

APPELLATE CIVIL

Before Falshaw and Dua, JJ.

JANAK DULARI,—Appellant.

versus

NARAIN DAS,—Respondent.

First Appeal from Order No. 26 of 1957.

1958
Sept. 8th

Hindu Marriage Act (XXV of 1955)—Sections 3(b) and 19—Court of Additional District Judge—Whether can be considered to be the principal Civil Court of Original Jurisdiction—District Judge—Whether can transfer a case under the Act to the Court of Additional District Judge.

Held, that the Court of the Additional District Judge cannot be considered to be the principal civil court of original jurisdiction within sections 3(b) and 19 of the Hindu Marriage Act, 1955.

Held, that the District Judge to whom a petition under the Hindu Marriage Act, is presented cannot transfer it to an Additional District Judge since the petitions under the Act lie only to the principal civil court of original jurisdiction which is the court of the District Judge only and not the court of the Additional District Judge.

Kuldip Singh v. The State of Punjab and another (1) followed.

Case referred by Hon'ble Mr. Justice Bishan Narain on the 10th February, 1958, to a Division Bench for opinion on the legal points involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Falshaw and Hon'ble Mr. Justice Dua after deciding the points referred to it returned the case to the Single Bench. The case was finally decided by the Hon'ble Mr. Justice Dua on the 8th September, 1958, on merits.

First Appeal from Order of Shri Raj Inder Singh, Additional District Judge, Amritsar, dated the 15th January, 1957 holding that the court at Gurdaspur had no jurisdiction to try the case.

SHAMAIR CHAND, for Appellant.

D. R. MANCHANDA, for Respondent.

ORDER

Falshaw, J.—In connection with an appeal under section 28 of the Hindu Marriage Act, XXV of 1955, which came before Bishan Narain, J., a question of jurisdiction arose which has been referred by him for decision by a larger Bench and has been formulated by him in the following two questions:—

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- (1) Whether the Court of Additional District Judge can be considered to be the principal civil Court of original civil jurisdiction within section 19 of the Hindu Marriage Act?
- (2) If not, can the District Judge transfer a case under the Hindu Marriage Act to the Court of Additional District Judge, and on such a transfer he would have jurisdiction to hear and decide the case?

Section 19 of the Hindu Marriage Act prescribes that every petition under the Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnized or the husband and wife reside or last resided together. In section 3(b) "district court" is defined as meaning, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as

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having jurisdiction in respect of the matters dealt with in this Act.

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The relevant provisions regarding civil courts in this State are contained in Chapter 3 of the Punjab Courts Act VI of 1918. Section 18 reads—

“Besides the Courts of Small Causes established under the Provincial Small Causes Courts Act, 1887, and the Courts established under any other enactment for the time being in force, there shall be the following classes of Civil Courts, namely:—

(1) The Court of the District Judge;

(2) The Court of the Additional Judge;
and

(3) The Court of the Subordinate Judge”.

The first part of section 20 reads—

“The State Government shall appoint as many persons as it thinks necessary to be District Judges, and shall post one such person to each district as District Judge of that district.”

Section 21 reads—

“(1) When the business pending before any District Judge requires the aid of an Additional Judge or Judges for its speedy disposal, the State Government may appoint such Additional Judges as may be necessary.

(2) An additional Judge so appointed shall discharge any of the functions of a

District Judge which the District Judge may assign to him, and in the discharge of those functions he shall exercise the same powers as the District Judge.”

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Section 24 provides that the Court of the District Judge shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district.

From this it is perfectly clear that in this State any petition under the Hindu Marriage Act has to be filed in the Court of the District Judge, and at first sight there would seem to be no difficulty, in view of the provisions of the Punjab Courts Act set out above, in concluding that in the districts where, on account of the size of the pending file in the Court of the District Judge, additional Judges have been permanently or temporarily appointed, the petitions filed in the Court of District Judge under the Hindu Marriage Act can be allotted by him for disposal to an Additional Judge. Indeed, as the learned Judge who has referred the matter evidently thought, there would have been no difficulty at all on the point but for the decision of a Bench of five learned Judges of the Supreme Court in *Kuldip Singh v. The State of Punjab and another* (1).

