

Krishna Kumar Damani Vs. Ramnarain Agarwal and anr.

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Court : Kolkata

Decided On : Sep-13-1983

Reported in : AIR1984Cal162

Judge : Monjula Bose, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 24; ;[West Bengal Premises Tenancy Act, 1956](#) - Sections 13, 20, 24(1), 24(2) and 24(5); ;Code of Civil Procedure (CPC) (Amendment) Act, 1976

Appeal No. : Matter No. 389 of 1982

Appellant : Krishna Kumar Damani

Respondent : Ramnarain Agarwal and anr.

Advocate for Def. : Dipak Shome, Adv. (for No. 1)

Advocate for Pet/Ap. : P.K. Roy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Monjula Bose, J.

1. This application under Clause 13 of the Letters Patent, 1865 and Section 24 of the Code of Civil Procedure, 1908 seeks, inter alia, withdrawal of Title Suit No. 60 of 1982 (Shri R. N. Agarwal v. Shri Krishna Kumar Agarwal) from the Court of 3rd Subordinate Judge. Alipore, for being tried subsequent to the disposal of the petitioner's prior suit being No. 51 of 1982 (KrishnaKumar Agarwal v. Ramnarain Agarwal and Ashoka Housing Corporation) now pending for disposal in the Original Side of this Court.

2. In the earlier suit being No. 51 of 1982 instituted in this Court on January 28, 1982 the plaintiff sought the following reliefs.

(a) A declaration that the plaintiff is a nominee of the first defendant for the purchase of Flat No. 8B and Garage No. 8B at Ashoka at 111. Southern Avenue. Calcutta, more fully described in Annexure 'A' to the plaint:

(b) a decree for specific performance of agreements for sale dated October 10, 1975 and May 13, 1977. entered into between the first defendant and the second defendant by executing and registering an appropriate conveyance in respect of the said premises in favour of the plaintiff as the nominee of the first defendant:

(c) in the alternative, an appropriate conveyance to be executed and registered by the second defendant in favour of the first defendant in respect of the said premises and the first defendant be directed to execute and register an appropriate conveyance in respect thereof in favour of the plaintiff in specific performance of the Agreement for Sale between the plaintiff and the first defendant entered into on or about May 23, 1980:

(d) attachment:

(e) receiver;

(f) injunction;

(g) costs: and

(h) further and/or other reliefs.

3. It appears that by a letter dated February 1, 1982 the Respondent No. 1 (plaintiff in the Alipore proceedings) was intimated of the filing of the aforesaid suit and thereafter on March 20, 1982 as absolute owner of the self-same suit premises he caused Title Suit No. 60 of 1982 to be instituted in the Court of the third Subordinate Judge, Alipore, inter alia, for eviction of the petitioner both on the ground of default in payment of rent, and reasonable requirement of the landlord for his own use and occupation and accordingly, sought a decree for 'Khas' possession and mesne profits proceedings on the basis that the defendant. Krishna Kumar Damani (plaintiff herein) was inducted by him as a tenant in the suit premises.

4. From a perusal of the allegations in the High Court Suit No. 51 of 1982 it appears that the plaintiffs contentions, inter alia, are that Flat No. 8B of the suit premises and a garage thereat were agreed to be sold by the Defendant No. 2. owner, to the Defendant No. 1 in respect of which agreement the total consideration money of Rs. 1,22,715 has been paid and possession obtained by the first defendant though no conveyance in favour of the first defendant and/or his nominee has yet been executed by the Defendant No. 2.

5. The plaintiff's further case is that on May 23, 1980 the defendant No. 1 agreed to sell to the plaintiff the said flat and garage in the plaintiff's occupation as tenant and the entire consideration amount of Rs. 2,48,169 payable therefor received by the defendant No. 1. As such, he claimed to be in possession of the suit premises both as tenant and also in part performance of the agreement for sale in his favour, in respect of which the suit for specific Performance is filed.

6. It is his further case in the Plaint that the first defendant by his letter of January 23, 1980. addressed to the defendant No. 2 with a copy thereof forwarded to the plaintiff, called upon the second defendant to formally convey the premises to him by executing and registering an appropriate deed of conveyance in his favour, which has not yet been complied with. That with intent to avoid duplication of the necessary conveyance the first defendant nominated the plaintiff as the purchaser of the said flat so that the plaintiff may obtain a registered conveyance in respect thereof directly from the second defendant. It is contended that in order to

