

MANU/BH/0084/1960

Equivalent Citation: AIR1960Pat244

**IN THE HIGH COURT OF PATNA  
FULL BENCH**

Civil Revn. No. 873 of 1955

Decided On: 09.02.1960

Appellants:**Shyam Nandan Sahay and Ors.**  
**Vs.**

Respondent:**Dhanpati Kuer and Ors.**

**Hon'ble Judges/Coram:**

*Vaidynathier Ramaswami , C.J., R.K. Choudhary and Kamla Sahai , JJ.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: B.C. De and Purnendu Narayan, Advs.*

*For Respondents/Defendant: Rajeshwari Prasad, Ramnarain Tewari, Harians Kumar and Phani Bhusan Prasad, Advs.*

**JUDGMENT**

**R.K. Choudhary, J.**

**1.** Defendants second party are the petitioners. The plaintiffs opposite parties 1 and 2 instituted Title suit No. 143 of 1953 against the petitioners and opposite parties 3 to 22 in the First Court of the Munsif at Muzaffarpur on 2-9-1953 for declaration of their title to, and for joint possession with the opposite parties 15 to 22 over, the lands in suit by dispossessing the petitioners and opposite parties 3 to 14 or whichever of them be found to be in possession thereof. They also made a prayer for a decree of mesne profits, past and future. The suit was valued at Rs. 825/- and filed before the Munsif, First court who had pecuniary jurisdiction to try suits up to value of Rs. 2000 only.

The petitioners filed a written statement contesting the suit on various grounds, including one of valuation. They stated that the valuation given by the plaintiffs was too low and, on a proper valuation the Munsif, First court would have no jurisdiction to try the suit. An issue regarding the valuation of the lands in suit was also raised. In February, 1955, the suit was transferred by the District Judge of Muzaffarpur to the court of the Execution Munsif at Muzaffarpur who had pecuniary jurisdiction to try suits up to the value of Rs. 4,000/-. In this court also the petitioners pressed the question of valuation of the lands in suit, and both parties adduced evidence in support of their respective contentions in regard to that matter.

The execution Munsif, on 7-7-1955, held that the total value of the suit was Rs. 3,947/8/-. On 12-7-1955, the petitioners filed an application before him stating that he had no power to entertain the plaint and that the transfer of this case by the District Judge from the first court of the Munsif to his court was illegal and could not validate the filing of the plaint. It was contended that inasmuch as the Munsif, First court, in whose court the plaint was originally filed had no jurisdiction to entertain the plaint of this suit, the valuation of which had been found to be Rs. 3,947/8/- the

entire proceedings from the date of the institution of the suit including the transfer of the same to the court of Execution Munsif, were null and void and without jurisdiction.

It was, accordingly, prayed that the plaint should be returned to the plaintiffs for being filed in the proper court. The learned Execution Munsif overruled the above contention, and held that he had jurisdiction to try the suit. Against the above order of the Execution Munsif, the petitioners made this application in revision to this court, which was first heard by a single judge who referred to a Division Bench for hearing. Before the Division Bench a Bench decision of this court in *Bibi Sairah v. Mt. Gulab Kuer* AIR 1919 Pat 345, was cited in support of the contention raised on behalf of the petitioners. That Bench however, in view of various decisions of other High Courts doubted the correctness of the above decision of this court, and the case has, therefore, been referred to the Full Bench.

**2.** Mr. B C. De, appearing for the petitioners, has contended that the value of the suit as found by the Execution Munsif being above the pecuniary jurisdiction of the Munsif, first court, Muzaffarpur, in whose court the plaint of the suit was originally filed, there was no valid presentation of the plaint and therefore, there was no legally instituted suit pending in that court which could be transferred by the District Judge to the court of the Execution Munsif for trial. He has submitted an argument that the District Judge had no jurisdiction to transfer such a case to any other court, and, by the order of transfer, the transferee court could have no jurisdiction to try the suit.

