

**IN THE HIGH COURT OF JUDICATURE AT HYDERBAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADERSH**

Tr.C.M.P.Nos.704 and 705 of 2014

Between:

Tadikonda Surya Venkata Satyanarayana Murthy

.....Petitioner

And:

Tammana Seethamahalakshmi and 3 others

..... Respondents

JUDGMENT PRONOUNCED ON : 21-06-2016

**HON'BLE SRI JUSTICE : V.
RAMASUBRAMANIAN**

AND

**HON'BLE SRI JUSTICE : A. SHANKAR
NARAYANA**

1. Whether Reporters of local
Newspapers may be allowed to see
the Judgments? :
2. Whether the copies of judgment
may be marked to Law Reporters/
Journals?
3. Whether their Ladyship/Lordship
wish to see the fair copy of the
judgment? :

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*** HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN**

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

+ Tr. C.M.P.Nos.704 & 705 of 2014

% 21-06-2016

Tr.C.M.P.No.704 of 2014

Tadikonda Surya Venkata Satyanarayana
Murthy

.... Petitioner

AND

Tammaana Seethamahalakshmi and 3 others

.... Respondents

Tr.C.M.P.No.705 of 2014

Chilikuri Satyanarayana (died)
Chilikuri Venkata Ramanjanyulu

.... Petitioner

AND

Thota Venkata Ramana and 6 others

.... Respondents

! Counsel for petitioner : Sri G. Simhadri,

^ Counsel for respondent : Sri Dasari S.V.V.S.V. Prasad

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> Head Note:

? Cases referred:

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Tr. C.M.P.Nos.704 & 705 of 2014

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COMMON ORDER: (Per Hon'ble Sri Justice V. Ramasubramanian)

Brief facts leading to the transfer petitions

The unsuccessful plaintiffs in two different suits on the file of the Senior Civil Judge, Narsapur of West Godavari District, who had filed regular appeals under Section 96 of the Code of Civil Procedure (for short “the Code”), which are pending on the file of VI Additional Fast Track Court at Narsapur of West Godavari District, have come up with the present transfer petitions seeking transfer of the appeals from the VI Additional Fast Track Court, Narsapur to any other Court only on the specious plea that the VI Additional Fast Track Court Judge had dismissed 45 appeals in a span of three days without taking up final hearing in a proper manner and that therefore, there is a reasonable apprehension in the minds of the petitioners herein that they may not get justice from the VI Additional Fast Track Court, Narsapur.

2. As a matter of fact, the transfer petitions are completely devoid of merits and were liable to be thrown out without much ado, on the short ground that the dismissal of 45 appeals in a span of three days can hardly give rise to an apprehension of the nature pleaded by the petitioners. But, when these transfer petitions were posted before a learned Judge, the learned counsel for the respondents took exception to the maintainability of the transfer petitions on the file of this Court, on the ground that the transfer petitions ought to have been filed on the file of Principal District Judge, under Section 24 (1) of the Code. But the learned counsel for the petitioners relied upon a judgment of a learned Single Judge of this Court in **Manchukonda Venkata Jagannadham v. Chettipalli Bullamma (AIR 2011 AP 104)** to the effect that the

District Court has no power to transfer a case pending on the file of one Additional District Judge to the file of another District Judge. The respondents relied upon the decision of another learned Judge in **T. Niranjan v. Ch. Ramesh Chander Reddy (2013 (3) ALT 150)**, wherein it was held that in view of the express language of Section 24 (3) (a) of the Code, the *ratio decidendi* in **Manchukonda Venkata Jagannadham v. Chettipalli Bullamma** was incorrect.

3. Finding that there was a conflict of opinions between 2 Benches of co-ordinate jurisdiction, the learned single Judge before whom the present transfer petitions came up for hearing has referred the matter to the Division Bench.

Order of Reference

4. The operative portion of the order of the learned Judge, by which these petitions stand referred to us, reads as follows:

“.....In the light of conflicting decisions of this Court in *Manchukonda Venkata Jagannadham's* case (1 supra) and in *T. Niranja's* case (2 supra), the point that is to be answered is whether the District Court has jurisdiction to exercise power under Section 24 to withdraw and transfer any suit, appeal or other proceeding pending on the file of one Additional District Court to another Additional District Court or from/or to the District Court.

