

1936

Present : Abrahams C.J. and Fernando A.J.

KULUTH v. MOHAMADU.

25—D. C. Kandy, 46,975.

Jurisdiction—Action under section 247 of the Civil Procedure Code brought in Court of Requests—Objection to jurisdiction—Transfer of case to District Court—Limitation.

Where an action under section 247 of the Civil Procedure Code which was instituted in the Court of Requests was found to be beyond the pecuniary jurisdiction of that Court, and the Supreme Court on the application of the plaintiff allowed a transfer of the case under section 46 of the Courts Ordinance to the District Court having jurisdiction, subject to the defendant being given an opportunity of raising the point that the delay in presenting the plaint to the District Court made the action under section 247 out of time,—

Held, that the action was prescribed, as the trial in a District Court could not be deemed to be a continuation of the proceedings in the Court of Requests.

*Mudianse v. Siriya*¹ followed.

¹ 23 N. L. R. 285.

A PPEAL from a judgment of the District Judge of Kandy.

H. V. Perera (with him *G. E. Chitty*), for plaintiff, appellant.

N. E. Weerasooria, for defendant, respondent.

Cur. adv. vult.

August 5, 1936. ABRAHAMS C.J.—

The appellant brought an action under section 247 of the Civil Procedure Code in the Court of Requests, Gampola. In so doing he was within the fourteen days allowed by that section. The defendant to the action in his answer said that the Court of Requests had no jurisdiction as the value of the land concerned, and the amount of the writ, was beyond the pecuniary jurisdiction of the Court. The Court having jurisdiction in the case was the District Court of Kandy, but the plaintiff obviously did not propose to remedy his mistake by instituting proceedings in that Court, since the fourteen days fixed by section 247 had expired long since. Therefore, he took the course of applying to the Supreme Court for a transfer of the case to the District Court of Kandy, under the provisions of section 46 of the Courts Ordinance.

The hearing of the application came before Mr. Justice Koch. The learned Judge found himself faced by conflicting decisions of the Supreme Court in cases where a plaint having been filed under section 247 of the Civil Procedure Code in a Court having no jurisdiction to entertain the action, the question has then arisen whether if the plaint is then returned to the plaintiff under section 47 of the Code and is subsequently presented to the right Court, it can be said to have satisfied the provisions of section 247 when it was filed in the wrong Court within the fourteen days allowed by that section. Mr. Justice Koch said that as the authorities were conflicting he was disposed to allow the application for a transfer, subject to the respondent being given an opportunity of raising, if he was so disposed, the point as to whether the delay in presenting the plaint to the District Court of Kandy, made the action under section 247 out of time.

The case duly came on to the District Court of Kandy. The learned District Judge held that the order of transfer left it open to him to consider whether he had jurisdiction to hear the case, and he held that he had no jurisdiction and dismissed the plaintiff's action. From that decision the plaintiff now appeals.

The conflicting decisions which were cited before Mr. Justice Koch have been cited before us. In *Werthelis v. Daniel Appuhamy*¹, Wendit J., having held in appeal that the Court of Requests in which an action under section 247 of the Code had been brought had no jurisdiction to entertain the action, was then of the opinion that the proper order for him to make was one under section 47 of the Code and that it was not too late for him to do so. Again in *Nagan v. Rodrigo*², de Sampayo A.J.,

¹ 12 N. L. R. 196.

² 17 N. L. R. 348.

having upheld the dismissal of an action brought in the Court of Requests on the ground of want of jurisdiction, was of the opinion that he might justly follow the course pursued by Wendt J. in *Werthelis v. Daniel Appuhamy* (*supra*). On the other hand, in *Mudianse v. Siriya*¹ Ennis J. and Garvin A.J. refused to hold that the day of the institution of the action was the date of the first presentation to the wrong Court, Ennis J. observing that, in his opinion, section 47 of the Civil Procedure Code cannot be used indefinitely to prolong the period of limitation provided in section 247. In *Chinnadurai v. Rajasuriya*², Garvin A.C.J. and Jayewardene A.J. examined the case referred to above, *Marthelis v. Daniel Appuhamy* (*supra*), but apparently disapproved of it, Garvin A.C.J. observing that Wendt J., in making the order he did, said that he felt justified in doing so by reason of certain Indian cases which were cited to him; but an examination of those decisions showed that they were based on what is said to have been the inveterate practice in those Courts, but that in Ceylon the practice has always been the other way.

I am not disposed to disagree with the two cases which were cited against the appellant, and I would add that the views expressed by Ennis J. in *Mudianse v. Siriya* (*supra*) commend themselves to me. But it is urged on behalf of the appellant that this is an unprecedented case for there is no question of the return of the plaint from the wrong Court to be filed in the right Court, but here there has been an actual order for the transfer of the case. So far as I can understand, what is implied by this distinction seems to me that it is being argued that a continuation of the proceedings that were instituted in the Court of Requests can follow from the transfer, and therefore that there is no question as to two conflicting dates when there has been only one presentation of the plaint in the case. If that contention is sound, obviously the appellant here is in a better position than he would have been had his action been dismissed or if he had sought to move the Supreme Court to act under section 47 of the Civil Procedure Code. But I think there is a fallacy in his reasoning, for to contend that the hearing in the District Court of Kandy is a continuation of the proceedings in the Court of Requests of Gampola, postulates that the Court at Gampola had jurisdiction to entertain the action. There can be no continuation of those proceedings, in my opinion, unless either the Court to which the plaint was presented in the first instance had jurisdiction to determine the case, and that of course is not so, or that Mr. Justice Koch had actually conferred jurisdiction upon it by making the order of transfer as suggested, the absurdity of which proposition is manifest. In making the order he did, with the reservation attached to it, Mr. Justice Koch, it seems to me, thought that the appellant should have the change of proving his case provided he was not out of time under section 247, but that the opposite party should not be debarred from taking the point of limitation.

In my opinion the learned District Judge had no option but to dismiss the action, and I would therefore dismiss the appeal with costs.

FERNANDO A.J.—I agree.

Appeal dismissed.

¹ 23 N. L. R. 285.

² 32 N. L. R. 86.