On behalf of the plaintiffs opposite parties, however, it is contended that the suit as originally filed, in view of the statements contained in the plaint was validly instituted in the first court of the Munsif at Muzaffarpur as according to the value put in the plaint it was within the pecuniary jurisdiction of that Munsif. It is further contended that the District Judge had full jurisdiction to transfer the suit from the first court of the Munsif to the Court of the Execution Munsif.

**3 .** The provision for transfer by superior court of a case pending in the court subordinate to it is given in Section 24 of the Code of Civil Procedure, Sub-section (i) of which runs as follows:

"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 own 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) retransfer the same for trial or disposal to the court

from which it was withdrawing."

According to this provision, the District court could withdraw any suit pending in any court subordinate to it and transfer the same for trial or disposal to any Court subordinate to it competent to try or dispose of the same. It is under this provision that in the present case the District Judge transferred the title suit from the first court of the Munsif at Muzaffarpur to the court of the Execution Munsif there. The contention, however, on behalf of the petitioners is that, in order that the District Judge could pass an order of transfer, the suit should have been legally pending in the court in which it was originally instituted.

It has been submitted that a suit can be said to be pending in a court only when that court had jurisdiction to entertain it; but if for any reason that court could not entertain the suit, it could not be said to be pending in that court. In other words, the contention put forward is that a suit is said to be pending in the court only when the plaint of the suit is validly presented in that court; and a plaint can only be said to be validly presented in a court if, on facts found, that courts could have jurisdiction to entertain the same. On the basis of the above argument, it has been submitted that the value of the present suit having been found to be above Rs. 2,000/- by the Execution Munsif, its plaint was not validly presented before the Munsif First court and it was, therefore, not pending, in the legal sense of the term, in that court at the time when the order of transfer was made by the District Judge. The contention put forward on behalf of the plaintiffs opposite parties, however, is that the jurisdiction of the court to entertain a suit at the time when the plaint is presented is to be determined on the facts and valuation given in the plaint and the institution of such a suit cannot be said to be void if subsequently it is found, from facts ascertained later on, that that court had no jurisdiction to entertain it.

**4.** In support of the application Mr. De has relied on the cases of *Ledgard v. Bull* ILR 9 All 191 (PC), *Amir chand v. Buti Shah* AIR 1930 Lah 195; *Kanhaiya Lal v. Hamid Ali* AIR 1940 Oudh 164 (FB), *Kartar Singh v. Jharkhand Mines and Industries Ltd.* AIR 1954 Pat 60; and AIR 1919 Pat 345.

**5.** In ILR 9 All 191 (PC) the plaintiff brought an action for damages for alleged infringement of certain exclusive rights secured to him by certain patents. The plaint was originally filed in the court of the Subordinate Judge at Cawnpore. Section 22 of the Indian Patent Act (Act XV of 1859) expressly provides that no action for infringement shall be maintained in any court other than the principal Court of original jurisdiction was the court of the District Judge. The District Judge, later on, passed an order that the case be transferred from the court of the Subordinate Judge to his Court. It was then entered in the file of the District Court and proceeded as a transferred suit originally instituted in the court of the Subordinate Judge.

It was contended before him by the defendant that the District Judge had no jurisdiction to entertain the suit inasmuch as it had not been regularly brought into his court. The District Judge overruled the above contention, and against his order the defendant presented an application to the High Court under Section 622 of the then Code of Civil Procedure. That petition was rejected, as irregular, by the High Court and the District Judge then proceeded with the trial of the other issues in the case, and found in favour of the plaintiff that the alleged infringement had been established, and assessed damages at Rs. 10,000/-. Upon an appeal by the defendant, the High Court agreed with the District Judge that the defendant's plea of no jurisdiction was not well founded.