8. Article 141 of the Constitution of India stipulates that law declared by the Supreme Court shall be binding on all Courts within the territory of India. But as regard the application of precedents of the High Court there is no direct constitutional provision as Article 141. But a three Judges Bench of the Supreme Court in *M/S. EAST INDIA COMMERCIAL COMPNAY LIMITED, CALCUTTA vs. COLLECTOR OF CUSTOMS, CALCUTTA* (AIR 1962 SC 1893) at para 14 held thus:

“.....It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working: otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the

highest court in the State is binding on authorities or tribunals under its superintendence.”

9. There is no dispute and there cannot be any dispute that a larger Bench decision will prevail over a smaller Bench decision. But the conflicting judgments on a particular point by co-equal benches cause enormous difficulty to lower Court Judges who are bound by the ratio of the law enunciated by the superior Courts. In *DELHI DEVELOPMENT AUTHORITY vs. ASHOK KUMAR BAHREL*’s case (AIR 2002 SC 2940) the Supreme Court emphasized the need to refer the case to a larger bench when conflicting views of the coordinate benches are noticed and held that inconsistency and contradiction in the orders passed by the same Court on the same point regarding the same scheme cannot be allowed to be continued or perpetuated. It was further observed that the cardinal principle of rule of law that inconsistency and contradiction in the orders has to be avoided at all costs to bring about a certainty in the mind of the Subordinate courts and the litigant public. This principle would stand violated in case two binding principles on the same point of the same Court are allowed to operate simultaneously. In view of the above facts and circumstances, I am of the opinion that conflict of law in the judgments in *Manchukonda Venkata Jagannadham*’s case (1supra) and in *T. Niranja*’s case (2 supra) is required to be resolved by an authoritative pronouncement by Division Bench.

10. There is no impediment to decide the instant transfer petitions, but the judicial discipline demands that the decision in the matter shall have to await the authoritative pronouncement by the Division Bench of this Court.

11. For the reasons stated above, Registry is directed to place the papers before Hon’ble the Acting Chief Justice for appropriate orders.....”

5. We have heard Sri G. Simhadri, learned counsel for the petitioner and Sri Dasari S.V.V.S.V. Prasad, learned counsel for the respondents.

How the conflict arose

6. In **Manchukonda Venkata Jagannadham v. Chettipalli Bullamma** {AIR 2011 A.P. 104}, an order of transfer passed by

the Principal District Judge, Visakhapatnam, transferring a suit from the file of the VII Additional District Judge to the file of the II Additional District Judge, was challenged in a revision, on the ground that the Additional District Judges were not subordinate to the Principal District Judge.

7. Finding that the power to withdraw and transfer a suit, appeal or other proceeding is conferred only upon the High court and the District Court, in relation to any matter pending in a court subordinate thereto, the learned Judge thought that Additional District Judges who are of equal rank and status cannot be treated as subordinate to the Principal District Court. In so far as the Explanation provided under clause (a) of sub-section (3) of Section 24 is concerned, the learned Judge opined that the same does not use the expression “Additional District Judge or Assistant District Judge”, but merely uses the expression “Additional and Assistant Judges”. The absence of the word “District” after the words “Additional” and “Assistant” was taken by the learned Judge to be an indication that the deeming fiction created under clause (a) of sub-section (3) would be applicable only to the City Civil Courts and not to the Courts of Additional District Judges. When it was brought to the notice of the learned Judge that under Sections 6 and 11 (2) of the Andhra Pradesh Civil Courts Act, 1972, the District Judge enjoys the power of distribution among and allotment of work to Additional Judges, the learned Judge opined that these powers are completely different from the power of the District Court under Section 24 of the Code. When the decision of the Karnataka High Court in **Sathya Shree v. M. Kumreshan (1999 AIHC 3366)**, was brought to the notice of the learned Judge, he disagreed with the same on the ground that the expression

“Additional and Assistant Judges” cannot be read as “Additional District Judges” and “Assistant District Judges”, as no Court can read anything into a statutory provision, which is unambiguous.