This case relates to the question whether a certain person should be prosecuted for offences under sections 471 and 193, Indian Penal Code, which had evidently been mis-managed in the subordinate Courts. In a suit for a considerable sum of money on the basis of a mortgage filed by Amar Singh, the second respondent in the appeal in the Supreme Court, Kuldip Singh defendant had produced and relied on a receipt purporting to show

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a payment of Rs. 35,000. The trial Judge did not accept this as a genuine document and passed a preliminary decree in the suit on the 15th of March, 1950 followed by a final decree on the 15th of July, 1950. The defendant's appeal was dismissed by the High Court on the 9th of May, 1951, when again it was held that the alleged receipt was a suspicious document. Amar Singh, the plaintiff, thereafter applied in the Court of the successor of the learned Subordinate Judge who had decreed the suit for the prosecution of the defendant for using a forged document and perjury. However, the presiding officer of the Court was transferred before this application was decided, and no other Subordinate Judge of the first-class was posted in his place though a Subordinate Judge of the fourth class was posted to the district, and when the application of Amar Singh came before the latter he took the view that he was not competent to deal with it as the alleged offence had been committed in the suit tried by a first class Subordinate Judge and he, therefore, forwarded the case to the District Judge, who in turn referred it to the Senior Subordinate Judge. This officer ordered the filing of a complaint against Kuldip Singh and himself filed such a complaint. Kuldip Singh filed an appeal against the order for his prosecution in the Court of the District Judge who sent it for disposal to an Additional District Judge who accepted the appeal, partly on the ground that the Senior Subordinate Judge not being the successor of the Judge who had tried the suit could not file the complaint and partly because on the merits there was no prima facie case.

Amar Singh then carried the matter to the High Court in revision and the learned Judge who decided the matter held that the Senior Subordinate Judge had jurisdiction to file the complaint

and that there was a *prima facie* case on the merits and he accordingly set aside the order of the Additional District Judge and restored the order of the Senior Subordinate Judge making the complaint.

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In Kuldip Singh's appeal in the Supreme Court it was held that the Court of the Additional District Judge was not a divisional Court of the Court of the District Judge but a separate and distinct Court of its own, and that when an offence punishable under section 193 of the Indian Penal Code was committed in, or in relation to, a proceeding in a Court of a Subordinate Judge of the first class in the Punjab, the complaint could not have been made either by the Senior Subordinate Judge or by the Additional District Judge. In the circumstances it was held that what the High Court ought to have done was to send the case to the District Judge for him to decide as an application by the plaintiff for the prosecution of the defendant, and the Supreme Court ordered that this should be done.

The case of course involved consideration of the question of interpretation of certain provisions in the Criminal Procedure Code chiefly regarding which was the Court to which the Court which decided the suit was subordinate, and it was held that this Court was the Court of the District Judge and not the Court of the Additional District Judge who, under no circumstances, could file a complaint regarding an offence arising out of a suit tried by a Subordinate Judge. The passage in the judgment which has occasioned the difficulty in this matter reads as follows:—

“As we have already pointed out, section 18 of that Act states that, in addition to

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Court of Small Causes and Courts established under other enactments,

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‘there shall be the following classes of Civil Courts, namely:—

- (1) The Court of the District Judge;
- (2) The Court of the Additional Judge; and
- (3) The Court of the Subordinate Judge.’

The Court of the Additional Judge is, therefore, constituted a distinct class of Court, and it is to be observed that the Act speaks of the Court of the Additional Judge and not of the Additional District Judge as is the case with certain other Acts in other parts of India. This language is also to be compare with Articles 214 and 216 of the Constitution which constitute and define the constitution of the High Courts in India.

“ ‘214(1) There shall be a High Court for each State.’

‘216. Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint.

The Punjab Courts Act nowhere speaks of an Additional District Judge or of an Additional Judge to the District Court; also, the Additional Judge is not a Judge of co-ordinate judicial authority with the District Judge. Section 21(1) states that—

“When the business pending before any District Judge requires the aid of an Additional Judge or Judges for its speedy disposal, the State Government may appoint such Additional Judges as may be necessary.’

But these Judges cannot discharge all the judicial functions of the District Judge. Their jurisdiction is a limited one and is limited to the discharge of such functions as may be entrusted to them by the District Judge. Section 21(2) states that—

‘An Additional Judge so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to him.’