On merits, however, the High Court differed from the view taken by the District Judge, and, in the circumstances of that case, passed an order that the plaint be amended and presented in the proper court, that is, the principal Court of original jurisdiction in civil cases at Cawnpore, with necessary averments as required under the provisions of the Patent Act. On appeal to the Privy Council, their Lordships of the Judicial Committee held that, the suit not having been duly instituted in the proper court, the transference of the suit to the District Court was incompetent. Referring to the decision in *Peary Lal Mozoom-dar v. Komal Kishore Dassia* ILR 6 Cal 30, their Lordships observed, as held in that case, that the superior court cannot make an order of transfer of a case under Section 25 of the Civil Procedure Code (which is equivalent to Section 24 of the present Code) unless the court from which the transfer is sought to be made has jurisdiction to try it.

The Privy Council case is clearly distinguishable because that was a case of statutory jurisdiction and there was total lack of jurisdiction in the Subordinate Judge under the provisions of the Patent Act to entertain a suit filed under the provisions of that Act. The Subordinate Judge at Cawnpore in that case had no jurisdiction at all over the subject matter of the suit; but that is not so in the present case. In the instant case, the Munsif, First Court had undoubtedly jurisdiction over the subject-matter of the suit, provided its value was within his pecuniary jurisdiction. That case, therefore, can have no application to the facts of the present case.

The case in ILR 6 Cal 30, referred to above, is also clearly distinguishable. In that case, the suit was tried by the Subordinate Judge of Rungpore. Before the presentation of the appeal, however the land which formed the subject matter of the suit was transferred to the District of Pubna, and consequently the district court of (supra) alone had jurisdiction to hear the appeal. The appeal however, was inadvertently filed in the District Court of Rungpore which had no jurisdiction to entertain the appeal. An application was made in the High Court for authorising the District Judge of Rungpore to try the above appeal.

It was held that the High Court had no power to authorise any court to assume jurisdiction to receive and hear an appeal contrary to the usual course prescribed by the Code, and that an appeal could be transferred only from a court having jurisdiction to receive and try it. In that case there was no question of transfer of a case from one court to another; that was a case for authorising a court, which could not entertain the appeal, to hear the same. The final order that was passed in that case was that the appellant was directed to take necessary steps to place his appeal in the Pubna court and then to renew his application for transferring the same to the Rungpore Court because there it could be more conveniently tried. That was also a case, therefore, of total lack of jurisdiction in the District Court of Rungpore to entertain the appeal.

**6.** In AIR 1930 Lah 195, what happened was this. Three suits were instituted in the court of an Honorary Subordinate Judge, who found later on that he had no jurisdiction to try the same. He then sent these suits to the District Judge for transfer to a court having jurisdiction, and the District Judge transferred them to the Senior Subordinate judge. It was contended before him that the institution of the suits before the Honorary Subordinate Judge was not valid, but he overruled the contention. In revision, the High Court held that the original court had no jurisdiction to send the suits to the District Judge for transfer, and that it should have returned the plaints.

It was further held that the District Judge similarly had no jurisdiction to transfer the suits since section 24 of the Code of Civil Procedure only contemplates a transfer of suits from one competent court to another and the original court found in those cases that it had no jurisdiction to hear the suits. In the first place, the above decision was given because these points were not seriously contested before the High Court. Secondly, it was rightly pointed out in that case that, when the honorary Subordinate Judge found that he had no pecuniary jurisdiction to try the suits he should have, instead of writing to the District Judge for transfer, returned the plaints to be filed in the proper court.

Order VII, Rule 10, of the Code of Civil Procedure expressly provides that the plaint shall at any stage of the suits be returned to be presented to the court in which the suits should have been instituted. In that view of the matter, the question of transfer did not really arise in that case, and the District Judge was rightly held to have erred in passing the order of transfer.

That case also, therefore has no application to the facts of the present case. In MANU/OU/0056/1939 : AIR 1940 Oudh 164 no doubt, it was observed that, when the suit was much beyond the pecuniary jurisdiction of the Munsif, in whose court it was originally filed, it could not be validly transferred to the court of the Civil Judge, who tried it subsequently. But that observation is mere obiter dictum because there was a finding in that case that there was no under-valuation, the question in controversy before us did not, therefore, really arise in that case.