8. In **T. Niranjan v. Ch. Ramesh Chander Reddy {2013 (3) ALT 150}** another learned Judge took note of the definition of the expressions “District” and “Judge” under Section 2 (4) and 2 (8) of the Code and held that the power of transfer is inherent in the power of assignment of work. Though the decision in *Manchukonda* was brought to the notice of the learned Judge in *T.Niranjan*, the learned Judge ignored the same on the ground that it was contrary to the statutory scheme. As a result, we have 2 conflicting opinions on hand.

Scheme of section 24 and the nature of the power conferred

9. Section 24 of the Code is extracted for the purpose of easy reference as follows:

“General power of transfer and withdrawal.- (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 withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.”

10. The salient features of sub-section (1) of Section 24 are as follows:

- 1) the general power of transfer and withdrawal vests both with the High Court as well as the District Court;
- 2) the power could be exercised either *suo motu* or on an application of any of the parties;
- 3) if the power is exercised *suo motu*, no notice is required to be served on the parties, but, if the power is sought to be exercised on the application of any of the parties, it can be done only after notice to the other party and after hearing such of them as desired to be heard;
- 4) the power may be exercised at any of stage of the proceeding;
- 5) the principal condition for the exercise of the general power of transfer and withdrawal is that the Court from whose file the suit, appeal or other proceeding is sought to be transferred, should be a Court subordinate to the Court seeking to exercise the general power of transfer and withdrawal.

11. The power conferred upon the High Court and the District Court by sub-section (1) of Section 24 is of three types. They are,-

- 1) the power to transfer a suit, appeal or other proceeding pending before the very Court ordering the transfer, for trial or disposal to any other court subordinate to it and which is also competent to try and dispose of the same;

- 2) the power to withdraw a suit, appeal or other proceeding pending in any Court subordinate to the Court ordering the transfer, for the purpose of trial and disposal by the very Court ordering the transfer; and
- 3) the power to withdraw any suit, appeal or other proceeding pending in any court subordinate to the court ordering the transfer, and to transfer the same for trial or disposal to any other court subordinate to it and which is also competent to try and dispose of the same.

Deeming fictions created in section 24

12. Sub-sections (3) and (4) of Section 24 create two deeming sections. Clause (a) sub-section (3) creates one deeming fiction by holding that for the purpose of Section 24, the Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court. Sub-section (4) creates another deeming fiction by providing that if a suit is transferred from a Court of Small Causes to any other Court, the transferee Court will be deemed to be a Court of Small Causes.

Purport of clause (a) of sub-section (3) of section 24

13. As we have indicated above, the nature of the power conferred upon the High Court and the District Court is of three types, the first of which is found in clause (a) of sub-section (1). Interestingly, the power under Section 24 (1) (a) is akin to the power of distribution and allocation of work. ***Under this provision, a suit, appeal or other proceeding pending before the High Court or the District Court itself can be transferred for trial and disposal to any other Court subordinate to it, if that other***

Court is competent to try and dispose of the same. What is provided in Sections 6 and 11 (2) of the A.P. Civil Courts Act, 1972, is similar to what is provided in sub-section 24 (1) (a). Therefore, the opinion expressed in **Manchukonda Venkata Jagannadham v. Chettipalli Bullamma** that the distribution and allocation of work under Sections 6 and 11 (2) of the A.P. Civil Courts Act, 1972 is completely different from the power conferred by Section 24 of the Code, does not appear to be correct.

Difference in the language employed

14. Another important aspect that has not been taken note of in **Manchukonda Venkata Jagannadham** is that in the entirety of Section 24, which contains five sub-sections, there is only one part viz., clause (a) of sub-section (3), where the word “Judge” is used. In all other parts of Section 24, the statute uses only the expression “Court” and not “Judge”. Therefore, let us see what a District Court is.

