

Kanniammal and anr. Vs. P. Narayanan and anr.

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Court : Chennai

Decided On : Aug-16-1988

Reported in : AIR1989Mad350; (1988)IIMLJ382

Judge : M. Srinivasan, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 24 and 25; [Motor Vehicles Act, 1939](#) - Sections 110; Constitution of india - Article 227

Appeal No. : Tr. C.M.P. No. 5389 of 1988

Appellant : Kanniammal and anr.

Respondent : P. Narayanan and anr.

Advocate for Def. : M. Palani and ;M.V. Chandran, Adv.

Advocate for Pet/Ap. : J. Mahalingam, Adv.

Disposition : Petition Allowed

Judgement :

Acts/Rules/Orders:

Civil Procedure Code (CPC), 1908 - Sections 24 and 25; [Motor Vehicles Act, 1939](#) - Section 110; Constitution of india - Article 227

Cases Referred:

Varalakshmi Sundar v. Meeran, (1980) 93 Mad LW 540; Annamalai v. M. Arumugaswamy, (1982) 95 Mad LW 687; Rajeshwari v. United India Insurance Co., 1984 Ace CJ 273, AIR 1984 Mad 170; State of Gujarat v. Vakhatsinghji, AIR 1968 SC 14SI; Gujarat v. Vakhatsinghji, AIR 1968 SC 1481; Bhagwati Devi v. I.S. Goel, 1983 Acc CJ 123; State of Haryana v. Darshana Devi, 1979 Acc CJ 205, AIR 1979 SC 855

Disposition:

Petition Allowed

ORDER

M. Srinivasan, J.

1. This is a petition to transfer M. O. P. No. 514/87 from the file of the District Court, Veltore to the file of the Motor Accident Claims Tribunal, Madras.

2, In the affidavit filed in support of this petition it is stated that the petitioners and 1st respondent are all residents of Madras. The 1st respondent is the owner of the lorry. The 2nd respondent is the Insurance Company having its registered office at Madras, It is further stated that the eyewitnesses to the occurrence are at Madras, and therefore, the convenience of parties require the proceedings to be transferred to Madras.

3. Learned Counsel for the 2nd respondent raises an objection, as to the maintainability of the application under Section 24, C.P.C. According to him, the Motor Accident Claims Tribunal is not a Court subordinate to this Court, within the meaning of Section 24, C.P.C., and that a petition for transfer of the proceeding cannot be sustained. He relies upon two decisions of this Court viz., (1) Varalakshmi Sundar v. Meeran (1980) 93 MLW 540 and (2) Annamalai v. M. Arumugaswamy (1982) 95 MLW 687. In the former decision, Ratnam, J. has taken the view, that the Motor Accident Claims Tribunal is not a Court under Section 24, C.P.C. and it cannot be treated as a Court subordinate to this Court. In the latter decision Balasubramanian, J. has taken the view that under Article 227 of the

Constitution of India, a proceeding before one Tribunal constituted under the Motor Accident Claims Tribunal cannot be transferred to another Tribunal. Learned Counsel for the petitioners places reliance on a decision of Sathidev, J. in *Rajeshwari v. United India Insurance Co.*, : AIR 1984 Mad 170. After referring to both the earlier decisions of this Court Sathidev, J. relying upon *State of Gujarat v. Vakhatsinghji*, : [1968] 3 SCR 692 has held, that this Court can exercise its power under Article 227 of the Constitution to transfer a proceeding from one Tribunal to another. The view taken by Sathidev, J. is that the view taken by Balasubramanyam, J. in (1982) 95 MLW 687 is not correct in view of the pronouncement of the Supreme Court in *State of Gujarat v. Vakhatsinghji*, : [1968] 3 SCR 692.