**7.** Now, I will come to the decisions of this court, In Kartar Singh's case AIR 1954 Pat 60, the petitioner instituted a title suit in the court of the Subordinate Judge of Ranchi against opposite parties 1 to 5 and the opposite parties 1 and 3 had also instituted another title suit in the court of the Subordinate Judge at Hazaribagh against the petitioner and some of the opposite parties. An application was filed in the High Court making a prayer that, as the subject-matter of the two suits was the same, and the main parties who were chiefly interested in the reliefs claimed in the two suits were the same, and common questions were for consideration in both the suits, the suits pending at Ranchi may be transferred to Hazaribagh and tried along with the suit pending there, or the suit instituted at Hazaribagh be transferred to Ranchi and be tried with the suit instituted there.

On behalf of one of the opposite parties in that case, it was contended that the suit instituted at Ranchi should not be transferred to Hazaribagh because one of his main defences would be that the court at Ranchi had no jurisdiction to try that suit, and, in view of the decision of the Privy Council in ILR 9 All 191 (PC) there would be difficulty in this court directing the transfer of the Ranchi suit to Hazaribagh. Without deciding that question however, this court passed an order that the suit instituted at Hazaribagh should be transferred to Ranchi in which case there would be no objection as to the jurisdiction of this court in transferring the same. But no definite decision was given in that case on the point at issue in the present case.

The case of AIR 1919 Pat 345, however, directly supports the contention raised on behalf of the petitioners. In that case, the plaintiff claimed to be a transferee of certain property from the judgment-debtor, who was her husband under baimoqasa deed the consideration of which was valued at Rs. 5,000/-. In execution of a decree against the judgment-debtor that property was attached. She objected to the attachment under the provisions of Order XXI Rule 58, of the Code of Civil Procedure. The objection was rejected on the grounds that the transfer was fabricated in order to

defraud the creditors of the judgment-debtor. She then instituted a suit in the Court of the Munsif at Muzaffarpur under the provisions of Order XXI Rule 63, of the Code of Civil Procedure.

For the purposes of jurisdiction, the suit was valued at Rs. 1,500/- only and not Rs. 5,000/-. The Munsif at Muzaffarpur at that date had jurisdiction to try suits up to the value of Rs. 2,000/- only. Shortly after the institution of the suit, that Munsif was transferred, and there was no other Munsif at Muzaffarpur who had jurisdiction to try a suit of a value of over Rs. 1,000/-. Accordingly, the case was transferred from the court of the Munsif to that of the Subordinate Judge, by order of the District Judge, on the ground that the Munsif's successor had no jurisdiction to try suits of a value over Rs. 1,000/---After the case had been transferred to the court of the Subordinate Judge, a question arose between the parties as to the real value of the property. The Subordinate Judge, however, passed an order that the court-fee paid was sufficient whether the valuation was Rs. 1,500 or Rs. 5,000. On the same day, however, the plaintiff herself applied to amend the plaint by altering the value from 1,500/- as originally stated, to Rs. 5,000/-and the plaint was amended accordingly.

After the plaint had been amended the Subordinate Judge, on 8-7-1914, returned it to the plaintiff for refileing it in the proper court because he took the view that a suit valued at Rs. 5,000/-could not have been filed in the Court of the Munsif, and, therefore, it ought to be refiled in the court of the subordinate Judge so as to grant jurisdiction. The suit was ultimately decided in favour of the plaintiff; but on appeal the District Judge dismissed the same. The plaintiff therefore preferred a second appeal in the High Court. A point was raised in the High Court about the suit being barred by time. If the suit had been properly instituted in the first instance before the Munsif, the suit was clearly within time; but if the date of the institution of the suit be taken to be the date on which the Subordinate Judge passed the order for return of the plaint to be refiled in the proper court, then the suit became obviously barred by limitation.

