

13 B. 654.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice
Nanabhai Haridas.

SAKHARAM AND ANOTHER (Original Plaintiffs) Applicants v. GANGARAM AND OTHERS (Original Defendants), Opponents.*
[10th January, 1889.]

Civil Procedure Code (Act XIV of 1882, s. 25—District Court—No power to transfer suits pending in its own Court—Ultra vires—Construction—Practice.

Section 25 of the Civil Procedure Code (Act XIV of 1882) only enables a District Court to transfer a suit pending in a Court subordinate to itself, and not to transfer a suit which is pending in its own Court.

Accordingly where a District Judge made an order to retransfer to the original Court certain suits pending in his Court which had been previously transferred to his Court from a subordinate Court.

[655] Held, that the order of retransfer was *ultra vires*, and should be discharged.

[F., 24 A. 304 (306); 10 C.W.N. 902 (903); R., 32 C. 875=9 C.W.N. 705; 36 C. 193=5 C.L.J. 611 (619)=1 Ind. Cas. 913; 25 Ind. Cas. 141=12 A.L.J. 1094; D., 5 A. 183 (186).]

APPLICATION under the extraordinary jurisdiction of the High Court against an order of S. Tagore, District Judge of Sholapur-Bijapur.

The plaintiffs, who belonged to the class of *shevadharis*, had instituted in 1880 certain suits against the defendants, who were the *badves* attached to the temple of Vithoba at Pandharpur, for declaration of their rights the enjoyment of which was obstructed by the defendants. The suits were originally filed in the Court of the Subordinate Judge of Pandharpur, but were in 1881 transferred from that Court to the District Court at Sholapur where some of them had been disposed of, and the others left pending. On the 13th August, 1888, the defendants applied to the District Judge of Sholapur to have the pending suits retransferred to the Court of the Subordinate Judge of Pandharpur. The District Judge passed an order re-transferring the suits to the Pandharpur Court. Against that order, the plaintiffs applied to the High Court under its extraordinary jurisdiction, and obtained a rule.

The rule now came on for hearing and disposal.

Shantaram Narayan, showed cause:—The reasons for transfer to the District Judge having ceased, the suits were rightly ordered to be retransferred to the Court in which they had been instituted. The power to withdraw a suit includes the power to send back, and, therefore, the order of retransfer should be upheld.

Dhairyanan, (*Ghanasham Nilkanth Nadkarni* with him) *contra*:—The District Judge having once transferred a suit to his Court, where it is pending, has no power to retransfer it. Under s. 25 of the Civil Procedure Code (Act XIV of 1882) the District Court has only power to transfer a suit from an inferior Court. The order of retransfer, therefore, was made without jurisdiction, and should be set aside.

* Extraordinary Civil Application, No. 132 of 1888.

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SARGENT, C. J.—The suits, having been transferred from the Court of the Subordinate Judge of Pandharpur to the District Court of Sholapur, were pending in the latter Court when the defendants made their application to have the suits retransferred to Pandharpur. Section 25 only enables a District Court to [656] transfer a suit pending in a Court of first instance subordinate to itself, and not to transfer a suit which is pending in its own Court. The order of retransfer must, therefore, be discharged as having been made without jurisdiction. Rule made absolute with costs.

13 B. 656.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Candy.

TUKARAM ANANT JOSHI, A LUNATIC BY HIS NEXT FRIEND, BHIKAJI RAMCHANDRA NIMKAR (Original Plaintiff), Appellant v. VITHAL JOSHI AND OTHERS (Original Defendants), Respondents.*
 [14th January, 1889.]

Right to sue—Suit by a next friend of a lunatic—Code of Civil Procedure (Act XIV of 1882), s. 463—Adjudication of lunacy under Act XXXV of 1858.

A suit for partition was brought by A as next friend of B, a lunatic.

Subsequent to the institution of the suit, B was adjudged to be of unsound mind under Act XXXV of 1858, and A was appointed a manager of the lunatic's estate.

Held, that A had no right to sue, as next friend of the lunatic, under chap. XXXI of the Code of Civil Procedure (Act XIV of 1882). The provisions of this chapter apply only in cases where there has been an adjudication of lunacy under Act XXXV of 1858 previously to the institution of the suit.

Held, also that, independently of the provisions of chap. XXXI of the Code of Civil Procedure, on principles of equity, A had no right to sue in respect of the immoveable property of a lunatic.

Held, further, that the adjudication of lunacy under Act XXXV of 1858 and A's appointment as manager of the lunatic's estate subsequent in the institution of the suit did not cure the original invalidity of his proceedings in the suit.

[N.F., 23 B. 653; Appr., 21 B. 351 (365); R., 20 A. 2 (5); 3 L.B.R. 169 (172); D., U.B.R. (1905); 3 Qr. C. P.C. 463.]

SECOND appeal from the decree of R. Courtenay, Assistant Judge of Ratnagiri, in appeals Nos. 336 and 340 of 1885 of the District File.

This action was instituted by Tukaram Anant Joshi, a lunatic, by his next friend, Bhikaji Ramchandra Nimkar, for a partition of certain ancestral property. The suit was filed on 29th August, 1883.

The defendants pleaded (*inter alia*) that Bhikaji could not sue, as next friend of the lunatic, without a certificate of guardianship or administration.

[657] In January, 1885, when the Subordinate Judge, after having recorded the whole evidence and heard arguments of both sides, was about to pronounce judgment, Bhikaji applied to the District Judge, under Act XXXV of 1858, for an inquiry into the plaintiff's state of mind. On the

* Second Appeal, No. 652 of 1886.