formalise the same, a formal agreement was prepared in duplicate on stamp paper on 27th August, 1980 and though the first defendant took away the original thereof for scrutiny, the same has not yet been executed. The said document is alleged to be prepared according to the instructions of the plaintiff and the first defendant, recording full terms and conditions of the agreement between the plaintiff and the first defendant, which the defendants are now wrongly denying and/or interested to deny. It is contended that the defendants are denying the right of the plaintiff as nominee of the first defendant as also his right to obtain an appropriate conveyance in respect of the said premises from the second defendant as such nominee. It is averred that the plaintiff has performed the essential terms of the contract required to be performed and has always been and is still ready and willing to perform the essential terms that will remain to be performed. 7. In this petition for withdrawal of the eviction proceedings to this Court, it is, inter alia, contended that the proceedings instituted in the Alipore Court by the first defendant is an abuse of the process of Court and filed mala fide with intent to harass the petitioner on the pretended ground of reasonable requirement. It is further averred that the provision of Section 13 (1) (k) of the [West Bengal Premises Tenancy Act, 1956](#) has no application to the facts and circumstances of the case.

8. The petitioner herein contends that in spite of having made payment of the full consideration money he has not been able to obtain any legal title to the flat and garage in question by reason of the wrongful attitude of the respondents. That the earlier suit filed in this Court is a more comprehensive suit and a decision in this suit would fully and substantially cover the subsequent eviction suit, for in the event of Plaintiffs succeeding herein there would be no question of his ejection from the suit premises. The cause of action of the plaintiff in this suit thus necessarily forms a part of his defence in the subsequent Alipore Suit and one of the main questions which will be required to be determined in both the suits is whether the petitioner has a right to remain in occupation of the said premises by reason of part performance of the agreement for sale relied upon. That it is neither just nor convenient for the two suits to be proceeded with in the different courts which may result in a conflict of judicial decision.

9. In the affidavit-in-opposition. affirmed by Ram Naravan Agarwal on July 12, 1982. on the other hand the case suggested is as follows:--

The defendant No. 1 is the absolute owner of the flat at the suit premises and had inducted the plaintiff as a monthly tenant at a rental of Rs. 1,800 per month in pursuance of the plaintiff's letter dated May 25, 1977. wherein the terms of tenancy were recorded. The plaintiff is a defaulter of payment of rent since July, 1980 and the suit flat is reasonably required by the defendant for his own use and occupation. Accordingly, a notice to vacate the said flat was given in accordance with the Act by the letter dated 15th June, 1977. It is, however, admitted that certain moneys were received by the defendant but contended that the same were accommodation loans received from the plaintiff on two occasions, and further alleged that at the time of issuing cheques the plaintiff obtained defendant's signature upon blank letterheads. It is contended that the defendant had never agreed to sell the suit property to the plaintiff at any material point of time and this suit has been filed after receipt of the ejectment notice of 1977. It is denied that the defendant nominated the plaintiff as the purchaser of the suit premises in order that the plaintiff could obtain a register-ed conveyance in respect thereof from the defendant No. 2. It is also denied that any formal agreement was prepared on the defendant's instruction and/or the same was collected by the defendant for scrutiny. It is averred in paragraph 17 of the affidavit-in-opposition that the Plaintiff has no locus standi to make the present application and the same is mala fide, vexatious, misconceived and not maintainable and has been made to harass the defendant and to delay the hearing of the eviction proceedings filed in the Alipore Court. It is contended that the issues involved can be decided only by the Alipore Court and denied that the main question requiring determination is the plaintiff's right to remain in occupation of the suit premises. It is denied that the balance of convenience is in favour of granting of a transfer order and contended that Clause 13 of the Letters Patent has no application to the instant proceedings.

10. In this background, this application for withdrawal of the eviction suit No. 60/82 pending in the 'Court of the Third Subordinate Judge. Alipore. to this Court under Clause 13 of the Letters Patent and Section 24 of the Code of Civil Procedure is strenuously contested by the respondent No. 1-landlord. The Respondent No. 2

has not contested the proceeding.

11. The short point canvassed before this Court requiring consideration is whether the jurisdiction of the High Court to transfer and/or withdraw a suit to itself under Clause 13 of the Letters Patent and/or Section 24 of the Code of Civil Procedure has been destroyed and/or taken away by reason of Section 20 of the [West Bengal Premises Tenancy Act, 1956](#) read with Clause (2) of the First Schedule thereto.

12. The said Section 20 reads:--'Special provisions regarding jurisdiction of courts for trial of suits for possession -- Notwithstanding anything contained in any other law. a suit or proceeding by a landlord against a tenant in which recovery of possession of any premises to which this Act applies is claimed shall lie to the courts, as set out in the first Schedule, and no other court shall be competent to entertain or try such suit or proceeding.'

13. The first Schedule of the Act which is to be read with Section 20.

First Schedule (See Section 20)

(1) Where the premises are situate on land, wholly within the Ordinary Original Civil Jurisdiction of the Calcutta High Court--(i) Where the value of the suit does not exceed rupees one lakh -- to the City Civil Court, as defined in the City Civil Court Act, 1953, (West Bengal Act XXI of 1953);

(ii) Where the value of the suit exceeds rupees one lakh to the High Court at Calcutta.