The point for decision, therefore, fell to be whether the suit was instituted in a Court which had no jurisdiction to try it. On behalf of the plaintiff it was contended that by reason of the transfer made by the District Judge of the suit to the court of the Subordinate Judge any defect that could have been in the initial want of jurisdiction in the court before which the suit was cured, and that the case having once got before the Subordinate Judge it was of no moment whether the value was Rs. 1,000/- or Rs. 5,000/-because he had jurisdiction to try a suit of either value. This contention of the plaintiff was accepted by their Lordships who relying on the Privy Council decision in ILR 9 AH 191, held that an order for the transfer of a suit from one court to another under Section 24 of the Code of Civil Procedure cannot be made unless the suit has been brought in a court having jurisdiction.

Their Lordships took the view that there is no difference in principle between a case where a court has no jurisdiction over the subject-matter and a case where a court has no jurisdiction over subject-matter valued at over a certain amount. As the subject matter of the suit is that a case was worth Rs. 5,000/- it was held that the court of the Munsif had no jurisdiction whatsoever to try the case, and the District Judge had no jurisdiction to transfer the same to the Court of the Subordinate Judge, so as to confer jurisdiction upon him. In that case, thus it appears that the plaintiff knowingly and purposely put a low valuation of the suit in the plaint, and she could not be said, therefore, to have put the wrong value bona fide. Apart from that, it appears that their Lordships did not feel inclined to appreciate the difference between

a suit which on the face of it, from the very averments made in the plaint, is beyond the pecuniary jurisdiction of the court, and a suit in which the objection to jurisdiction is not patent on the face of it.

In my opinion, as I will presently show, there had been no proper approach to the question under determination in that case. In my opinion, a distinction must be drawn between cases where there is an inherent lack of jurisdiction, apparent upon the face of the record, and cases where it is doubtful, or at least not so apparent, whether the court possesses jurisdiction or not. Where there is total lack of jurisdiction, nothing can confer the same on the court, and an objection to jurisdiction cannot be waived. Therefore, even if such objection has not been raised by any party, the entire proceeding of the court from the very initial stage is without jurisdiction and void. For example, if an application for grant of probate of a will has been filed in the court of a Munsif, all proceedings relating thereto in that court are null and void.

TO a case like this the principle of ILR 9 All 191 (PC) will undoubtedly apply, and there would not be any proceeding pending in the legal sense of the term in the Court of the Munsif so as to be transferred to any other court. Where, however, there is no total lack of jurisdiction, but on the contrary, the averments in the plaint, if not challenged manifestly bring the case within the jurisdiction of the court in which it is filed, its proceedings are perfectly within jurisdiction, and want of jurisdiction in such a case can rightly be waived. In other words this kind of defect in jurisdiction is not fundamental in character and does not amount to anything more than a mere irregularity in the exercise of jurisdiction. In cases of this kind, therefore, where there has been no objection to the jurisdiction of the Court, a party cannot be allowed subsequently to question its jurisdiction. To these cases, in my opinion, the principle of the above Privy Council case does not apply.

**8.** The lack of pecuniary jurisdiction comes under the latter of the above two kinds of defects, and, therefore, is not fundamental in character. It can be waived by any of the parties, and, if not challenged at the proper time, it cannot be questioned subsequently. This is apparent from Section 11 of the Suits Valuation Act, which runs as follows:

"11 (1) Notwithstanding anything in Section 578 of the Code of Civil Procedure (XIV of 1882) an objection that by reason of the over valuation or under valuation of a suit or appeal a court of first instance or lower appellate court which had not jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate court unless --

(a) the objection was taken in the court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate court in the memorandum of appeal to that court, or

(b) the appellate court is satisfied, for reasons to be recorded by it in writing that the suit or appeal was over valued or under valued, and that the over valuation or under valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in Clause (a) of Sub-section (1) but the appellate court is not satisfied as to both the matters mentioned in Clause (b) of that sub-section and has before it the materials

necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the court of first instance or lower appellate Court.

