

## SUPREME COURT.

SYED ALLY AND ONE (APPELLANTS)

v.

CASSIM MOHAMED SURETY (a) U MAUNG  
MAUNG (RESPONDENT).\*† S.C.  
1949

June 20.

*Code of Civil Procedure, ss. 24 and 122—Order 7, Rule 10—Rule 21 of the Original Side Rules of Procedure (Civil).*

*Held* : The High Court has framed rules under s. 122 of the Code of Civil Procedure for regulating the procedure on the Original Side of the Court. These rules have preference over the rules of the Code of Civil Procedure in the Original Side of the High Court. Rule 21 of the Original Side Rules of Procedure (Civil) supersedes Order 7, Rule 10 of the Code of Civil Procedure.

That where a suit is instituted rightly in a Court and the Court subsequently loses jurisdiction owing to the passing of a new Act, and certain preliminary steps such as appointment of receiver have been taken, instead of returning the plaint, the Court should transfer the suit. The effect of the return of the plaint is to wipe out everything that has been done in the Court in which the suit is instituted ; but in case of transfer, the Transferee Court will proceed from the stage at which the transfer is made.

*Leong* for the appellants.*Dawoodji* for the respondent.

The judgment of the Court was delivered by the Chief Justice of the Union.

SIR BA U.—What is involved in this case is only a question of procedure and the question is that, if part of the pecuniary jurisdiction of a Court is taken away during the pendency of a suit because of which the Court cannot continue to try the suit to its conclusion, what procedure should be adopted to enable the suit to be tried by a Court of competent jurisdiction? The question arises in these circumstances. Before the second World War there were two Civil Courts in Rangoon to try civil suits—the

---

\* Civil Appeal No. 7 of 1948.

† Present : SIR BA U, Chief Justice of the Union of Burma, MR. JUSTICE KYAW MYINT and U TUN BYU, J.

S.C.  
1949

—  
SYED ALLY  
AND ONE

v.  
CASSIM  
MOHAMED  
SURETY (a)  
U MAUNG  
MAUNG.

High Court and the Small Cause Court. The Small Cause Court tried suits of a small cause nature up to the value of Rs. 2,000, while the High Court tried all other classes of suits.

The present suit is a suit for dissolution of partnership taking of accounts and payment of the plaintiff's share. The suit was valued at Rs. 1,000 for the purpose of jurisdiction. Not being of a small cause nature it was instituted in the High Court in January 1941. A few days later, the defendant, now the respondent, was by consent appointed Receiver *pendente lite* on his furnishing security in the sum of Rs. 8,000. A few months later differences arose over the management of the business by the defendant and the Court laid down certain terms on which the defendant was to manage the business. The second World War then broke out and the Civil Government evacuated to Simla in India and the High Court also ceased to function.

While in India the Governor, in exercise of the power conferred on him by the Government of Burma Act, 1935, enacted the Rangoon Small Cause Court (Amendment) Act, 1945, whereby the name of the Rangoon Small Cause Court was changed to that of the Rangoon City Civil Court and the said Court was empowered to try suits of a civil nature up to the value of Rs. 5,000. A few months after the passing of the Act hostilities with Japan terminated and the Civil Government returned to Burma. The High Court also started to function. The record of the present case along with those of several others was found to have been either lost or destroyed. By consent the record of the case was ordered to be reconstructed. When reconstruction was complete the case was placed before the 2nd Deputy Registrar of the High Court for directions. By that time the pecuniary

jurisdiction of the Rangoon City Civil Court was raised to Rs. 10,000.

Following the decision in Civil Regular Suit No. 30 of 1947 of the High Court, the Deputy Registrar returned the plaint for presentation to the Rangoon City Civil Court. This decision was later confirmed by a Judge sitting on the Original Side of the High Court.