It is true that sub-section (2) goes on to say that—

‘in the discharge of those functions he shall exercise the same powers as the District Judge.’

but these powers are limited to the cases with which he is entitled to deal. Thus, if his functions are confined to the hearing of appeals he cannot exercise original jurisdiction and *vice versa*. But if he is invested with the functions of an appellate tribunal at the District Court level, then he can exercise all the powers of the District Judge in dealing with appeals which the District Judge is competent to entertain. This is a very different thing from the administrative distribution of work among the Judges of a single Court entitled to divide itself into sections and sit as division Courts. When the Chief Justice of a High Court or the District Judge of a District Court makes an administrative allotment of work among the Judges of his Court, their jurisdiction and powers are not affected, and if work allotted to one Judge goes to another by mistake his jurisdiction to entertain the matter and deal with it is not affected. But that is not the scheme of the Punjab Courts Act and the mere fact that Mr. J. N. Kapur called himself the Additional District Judge and purported

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to act as such cannot affect the matter of his jurisdiction. As the Punjab Courts Act does not contemplate the appointment of Additional Judges to the District Court, none can be appointed. The Court contemplated is the Court of the Additional Judge which is in the nature of a special tribunal set up for a special purpose and invested with the powers of a District Judge when dealing with the matters specially entrusted to its jurisdiction. We hold, therefore, that the Court of the Additional Judge is not a division Court of the Court of the District Judge but a separate and distinct Court of its own."

Although we are bound to accept and act upon this pronouncement, I cannot refrain from observing with the utmost respect that it runs counter to the way in which the Punjab Courts Act has been interpreted and acted upon in the State of Punjab and also the State of Delhi to which the Punjab Courts Act has also been extended, and where the work is so heavy that it has to be apportioned by the District Judge among himself and four or five additional judges. So far as I am aware, the Additional Judges referred to in the Act have always been both popularly known as Additional District Judges, and also officially so designated in the Gazette notifications regarding their appointments. In actual practice, and so far as I am aware there have been no exceptions to this practice, nobody is ever appointed simply as an Additional Judge or as an Additional District Judge. The persons concerned are invariably appointed as Additional District and Sessions Judges for the purpose of exercising both the civil and criminal powers of a District Judge, who also is invariably designated as District and Sessions Judge. All cases cognizable by the Court of the District Judge or the Sessions Judge are instituted in his Court

and it is the work, in the form of cases of various kinds, civil and criminal, rather than functions, which is given to Additional District and Sessions Judges for disposal, and once a case, whether civil or criminal, or appellate or original, is thus sent to an Additional District and Sessions Judge, he proceeds to dispose of it using all the appropriate powers of the District or the Sessions Judge, as the case may be.

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However, in view of the pronouncement of the Supreme Court set out above I feel bound to hold that the first of the questions referred to us "Whether the Court of an Additional District Judge can be considered to be the principal civil Court of original civil jurisdiction within section 19 of the Hindu Marriage Act?" must be answered in the negative, and since by the Act the petitions under it lie only to the principal civil Court of original jurisdiction, the answer to the second question must also be in the negative and a District Judge to whom a petition under the Act is presented cannot transfer it to an Additional District Judge.

Before concluding I may venture to suggest that if this interpretation gives rise to any practical difficulties regarding the distribution of work in the districts where the work is sufficient to justify the appointment of an additional Judge, it is open to the State Government to overcome this difficulty as regards cases under the Hindu Marriage Act in either of two ways—

- (1) Under section 3(b) of the Act the State Government may by notification in the Official Gazette specify the Courts of Additional Judges as having jurisdiction under the Act; or else

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(2) The Central Government might be moved to amend the Act itself so as to make it clear that Additional Judges have jurisdiction under the Act, if this was the intention of the Legislature in the first instance.

Dua, J.

Dua, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL.

Before Bhandari, C. J. and Dulat, J.

NIHALU AND ANOTHER,—Appellants.

versus

CHANDAR AND OTHERS,—Respondents.

Letters Patent Appeal No. 107 of 1956.

1958

Sept. 10th

Partition—Co-owner—Rights of—Nature and extent of such rights—Co-owner—Whether can transfer any specific part of the common property—Transferee of such property—Rights of—Other co-owners, whether can file a suit for partition of the specific property transferred—Suit for partition—Whether the entire common property to be included and all co-owners to be made parties—Property transferred not exceeding the share of the transferor in the common property—Transferee of such share—Whether entitled to have that specific property assigned to himself.

Held, that co-owners have no separate rights with respect to any distinct portion of the common property, but each is interested, according to the extent of his share, in every part of the whole of such property. They are at liberty to transfer their separate interest to a stranger, including an interest in a specific part of the common property, the transferee taking the same position in relation to co-owners as was occupied by the transferor. The transferee from such a co-owner simply steps into the shoes of the transferor, subject to all the rights of the other co-owners, but he may lose his title if the specific property