 891 (G).

In AIR 1932 Mad 683 (E), both the learned Judges agreed that the suit which was within the small cause jurisdiction of the Subordinate Judge and beyond the small cause jurisdiction of the District Munsif can be transferred by the District Judge to the file of the District Munsif as the District Munsif was competent to try the suit within the meaning of Section 24(1), C.P.C. Though Jackson J. has referred to the decision in : AIR1929Mad513 he has not expressly dissented from the view taken by Ananthakrishna Aiyar J. In -- 'Kamalathammal v. Harihara AIR 1941 Mad 103 (F), Patna J. relies upon AIR 1932 Mad 683 (E) for concluding that the District Court may transfer any proceeding from a court of small causes to a court not having adequate small cause powers to deal with it as a court of small causes.

Nevertheless, the latter court shall be deemed to be a court of small causes for the purposes of the suit

transferred. The learned Judge has not referred to the decision of Ananthakrishna Aiyar I. in : AIR1929Mad513 . In the case before Krishnan Pandalai J. in AIR 1932 Mad 683 (E) on account of the abolition of the Subordinate Judge's court which alone had jurisdiction to try the suit as a small cause suit on account of the pecuniary value of the suit, the suit was transferred to the court of the District Munsif by the District Judge and such a transfer was held to be valid. A Full Bench of the Allhabad High Court in -- 'Bhagavati Pande v. Badri Pande : AIR1931All574 considered the effect of Section 35, Provincial Small Cause Courts Act, and Section 24(4), C.P.C., and Sukiman A. C.J. at pp. 578-579 states that the court to which the suit has been transferred under Section 24, C.P.C. would dispose of the suit as a court of small causes and no appeal would lie from its decree even if it has no jurisdiction to try other small cause suits of equal value.

The view expressed by Anauthakrishna Aiyar J. that a District Judge has no jurisdiction to transfer a small cause suit from the court of the Subordinate Judge to the court of the District Munsif not having adequate pecuniary jurisdiction as a small cause suit is opposed to the current of decisions not only of this court but of other High Courts as well. If the learned Judge's view is correct in our opinion there is no necessity for Sub-section (4) of Section 24, C.P.C. at all.

The reason is that if the court to which the small cause suit is transferred has jurisdiction to try it as a small cause suit then Sub-section (4) of Section 24, C.P.C. becomes redundant, The enactment of Sub-section (4) itself presupposes the non-existence of small cause jurisdiction of the requisite limit.

10. We, therefore, think that in the present case a civil revision petition has been properly filed in this court. What then is the procedure to be followed? In our view instead of transferring the appeal that is pending before the lower appellate court in the connected suit it would be better to direct the Additional Subordinate Judge, Tiruchirapalli to dispose of A.S. No. 356 of 1954 as expeditiously as possible so that the result of it might operate as *res judicata* if no second appeal is filed against the appellate decree.

On the other had, if a second appeal is filed then the same can be heard along with C.R.P.No. 1477 of 1954. Till then C.R.P. No: 1477 of 1954 will be adjourned. Therefore the order which we propose to make in C.M.P. No. 10321 of 1954 is that the Additional Subordinate Judge of Tiruchirapalli will be directed to dispose of App. No.356 of 1954 before the 30-7-1955.

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