(3) If the objection was taken in that manner and the appellate court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the court with respect to the hearing of appeals; but if it remands the suit or appeal or frames and refers issues for trial or requires additional evidence to be taken, it shall direct its order to a court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an appellate court shall, so far as they can be made applicable, apply to a court exercising revisional jurisdiction under Section 622 of the Code of Civil Procedure (XIV of 1882), or other enactment for the time being in force.

(5) This section extends to the whole of India except Part B States, and shall come into force on the first day of July, 1887." The above provisions clearly show that there is no apparent defect in the frame of a suit due to low valuation and it does not take away the inherent jurisdiction of the court to entertain it, An objection in regard to the above matter is of a kind which can be waived by the parties, if, as the above provision shows, a defendant does not take objection at the proper time with regard to valuation of the suit and the pecuniary jurisdiction of the Court, such objection cannot be entertained by an appellate court; and, even if such objection has been taken at the proper time, it will be of no avail before the appellate court, unless the under valuation has prejudicially affected the disposal of the suit on its merits.

In other words, the above section assumes that there is no apparent defect in the suit, and the court gets jurisdiction on the valuation given in the plaint. That being the position, it is not possible to hold that a suit on the valuation as given in the plaint could not be said to have been legally filed in the court having pecuniary jurisdiction to entertain the same if subsequently it is found that its value was above the pecuniary jurisdiction of that court. Such a suit, therefore must be held to be legally pending in a court from which it can be transferred to another court under Section 24 of the Code of Civil Procedure,

**9.** Section 24 of the Code of Civil Procedure is general in its terms, and the power of the superior court is untrammelled by any conditions. Once the case, on the plaint or the petition through which it is instituted, appears on the face of it to be within the jurisdiction of a subordinate Court and is pending before it, the superior court has full jurisdiction to transfer the same to another court, as contemplated by the above section, and the order of transfer cannot be challenged as being void by reason of the fact that subsequently the transferee court found that its valuation was beyond the pecuniary jurisdiction of the court in which the suit or proceeding is instituted, its transfer to another court by the Superior court cannot be called in question on the above ground.

**10.** There are ample authorities in support of the above view. In the Full Bench case of Maqsood Ali v. H. Hunter. MANU/OU/0073/1943 : AIR 1943 Oudh 338, a suit was brought for a declaration of the plaintiff's maintenance allowance being a charge over certain property and for arrears of maintenance for one year. The arrears claimed amounted to Rs. 200/- with Rs. 16/- interest thereon, and the valuation of the suit as

shown in the plaint was Rs. 216/- No objection to valuation was taken at any stage of the case. The plaintiff was granted the declaration prayed for. In a subsequent suit to recover arrears of maintenance it was contended that the declaratory decree in the previous suit was a nullity as the proper value of the subject-matter of the suit was beyond the Court's jurisdiction.

It was held that the declaratory decree in the previous suit could not be treated as a nullity even though the proper valuation of the suit was beyond the court's jurisdiction. It was pointed out in that case a distinction must be drawn between cases where there is an inherent lack of jurisdiction apparent upon the face of the record, and cases where it is doubtful, or at least not so apparent, whether the court possesses jurisdiction or not and that it would be clearly undesirable in cases of the latter kind, where either there has been no objection to the jurisdiction of the court, or where upon objection the Court has held that it has jurisdiction and the decision has not been upset in appeal, to allow a party subsequently to question the court's jurisdiction. In *Mt. Khudaijat-UI-Kubra v. Mt. Amina Khatun* (MANU/UP/0225/1923 : AIR 1924 All 388) : ILR 46 All 250 it was held that the criterion of the pecuniary jurisdiction of a court being prima facie the value placed on the subject-matter of the suit by the plaintiff in his plaint, if the defendant does not raise any objection to the valuation and a suit is tried by a court which if the valuation had been correctly made, might not have had. jurisdiction to fry it the court cannot be said to have acted without jurisdiction.