15. Section 2 (4) of the Code defines “District” to mean the local limits of the jurisdiction of a principal Civil Court of original jurisdiction. It includes the local limits of the ordinary original civil jurisdiction of a High Court. The expression “District court”, though not directly defined, is indirectly defined in Section 2 (4) itself to mean the principal Civil Court of original jurisdiction of a District.

16. Therefore, the expression “District Court” always denotes the principal Civil Court of original jurisdiction of a District. All other civil Courts of original jurisdiction, even if presided over by officers of the very same rank and status, will not be treated as District Courts within the meaning of Section 2 (4), if they do not happen to be the principal Civil Court of the district.

17. The expression “Judge” is defined in Section 2 (8) of the Code to mean the presiding officer of a Civil Court. Therefore, to be a judge within the meaning of Section 2 (8), the person concerned need not be the presiding officer of a principal Civil Court of original jurisdiction.

18. If we keep in mind the distinction between the expressions “District Court” and “Judges”, it will be clear that the general power of withdrawal and transfer conferred under Section 24 (1) is upon 2 courts namely:-

(i) the High Court and

(ii) the principal Civil Court of original jurisdiction of a district, which satisfies the definition under Section 2 (4).

19. From this, if we go to clause (a) of sub-section (3) of Section 24, it will be clear that ***the deeming fiction created therein is about the Courts of Additional and Assistant Judges vis-à-vis the District Court. Once this is clear, there is no difficulty in concluding that the absence of the word “district” after the words “additional” and “assistant” is of no consequence. The emphasis in clause (a) of sub-section (3) is not simply on Additional Judges and Assistant Judges, but is actually on “Courts of Additional and Assistant Judges” vis-à-vis “District Court”.*** This important aspect has not been taken note of in **Manchukonda Venkata Jagannadham**.

20. A careful look at clause (a) of sub-section (3) of section 24 would show that ***the phrase “courts of additional and assistant judges” appearing therein, is ejusdem generis with what follows, namely the phrase “District court”.*** When clause (a) speaks of the courts of additional and assistant judges with specific reference to the District court, it can be construed only as

a reference to the Additional and Assistant District Judges, irrespective of whether the word “District” is used or not in between the words “Additional Judges” and “Assistant Judges”.

21. A few decisions are cited by the learned counsel for the petitioner in support of his contention that the courts are not empowered to supply words into a statutory provision. We do not think that we need to refer to any of them, as the ***principle of causus omissus*** is too well recognised. We are not, in this case, supplying the word “District” in clause (a) of sub section (3), when it is conspicuous by its absence. We are just pointing out that the word already exists in the statutory provision, but it is more visible when we apply the rule of ejusdem generis.

Principle of subordination

22. In *Manchukonda*, the learned Judge appears to have been perturbed by the fact that if the power to transfer a case from the file of one Additional District Judge to the file of another Additional District Judge is recognised as available to the Principal District Judge, the general principles of judicial hierarchy and subordination of courts, will suffer a severe jolt. That is why the learned Judge drew a reference to Section 3 of the Code, which speaks about subordination of Courts.

23. Section 3 of the Code reads as follows:

“**Subordination of Courts**:- For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.”

24. As per Section 3, a Civil Court will be treated as subordinate to the District Court, only if that Civil Court happens to be of a grade inferior to the District Court. Since in terms of judicial powers, all District Judges enjoy the same status, the learned Judge thought in *Manchukonda* that the presiding officer of

an Additional District Court cannot be treated as a grade inferior to the Presiding Officer of the Principal District Court.

25. But, insofar as this aspect is concerned, it must be pointed out that Section 3 does not speak either about the hierarchy of the Judges or about the subordination of one or more Judges to another. ***Section 3 speaks only about the subordination of Courts and not subordination of Judges.***

26. Section 24 (1) (a) empowers the District Court to transfer a case pending before it, to any Court subordinate to it, provided such a Court has jurisdiction to try and dispose of the same. If the interpretation given in **Manchukonda** is correct, a Principal District Court cannot transfer any case pending on its file to the Court of an Additional District Judge, because the Additional District Judge cannot be treated as subordinate to the Principal District Judge. The Principal District Judge cannot also transfer a regular appeal pending before him to the Court of a Junior Civil Judge, since such a Judge, though subordinate to the Principal District Judge, will have no jurisdiction to try and dispose of an appeal. These consequences arising out of such an interpretation, would make the provision, a dead letter.