(2) Where the premises are situated on land, wholly or partly outside the Ordinary Original Civil Jurisdiction of the Calcutta High Court -- the Court other than the Calcutta High Court which would have had jurisdiction to try this suit if this Act were not passed.'

14. It is also necessary to notice Section 24 of the Code of Civil Procedure the relevant portions whereof read:

'General Power of Transfer and withdrawal :

24. (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 motion without such notice, the High Court or the District Court may at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

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

(i) try or dispose of the same; or

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

(iii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under Sub-section (1). the Court which (is thereafter to try or dispose of such suit or proceeding) may, subject to any special directions in the case of an order of transfer, either re-try it or proceed from the point at which it was transferred or withdrawn.

(3) For the purpose of this section.....

(4) The Court trying.....

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.'

15. Mr. P. K. Roy. learned counsel for the petitioner, relying upon a Division Bench judgment of this Court reported in : AIR1956 Cal65 (Lachmi Narayan Jute . v. Dwip Narayan Singh) contends that where the main question required to be adjudicated is a common one to both suits, it is desirable that both the suits are tried by the same Court and an order for transfer should be made to avoid any

conflicting decisions.

16. In support of the contention that wider powers than Clause 13 of the Letters Patent given to the High Court when exercising special jurisdiction under Section 24 of the Code of Civil Procedure to withdraw and/or transfer suits and/or to re-transfer the same to the Court from which it was withdrawn. My attention has been invited to V. S. A. Krishna Mudaliar v. V. S. A. Sabapati Mudaliar. a Full Bench decision of the Madras High Court reported in AIR 1945 Mad 69. where it held that Clause 13 of the Letters Patent is limited merely to its powers to remove and to try and determine suits as a Court of Extraordinary Original Jurisdiction for the purposes of justice upon its reasons being recorded.

17. Mr. Roy emphasises that the High Court when withdrawing a suit from a subordinate court to itself, exercises powers of jurisdiction of that subordinate court when adjudicating the transferred suit and contends that Section 20 of the West Bengal Premises Tenancy Act is no bar to the High Court withdrawing any suit to itself from a subordinate court, in support of which proposition he places reliance on:

(a) Annie Besant v. G. Navavamiah. reported in (1914) 41 Ind APP 314 at p.322: (AIR 1914 PC 41 at p. 43). where the Judicial Committee viewed that the powers of the High Court in dealing with suits transferred under Clause 13 of the Letters Patent. 1865 is confined to powers which but for the transfer might have been exercised by the transferor court.

(b) A Division Bench judgment of this Court in the case of Tarachand Ghanshyamdas v. State of West Bengal, reported in : AIR1955 Cal258 where the court held that when a suit is transferred under Clause 13 of the Letters Patent, it does not become a suit 'instituted in the High Court and the institution of a suit in the original court is not extinguished by the transfer, nor is an institution in the High Court substituted and the suit remains a suit of the Court where the plaint was filed'.

18. On the merits of the case Mr. Roy contends that the balance of convenience and/or of Justice require the ejectment proceedings instituted in the Alipore Court

to be transferred to this Court inasmuch as a common question, namely, as to whether the plaintiff is entitled to remain in possession of the suit premises, from which his ejectment is sought, is required to be answered in both the suits and any conflicting decision should be avoided.

19. At the very outset of his arguments. Mr. Dipak Shome. learned counsel for the Respondent No. 1 raised the objection that this Court has no Original Jurisdiction either Ordinary. Extraordinary or Special to try an ejectment suit for possession and based his arguments on his interpretation of Section 20 of the [West Bengal Premises Tenancy Act, 1956](#) contending that this was a complete bar from so doing.

20. In support of his proposition that this Court has no jurisdiction to try and determine ejectment suits when property wholly outside jurisdiction of this Court, he cited three single Bench decisions of this Court, namely:

(a) P. K. Ghose v. D. K. Dutt, reported in : AIR1953 Cal589 where P. B. Mukharji. J. (as he then was) laid down that Section 16 of the West Bengal premises Rent Control Act, 1950 has destroyed the jurisdiction of this Court under Clause 13 to entertain or try suits of the nature and description mentioned in that section of the Act. which decision was followed by a judgment of R. N. Pyne. J. in (b) Tapan Kumar Biswas v. Amar Nath Saha. reported in (1974) 1 Cal HC (N) 372 wherein the Court extended the principle laid down in : AIR1953 Cal589 to an application Under Section 24 of the Civil Procedure Code and (c) an unreported decision of D. K. Sen J. dated 22nd July, 1981 in the Matter No. 1129 of 1980. Prabartak Jute Mills Ltd. v. Sm. Mulli Devi Cho-rarai which followed the earlier decisions of Mukharji. J. and Pyne. J.