The same view was taken by a Bench of the Madras High Court in *Kammaran Nambiar v. Valia Ramunni* MANU/TN/0058/1937 : AIR 1938 Mad 257. It was held in that case that Section 11, Suits Valuation Act, embodies the principle of constructive res judicata and propounds, that unless, objection to the jurisdiction of a court is taken by the parties at the earliest possible opportunity and unless the want of jurisdiction has resulted in failure of justice, the principle of constructive res judicata will apply, and that where a suit is instituted in a court which has no pecuniary jurisdiction to try it, and no objection is raised by the parties as regards the jurisdiction of the court to try the suit, and the suit is tried and decided by the Court, it cannot be contended by either party in a subsequent suit between the same parties based on the same cause of action and claiming the same relief that the subsequent suit is not barred merely because the former suit was tried by a court which had no pecuniary jurisdiction to try it, unless it is shown that the want of jurisdiction has resulted in failure of" justice. It was further held that Section 11, Suits Valuation Act, is an exception to the fundamental rule of law that a judgment of court without jurisdiction is a nullity and that want of jurisdiction cannot be waived and also that the principle which the above section embodies is that the defect is not fundamental in character and is no more than a mere irregularity in the exercise of jurisdiction.

**11.** The above cases, therefore, support the; principle of law that in absence of any patent initial lack of jurisdiction the institution of a suit or proceeding in a court which on the face of the record and the averments made in the plaint or the petition has jurisdiction to entertain the same is a valid institution and all proceedings taken therein are with jurisdiction notwithstanding the fact that subsequently on inquiry it has been found that the suit or the proceeding at the time it was instituted was beyond the pecuniary jurisdiction of that court. These cases have even gone further to lay down that the decision by that Court will be res judicata between the parties. It cannot, therefore, be conceived for any moment that the initiation of the suit or proceeding is void from the very date of institution in such court.

**12.** In *Narain Das Gopal Das v. (Firm) Khunni Lal Lachmi Narain* MANU/UP/0127/1934 : AIR 1934 All 569 also, it has been held that the power of transfer vested in the High Court or the District Court by Section 24 of the Code of Civil Procedure is untrammelled by any conditions and is general in terms and that all, that is necessary to bring into play the jurisdiction of the High Court or the District Court to exercise the power of transfer and withdrawal given under that section is that the suit, appeal or other proceeding sought to be transferred, should be pending before it or in any court subordinate to it. Relying on the above decision the Nagpur High Court also in *Dr. K. L. Daftary v. K. L. Dube*, (S) MANU/NA/0161/1952 : AIR 1955 Nag 44, has taken the same view.

**13.** On a consideration of the authorities referred to above my concluded opinion is that where, on the valuation given in the plaint a particular court has jurisdiction to entertain the suit, a transfer of the same to another court under that provisions of Section 24 of the Code of Civil Procedure is competent even though subsequently it is found that its real valuation was beyond the pecuniary jurisdiction of that Court. The case of AIR 1919 Pat 345, in this respect was therefore, correctly decided and it must be overruled to that extent. It is accordingly, clear that in the present case the suit filed before the Munsif, First court Muzaffarpur on the valuation given in the plaint was within his jurisdiction and the District Judge was perfectly competent to transfer the same to the court of the Execution Munsif there who had undoubtedly jurisdiction to try the same, even on the subsequent valuation fixed by him.

**14.** The result, therefore, is that there is no merit in the application, which is accordingly, dismissed with costs. Hearing fee Rs. 150/-.

**Vaidynathier Ramaswami, C.J.**

**15.** I agree.

**Kamla Sahai, J.**

**16.** I agree.

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