4. Learned counsel for the petitioners invites my attention to the decision of the Supreme Court reported in *Bhagwati Devi v. M/s. I.S. Goel* 1983 ACJ 123 wherein the Supreme Court, after referring to its earlier decision reported in *State of Haryana v. Darshana Devi*, : [1979] 3 SCR 184 has held that for the purpose of Section 25, C.P.C., the Tribunal, constituted under the Motor Accidents Claims Tribunal, is a Civil Court and directed the transfer of cases from the file of Motor Accidents Claims Tribunal, Moradabad to the file of the Motor Accidents Claims Tribunal, Delhi.

5. Section 25, C.P.C. deals with the power of the Supreme Court to transfer suits, appeals or other proceedings from the High Court or other Civil Court of one State to the High Court or other Civil Court of another State. The relevant words used in Section 25, C.P.C. are 'Civil Court'. The Supreme Court has clearly laid down that the Motor Accidents Claims Tribunal constituted under the Motor Vehicles Act is a Civil Court within the meaning of Section 25, C.P.C. Section 24, C.P.C., uses the term 'Court subordinate to it'. The relevant portion in Section 24, C.P.C., reads thus :

'24. General power of transfer and withdrawal :-- (1) on the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

(a) ...

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) ...

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same.'

6. Thus, the Motor Accidents Claims Tribunal, having been held to be a Civil Court for the purpose of Section 25, Code of Civil Procedure, is certainly a Court Subordinate to the High court for the purpose of Section 24, Civil P.C.

7. Learned counsel for the respondents relies upon Section 3 of the Civil P.C. which runs as follows :--

'3. Subordination of Courts-- For the purpose of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade interior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.'

According to learned counsel, it is only those Courts which are specifically referred to in Section 3, Civil P.C., are subordinate to High Court and not any other statutory Tribunal which may be equated to Civil Court for certain purposes. Section 110(c)(2) of the Motor Vehicles Act is to the effect that the Tribunals shall have all the powers which Civil Courts have for taking evidence, for enforcing the attendance of witness, for discovery, for production of documents and the like. It is also stated that the Claims Tribunal shall be deemed to be a Civil Court for the purpose of Section 195 and Chap. 35, Cr.P.C., 1898 (Act 5 of 1898). In view of the decision of the Supreme Court and the provisions of Section 110(c)(2) of the Motor Vehicles Act, it is clear that the Motor Accidents Claims Tribunal is a Civil Court for certain purposes. As it is held to be a Civil Court for the purpose of Section 25 of Civil P.C., it is necessarily a Court subordinate to the High Court for the purpose of Section 24 of Civil P.C., because it is a Court of a grade inferior to that of a District Court. Even Ratnam, J. in Varatakshmi Sundar's case (1980) 93 MLW 540 has

held that the Tribunal is subordinate to the High Court though it is not a Court.

8. Hence, applying the ratio of the Supreme Court in *Bhagwati Devi v. I.S. Goel* 1983 ACJ 123 it has to be held that the Motor Accidents Claim Tribunal is a Civil Court subordinate to this Court for the purpose of Section 24 of Civil P.C. The decisions of Ratnam, J. and Balasubramanyan, J. referred to above are no longer good law in view of the decision of the Supreme Court referred to above. Hence, the petition for transfer is maintainable under Section 24 of Civil P.C.

9. Even assuming that Section 24 of Civil P.C. is not applicable, transfer could be ordered under Art 227 of the Constitution. The power of this Court conferred under Article 227 of the Constitution has not been taken away or curtailed by the provisions of the Motor Vehicles Act which fix the territorial jurisdiction of the tribunal constituted thereunder. A constitutional provision cannot be defeated by an ordinary legislation enacted by the Parliament. I do not agree with the view expressed by Balasubramanyam, J. in *Annamalai's case* (1982) 95 MLW 687. It is not necessary to enter into a detailed discussion on this matter as Sathiadev, J. has pointed out that the decision of Balasubramanyam, J. is not correct in view of the decision of the Supreme Court referred to above. Hence, a transfer could be ordered under Art 227 of the Constitution of India also in this matter.

10. Hence, the petition for transfer is ordered as prayed for by the petitioner.