20-A. Mr. Shome also placed reliance on Gocul Dos Jammunadoss & Company v. M. M. Sadasivier reported in AIR 1928 Mad 1091 at p. 1092 where the Court viewed that an application to withdraw an Insolvency petition from a Subordinate Judge and transfer for its trial and disposal to the Original Side of the High Court is not maintainable under Section 24(1)(a)(i) of C.P.C. or under Clause 13 of the Letters Patent as the High Court lacks 'competence' to 'try proceedings' under the provisions of the Insolvency Act.

21. Reliance was also placed on *Maldamiatti Kondavva v. Official Receiver, Nellore*, reported in : AIR1951 Mad676 where the Court viewed that it would not be competent to try or dispose of Insolvency proceedings sought to be transferred within the meaning of Section 24(1)(b)(ii) because the High Court in the exercise of its Original Insolvency Jurisdiction, is bound by the provisions of the Presidency Towns Insolvency Act and cannot administer the law as laid down in the Provincial Insolvency Act. In that background the Court viewed :

'S. 24. Civil Procedure Code presupposes that the Court which withdraws a suit, appeal or other proceedings from a court subordinate to it to its own file, would have jurisdiction to try and dispose of the same. The mere fact that the power to withdraw a suit, appeal or other proceedings from a subordinate court is conferred by Section 24(1)(b). Civil Procedure Code would not invest the Court so empowered with the jurisdiction to try the suit, appeal or other proceedings if the jurisdiction to try the case is excluded by other enactments. So far as the Insolvency is concerned, the Original Jurisdiction of this Court is limited to the provisions of the Presidency Towns Insolvency Act and this Court has no Original Jurisdiction over Insolvency proceedings which are cognizable by courts in moffusil. It cannot transfer to its file insolvency proceeding pending in a moffusil court and dispose of it in the exercise of its Original Insolvency Jurisdiction. Nor can the application for transfer be entertained on the Appellate Side of this Court, for the Original Side of the Court cannot be said to be a Court subordinate to this Court within the meaning of Section 24(1)(b)(ii). Civil Procedure Code so as to attract the operation of that clause. This Court would not be 'competent to try or dispose of the Insolvency proceedings sought to be transferred within the meaning of Section 24(1)(b)(ii). Civil Procedure Code because in the exercise of its Original Insolvency Jurisdiction it is bound by the provisions of the Presidency Towns Insolvency Act and cannot administer the law as laid down in the Provincial Insolvency Act.'

22. Applying the aforesaid principles to the instant case, Mr. Shome contends that Section 20 of the West Bengal Premises Tenancy Act read with the First Schedule thereof, exclude the Original Jurisdiction of this Court to try and determine the ejectment proceedings.

23. Nataraj Studios (P.) Ltd. v. Navrang Studios, reported in AIR 1981 SC 537 is cited as an authority for the proposition that public policy would not permit parties to contract out of the legislative mandate which requires certain kinds of disputes to be settled by Special Courts constituted by the Act. In that case the Court was called upon to decide whether an Arbitrator could resolve the disputes between the parties as to right of possession which under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 could only be resolved by the Court of Small Causes and excluded every other Court's jurisdiction to try and dispose of the same.

24. In that case it was held that the court of Small Causes alone has exclusive jurisdiction to resolve the disputes between the parties and Section 28(1) of the Bombay Rent Act confers jurisdiction on the Court of Small Causes to entertain and try any suit or proceeding between a landlord and tenant relating to recovery of rent and possession of any premises or between a licensor and licensee relating to the recovery of licence fee or charge and to decide any application made under the Act. and to deal with any claim or question arising but of the Act or any of its provisions and this neaatively excluded the jurisdiction of any other Court from entertaining any such suit, proceeding or application or dealing with such claim or question.

25. In reaching the aforesaid conclusion the Court viewed that the Bombay Rent Act is a welfare legislation and aimed at the definite social objective of protection of tenants against harassment by landlords and the broader considerations of public policies demand that suits for ejectment should only be tried by those Courts specified by the appropriate Rent Acts. The Court further viewed that the parties could not confer jurisdiction on a Court, nor can they by consent choose their forum and such agreements are void and contrary to public policy.

26. Mr. Shome also cited Raja Soap Factory v. S. P. Shantaraj. reported in : [1965]2SCR800 for the proposition that the Civil Procedure Code does not authorise the High Court to invest itself with jurisdiction under Section 24 or Section 151 of the Code of Civil Procedure where it is not conferred by law. In that case the Court further viewed that the High Court is not competent to assume to

itself jurisdiction which it does not otherwise possess, merely because an 'extraordinary situation' has arisen and held that by 'jurisdiction' it means the extent of the Dower which is conferred upon the Court by its constitution to try a proceeding.