In Civil Regular Suit No. 30 of 1947 the learned Chief Justice of the High Court observed :

"The learned Advocates who contend that this Court has jurisdiction to dispose of them (suits) have submitted that there is no provision of law under which this Court can transfer them to the Rangoon City Civil Court. However, there is a way out as the plaints therein can be returned under Order 7, Rule 10 of the Code of Civil Procedure."

The learned Chief Justice then held that the plaint should be returned under Order 7, Rule 10 of the Code of Civil Procedure. In so holding the learned Chief Justice apparently overlooked Rule 21 of the Original Side Rules of Procedure (Civil). These rules were passed by the High Court in exercise of the power conferred by section 122 of the Code of Civil Procedure. These rules should be followed and not those as are prescribed in the First Schedule of the Code of Civil Procedure. Only when there is no rule framed by the High Court, then the appropriate rule in the First Schedule of the Code of Civil Procedure should be followed. But for the purpose of this case it does not make much difference whether Rule 21 of the Original Side Rules of Procedure or Order 7, Rule 10 of the Code of Civil Procedure is prayed in aid as they do not in effect differ from each other.

The question is therefore whether in cases such as the present one, where such preliminary steps as the

S.C.  
1949

SYED ALLY  
AND ONE  
V.  
CASSIM  
MOHAMED  
SURETY (a)  
U MAUNG  
MAUNG.

S.C.  
1949  
—  
SYED ALLY  
AND ONE  
v.  
CASSIM  
MOHAMED  
SURETY (a)  
U MAUNG  
MAUNG.

appointment of Receiver and the rendering of accounts by the Receiver have been taken, the procedure as prescribed by Rule 21 of the Original Side Rules is the appropriate procedure to be adopted. If the procedure as prescribed by Rule 21 were adopted as in this case, the result would be, so to speak, the wiping out of what has been done off the slate. Further, in some cases it is imaginable that the question of limitation may arise in spite of what section 14 of the Limitation Act may say. That would mean causing not only inconvenience and extra expense to the parties but also it would mean delay in the trial of the suit and in some cases defeating the ends of justice. Procedure is prescribed to enable the Court of Justice to dispense justice in a quick and efficient manner. Therefore if there are two modes of procedure available to deal with a certain matter, that procedure that would cause less inconvenience and expense and that would promote the speedy termination of the litigation and serve the ends of justice should be adopted. Here in the present case the matter under discussion can be disposed of under section 24 of the Code of Civil Procedure. Section 24 says *inter alia* :

“ 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, . . . . .”

When then is a suit said to be pending before a Court? If a suit were filed in a Court which had no jurisdiction to entertain and try it from the beginning, then it could not be said to be pending before that

Court ; but if the suit were filed in a Court which had jurisdiction to entertain and try it but only later, by operation of law, it ceases to have jurisdiction to try it, then the suit must be said to be pending before that Court. The reason why it must be said to be pending before that Court is that it had seizin of the suit up to the stage when it ceases to have jurisdiction to try it. When that stage is reached the only thing to do is to get rid of the suit so that the trial of the suit can be continued by a Court of competent jurisdiction. Two methods are available to do this : one is to return the plaint as has been done in this case and the other is to transfer it by the High Court or the District Court to the Court of competent jurisdiction.

In such circumstances as are obtaining in the present case the appropriate procedure which, in our opinion, should be adopted is the procedure prescribed by section 24 of the Code of Civil Procedure. If the procedure were to be followed as has been followed in this case, complications and unnecessary consequences, as pointed out above, would ensue. If the suit were instituted in a Court which never had jurisdiction to entertain and try it from the beginning, section 24 would of course not apply. In such a case the only procedure to follow is to return the plaint.

For all these reasons we are of opinion that in the present case the appropriate procedure to adopt is to transfer the suit under section 24 of the Code of Civil Procedure to the Rangoon City Civil Court instead of returning the plaint. We accordingly set aside the order of the High Court and direct that the suit be transferred.

S.C.  
1949

—  
SYED ALLY  
AND ONE

v.  
CASSIM  
MOHAMED  
SURETY (a)  
U MAUNG  
MAUNG.