27. Mr. Shome next relied upon the saving clause. Section 4 of the Code of Civil Procedure which reads as follows :

'In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any such forum of procedure prescribed, by or under any other law for the time being in force'

28. Mr. Shome contends that the specific provision of Section 20 of the West Bengal Premises Tenancy Act is not affected by the Code of Civil procedure and/or Section 24 thereof. Distinguishing the decision reported in : AIR1956 Cal65 . he urges that the principles expounded therein are not applicable to the instant case as the said decision does not deal with withdrawal of suits by the High Court to itself notwithstanding an absolute statutory power and/or ouster of the High Court's Jurisdiction to try eviction proceedings. He does not dispute the ratio laid down in AIR 1945 Mad 69 (FB) and concedes that there is a distinction between Clause 13 of the Letters Patent and Section 24 of the Code of Civil Procedure. (19141 41 Ind APP 314 : (AIR 1914 PC 411 is contended to be of no use to the petitioner as firstly. It can no longer be held to be good law in view of Section 24(5) of the Code which enables the Court to transfer a suit or proceeding from a Court which has no jurisdiction to itself. He also distinguishes the facts of that case and submits that the same was based primarily in consideration of welfare of children when deciding an application for their custody under the Guardians and Wards Act. Similarly, the decision reported in : AIR1955 Cal258 is also distinguishable on facts, and relate to payment of court-fees. In that case the Court viewed that there could be no question of the High Court granting a certificate for refund of court-fees in exercise of its inherent power in the case of a suit transferred to the High Court, under Clause 13 of the Letters Patent as the court-fee in the original Court at the time of the institution of the suit was the fee payable under the Court-fees

Act. The said decision in any event is no longer good law as the plaintiff is now required to pay court-fees under the new Act.

29. Mr. P. K. Roy, learned counsel for the petitioner, in reply contends that the sheet anchor of the case of the respondent No. 1 rested on : AIR1953 Cal589 . which case is clearly distinguishable, inter alia, on the following grounds :

Firstly, the Court therein was not required to take into consideration the provisions of Section 24 of the Code of Civil Procedure, which is wider in import than Clause 13 of the Letters Patent, as held by the Full Bench decision of the Madras High Court in AIR 1945 Mad 69 and which proposition of law is not disputed.

30. Secondly, in reaching its conclusion the learned Judges drew support from Clause 44 of the Letters Patent whereunder powers of the Indian Legislature was preserved and all provisions of the Letters Patent made subject hereto.

31. Thirdly, the scope and effect of Clause 20 of the Letters Patent which sets out the law to be administered by the High Court in the exercise of its ordinary Original Civil Jurisdiction providing that in the exercise of such jurisdiction such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which would have been applicable to such case of any local court having jurisdiction therein not placed before the Court for its consideration.

32. Fourthly, the decision based on facts and circumstances peculiar to that case is plainly distinguishable, namely, withdrawal of a suit from a Special Court constituted by the Rent Act of 1950. i.e.. Chief Judge of Small Causes Court invested with the power of the District Judge for a special purpose of trying such suits, particularly as under Section 19(d) of the Presidency Small Cause Courts Act a suit relating to immovable property would not have been entertainable by the Small Causes Court, and lastly the effect of the 1976 amendment of the Civil Procedure Code make the same distinguishable.

33. The decision of Pyne J. reported In (1974) 1 Cal HC (N) 372. it is contended, merely followed the earlier decision reported in : AIR1953 Cal589 without noticing the distinguishable features thereof. In any event, the subsequent 1976

amendment by incorporating Section 24(5) of the Code of Civil Procedure makes the decision distinguishable. Furthermore, it appears that whilst arriving at his decision the learned Judge did not question the power of the High Court to withdraw or remove a suit for ejection to itself but was merely troubled (sic) with the exercise of his discretion in favour of the petitioner on the supposition that the Court may not ultimately feel itself competent to try the suit on transfer. The unreported decision of D. K. Sen. J. is similarly criticised. In that case also the Court did not give any reason of his own but merely followed the two prior decisions without noticing the distinguishing features therein or without making any independent analysis of the legal position. As such, the same does not in any way advance the case of the respondent any further than the proposition laid down in : AIR1953 Cal589 .

34-35. The decision of the Madras High Court reported in AIR 1928 Mad 1091 is also contended not to be good law any longer inasmuch as the proposition that the Appellate Side of the High Court cannot withdraw a suit for trial by the Original Side is clearly contrary to the Division Bench decision of this Court reported in : AIR1956 Cal65 . which is binding on this Court.

36. It is furthermore urged that the proposition that the High Court must be competent to try proceedings so withdrawn does not find support from the language of Section 24(1)(b) of the Code of Civil procedure which did not place any restriction on the Court when exercising its power of withdrawal as compared with such a restriction placed on its power of transfer for trial or disposal to any subordinate Court, as would appear from the express wordings of Section 24(1)(a) and Section 24(b)(ii). In any event, the law on the matter is required to be considered in the back-ground of the 1976 amendment. The decisions reported in : AIR1951 Mad676 is also criticised as being contrary to the decision of this Court reported in : AIR1956 Cal65 . and contended that the further finding that the High Court on transfer of an insolvency proceeding cannot administer the law laid down in the Provincial Insolvency Act is without consideration of Section 5(2) of the said Act as well as Clause 20 of the Letters Patent and thus also distinguishable.

37. Having heard the respective contentions of the parties and having given my anxious thoughts thereto. I am inclined to view that the contentions on behalf of the petitioner are formidable and must be sustained. The views of the Judicial Committee in Besant's case reported in (1914) 41 Ind APP 314 : (AIR 1914 PC 411) as also the Division Bench decision of this Court in Tarachand Ghanshyam Das v. State of West Bengal. reported in : AIR 1955 Cal 258 are valuable persuasive authorities binding on this Court which in my judgment are not distinguishable in any material particular from that which I have to decide when considering whether Section 20 of the West Bengal Premises Tenancy Act has destroyed the jurisdiction of this Court to determine and/or adjudicate on the matter as contended by the learned counsel for the respondent.

38. The obiter dictum of the Judicial Committee in Besant's case namely, that the powers of the High Court in dealing with suits transferred from a District Court under Clause 13 of the Letters Patent is confined to powers which but for the transfer might have been exercised by the District Court is supported by the principle enunciated by the Division Bench of this Court in Ghanshyam Das case. To my mind such powers are unaffected by any consideration of facts and it mattered not that the Judicial Committee was required to consider the welfare of minors under the Guardians and Wards Act and/or that the Division Bench decision centred round payment of court-fees as sought to be distinguished by learned counsel for the respondent. Ghanshyam Das's case : AIR 1955 Cal 258 to my mind succinctly and clearly lays down the law when considering the inherent power of the Court to transfer suits to the High Court under Clause 13 of the Letters Patent. The proposition is that the institution of a suit in the original court on transfer under Clause 13 of the Letters Patent nevertheless remains a suit of the court where plaint filed, and the same on transfer does not cease to be a suit attracting the jurisdiction of the court where suit instituted. With this view, I respectfully and whole-heartedly agree. This principle, to my mind, is equally applicable to an order passed under Section 24 of the Civil Procedure Code, as jurisdiction depends upon the Pleadings of the plaintiff and necessarily must depend upon the plaint filed in the original court. Another way of looking at the matter, whether a court has jurisdiction or not depends not upon falsity or correctness of a case required to be determined but upon the plaintiff's pleadings

determinable at the commencement and not at the conclusion of the trial. Applying, therefore, the aforesaid principle to the instant case the contention of Mr. Shome loses much of its gleam and it cannot be said that this Court lacks jurisdiction to try and determine the issue as to possession of immovable property situated wholly outside its ordinary original civil jurisdiction, as the Alipore Court wherein the suit was initially instituted and within whose jurisdiction the property in question wholly lay. was the competent court wherein such proceedings would ordinarily lie. In view of the clear exposition of the law in Ghanashyam Das's case as also the views of the Judicial Committee referred to hereinabove the three Single Bench decisions of this Court cited on behalf of the respondent are not binding upon this Court.

39-40. This apart, the more fundamental aspect of the matter, the law as it stands today after the 1976 amendment of the Civil Procedure Code has widened and/or enlarged the general powers of transfer and withdrawal of the High Court and/or District Courts, under Section 24(5) of the Civil Procedure Code and the courts are now empowered to have a suit transferred from a court which has no jurisdiction to try the proceedings instituted, and any further discussion on this matter may be purely academical. In any event none of the three decisions cited by the respondent were required to take note of this aspect of the matter and hence distinguishable.

41. The third line of reasoning which also finds favour with this court in repelling the contention of the learned counsel for the respondent is that the language of Section 24 of the Civil Procedure Code is clear and unambiguous and no restriction and/or impediments have been placed in the way of the High Court and/or District Court when exercising its power of withdrawal of any suit, appeal or proceeding from a subordinate court to itself under Section 24(1)(b) of the Code and/or prevent it from trying and/or disposing of the same under Section 24(1)(b)(i) or 24(2) after such withdrawal.

42. It is to be noticed that the legislature in its wisdom enabled both the High Court and district court to transfer any appeal or other proceedings pending before it for trial or disposal to any court subordinate to it but necessarily competent to try the

same thereby restricting the powers of the High Court and/or district court from transferring a suit or proceedings before it to a subordinate court which lacked jurisdiction or competency to entertain the same. No similar restriction has been placed on either the High Court or the district court's powers for withdrawing to itself any suit, appeal or proceedings pending in any court subordinate to it.

43. Section 24 (5) of the Amendment Act of 1976 taking a wider view in the interest of expedition no doubt, now permits a suit or proceedings to be transferred under Section 24(5) of the Civil Procedure Code from a court which has no jurisdiction to try it. To this extent the old law has been done away with.

44. Be that as it may in Raja Soap Factory case reported in : [1965]2SCR800 it is emphasised that the jurisdiction to try a suit under the power of withdrawal reserved under Section 24(1)(b) arises only when such suit, appeal or proceedings is properly instituted in a court subordinate to the High Court and the Supreme Court viewed that the exercise of jurisdiction under Section 24(1)(b) is conditioned by the lawful institution of the proceedings in a subordinate court of competent jurisdiction and transfer thereafter to the High Court. As such, it does not appear that there is any impediment placed on the High Court and/or district court to withdraw a suit or proceedings to itself and it cannot be viewed that this general power of transfer and/or withdrawal given under a Central Act has been abridged and/or taken away by the State legislature when enacting the West Bengal Premises Tenancy Act. Moreover, it must be held that any transfer and/or withdrawal to the court under Section 24(1)(b) or 24(5) is pursuant to an order of court, and has nothing to do with the initial institution of the suit in a court of original jurisdiction. Thus, the jurisdiction of transfer and/ or withdrawal given to the High Court under a special jurisdiction is not abridged and/or taken away by the West Bengal Premises Tenancy Act and following the decisions cited, upon transfer the suit continues to remain a suit of the original court, namely, Alipore Court and it cannot be said that this, court is incompetent to try and dispose of the same upon such transfer. Construing Section 24(2) of the Civil Procedure Code it is apparent and clear that where any suit or proceeding has been transferred or withdrawn under Section 24(1) the court to which it is transferred and/or withdrawn is thereafter required to try or dispose of the suit or proceedings subject to any

special direction in the case of an order of transfer.

45. The decision reported in : AIR1951 Mad676 is also of no assistance to the respondent as there is nothing to indicate that the power of the High Court and the district court to try and dispose of a case after withdrawal under Sections 24(1)(b) and 24(2) of the Civil Procedure Code has been excluded by the West Bengal Premises Tenancy Act 1956. Insolvency matters stand on a different footing as the original jurisdiction of the Court is limited to the provision of either Presidency Towns Insolvency Act or the Provincial Insolvency Act and the Court in the facts of that case viewed that the original Jurisdiction of the High Court was limited by the provisions of the Presidency Towns Insolvency Act and as such the court had no original jurisdiction over insolvency proceeding cognizable by courts in the Muffusil area and thus it could not administer the law as laid down in the Provincial Insolvency Act. This factor weighed with the court in holding that the power to withdraw would not invest the court so empowered with jurisdiction to try proceedings. Under the West Bengal Premises Tenancy Act no decree for recovery of possession of any premises in favour of landlord can be made unless any of the grounds specified under Section 13 are established. Protection against eviction under the Act thus necessarily lies within the four; corners of Section 13. and no different law is required to be administered by court's adjudicating on the landlord's right of eviction under Section 13 of the Act.

46. It was not seriously contended that no jurisdiction lay with this court under the general powers to transfer and/or withdraw such suit to itself under Section 24 of the Civil Procedure Code but the learned counsel for the respondent merely contends that such a transfer would result to naught as the court would be incompetent to try the case due to the special provision of Section 20 of the West Bengal Premises Tenancy Act read with the First Schedule thereto. This argument is fallacious. Section 20 of the West Bengal Premises Tenancy Act read with the First Schedule thereof merely prescribe the courts within whose jurisdiction a suit for possession by a landlord against the tenant shall lie and/or be instituted and is not at all an embargo on the special jurisdiction conferred upon the High Court and/or district court under Section 24 of the Civil Procedure Code to withdraw to itself and thereafter to try and dispose of such suit or proceeding which follows as

a matter of course once such suit or proceeding is withdrawn to itself. As held in : AIR1955 Cal258 such a suit withdrawn to itself continue to be a suit of the original court and it cannot be said that the High Court is incompetent to try and dispose of the same then the Code of Civil Procedure empowers it so to do under Sections 24(1)(b)(i) and 24 (2) of the Act. Any hearing of the proceeding after withdrawal under Section 24 of the Code would thus necessarily be in consequence of an order of Court and cannot be treated as an original proceeding instituted in this court wherein patently it did not lie as premises situated wholly outside the ordinary original civil jurisdiction of this Court. Thus whilst under its ordinary original civil jurisdiction no suit for possession by a landlord against the tenant can lie or be instituted in this High Court nothing prevents the High Court and/or district court from trying and disposing of a matter instituted in a competent court of jurisdiction as held in : [1965]2SCR800 (supra) and after 1976 amendment even if the original court lacked the initial jurisdiction to entertain the same. The power of transfer and/or withdrawal recognised in the statute is thus not at all abrogated and in my judgment the vested right to continue an action in a competent court of jurisdiction in which it was instituted. is subject to the power of transfer and/ or withdrawal given to the High Court and district court by Section 24 of the Civil Procedure Code. Thus, so long the power of transfer (in cases in which such a power exists) is not exercised, the action no doubt continues in its usual course in the court in which it was originally instituted and in such a court it would be competent to raise a point of jurisdiction. The institution of the suit in a court whether it had jurisdiction or not (since the 1976 amendment) does not affect the power to withdraw the same to the High Court or the district court under a procedure recognised by the Code to try or dispose of the same under such powers given under Sections 24 (1) (b) (i) and 24 (2). The legislature, as I have indicated, chose not to restrict the right of the High Court or district court from withdrawing proceedings to itself and thus it is not within the jurisdiction of the court to read into the Statute any words which have been deliberately omitted therefrom and not at all open to the court to modify and/or add to the provisions of a Statute when interpreting the same, particularly where clear and precise words have indicated the intention of the legislature. It is to be noticed that in the case of a transfer of a suit, appeal or other proceeding for disposal to any court

subordinate to the High Court or district court, the competency of the subordinate court is a prerequisite condition. No similar restrictions have been placed on the power of the High Court and the District Courts to withdraw to itself any proceedings from the subordinate courts. The argument of Mr. Shome thus straightforward and attractive, as it may seem, at first blush, if followed to its logical end would produce some very alarming results, namely, whilst it would mean that there is no bar for transferring and/or withdrawing a suit from a court lacking in initial jurisdiction to itself under Section 24 (5). there is an implied restriction when removing proceedings to itself from a competent court of jurisdiction.

47. In *Barker v. Edgar*. (1898) AC 748 at 754. the Judicial Committee observed:--

'When the legislature has given its attention to a separate subject and made provisions for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provisions unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms'.

48. If Mr. Shome's contentions are accepted, the same would tantamount to accepting a repeal by implication, of the special jurisdiction conferring the power of transfer and withdrawal on the High Court and/or district court to transfer and/or withdraw a suit to itself and, thereafter, to try and dispose of such suit or proceedings as empowered by Section 24 (2). In the instant case, as emphasised hereinbefore this High Court will get seisin of the ejectment proceedings only by and as a result of an order of transfer in exercise of its special jurisdiction under Section 24 of the C.P.C. and its jurisdiction and competency thereafter to try and dispose of the suit or proceedings follows as a matter of course under Section 24 (1) (b) (i) and Section 24 (2) thereof. This, in my view, is the inescapable effect of the statutory provisions, which, I am called upon to take cognisance and interpret.

49. In construing Section 20 of the West Bengal Premises Tenancy Act. I also do not find it excludes the power of transfer conferred by the express language of Section 24 of the C.P.C. and such transfer and/or withdrawal can be legally affected under Section 24(1). To my mind as I have already indicated. Section 24

of the C.P.C. does not seem to postulate the existence in the transferee court of any condition precedent when withdrawing a suit to itself although when transferring a proceeding to a subordinate court such condition is imposed and the transferee court is required to be a court of competent jurisdiction to try and dispose of the same. In this view of the matter, the principles enunciated in AIR 1981 SC 537 are not at all attracted and/or applicable to the facts of the instant case and it is not a matter of the parties contracting out of the legislative mandate requiring certain kind of disputes to be decided by special courts constituted by the Act. In any event, that decision is not one which was required to construe Section 24 of the C.P.C. and is thus distinguishable.

50. Finally, on the question of merits from the facts pleaded it appears that the main question to be adjudicated is a common one in both the suits, namely. the right of the tenant to remain in pos-session and it is apparent that the cause of action of the plaintiff in his prior suit now pending before this Court for specific performance of an agreement for sale will necessarily form part of his defence in so much as it affects his rights to be in possession of the premises dehors the West Bengal Premises Tenancy Act. Moreover, the defendant No. 2 is not a party to the ejectment proceedings and the earlier suit is thus a more comprehensive suit and the balance of convenience lies in having it heard by this Court.

51. For the reasons aforesaid, the Petitioner is entitled to succeed and the Rule Nisi is made absolute. There will be an order in terms of prayers (c) and (d). The applicant will be entitled to costs.