27. To put it differently, two conditions are to be satisfied for the exercise of the power under Section 24 (1) (a). The first is that the Court to which the case is to be transferred should be subordinate to the Court ordering the transfer. The second is that the transferee Court should also be competent (have jurisdiction) to try and dispose of the same.

28. Both the conditions laid down in Section 24 (1) (a) will stand satisfied only when the transfer is made from the Principal District Court, to any one of the Additional District Courts.

Therefore, Section 24 (1) (a) itself contains a clue as to how we should resolve the problem on hand.

Contention based on the distinction between administrative power and judicial power

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29. Interestingly, the learned counsel for the respondents had no option but to agree that the Principal District Court, upon receipt of a case, would have the power to distribute, allocate or assign any suit, appeal or other proceeding to any of the Additional District Courts. But, his contention was that the distribution and allocation of work on the administrative side by a Principal District Judge stands on a different footing from the exercise of a general power of withdrawal and transfer on judicial side. In other words, his contention is that what a Principal District Judge can do in exercise of the administrative powers conferred upon him, cannot be done by him in the exercise of judicial powers, as the Courts of the Additional District Judges are not subordinate to the Court of the Principal District Judge.

30. The answer to the above contentions is two fold. The first is that it is only because the Courts of Additional District Judges are not judicially subordinate to the Court of the Principal District Judge, that a deeming fiction is created by Section 24 (1) (a). The second is that an order transferring a suit, appeal or other proceeding from one Court to another cannot be treated as a judgment.

Order of transfer not a judgment

31. Section 2 (9) of the Code defines the word “judgment” to mean the statement given by the Judge of the grounds of a decree or order. The three segments of a judgment as propounded by the Supreme Court in **Omprakash Verma v. State of Andhra Pradesh (Scale 2010 (10) 707)** are:

- (i) facts and points in issue;
- (ii) reasons for decision and
- (iii) final order containing decision.

32. A declaration of final determination of the rights of the parties in a matter before the Court is what a judgment is. An order of transfer of a case from one Court to another does not bring to an end to any dispute between the parties. The order would not also be a decision on the respective claims.

33. ***The fact that the Principal District Judge cannot sit in Judgment or appeal over the judgment of an Additional District Judge, is not a ground to hold that the Principal District Judge would not even have a power to transfer a case pending on the file of one Additional Judge to another.*** While ordering the transfer of a case from the file of one Additional Judge to that of another, the District Court (or the Principal District Judge) neither pronounces a judgment on the merits of the case nor exercises the power of judicial review over any decision rendered by the Additional District Judge. Therefore, the expression “subordinate” need not be a cause for worry.

34. In **Asrumati Debi Kumar V. Rupendra Deb Raikot (AIR 1953 SC 198)**, the Supreme Court held that an order of transfer of a suit made under clause 13 of the Letters Patent is not a judgment within the meaning of clause 15 of the Letters Patent. The said decision was followed by a Division Bench of the Madras High Court in **K.V. Govindarajulu Mudaliar v. Devar and Co. (AIR 1954 Madras 248)**. The decision in *K.V. Govindarajulu Mudaliar* was rendered on 06-07-1953. Therefore, by virtue of the decision of the Full Bench of this Court in **M. Subbarayudu v. the State (AIR 1955 AP 87)**, the decision in *K.V. Govindarajulu*

Mudaliar is good as a binding precedent.

35. Apart from the fact that an order of transfer is not a judgment, it must also be noted that in a petition for transfer of a case from one Court to another, no order or decision of the subordinate Court is called in question. It is only when the decision or order of a Court is called in question before another Court, the former should be subordinate to the latter, in terms of judicial hierarchy. This is why Section 3 of the Code carefully uses the expression “of a grade inferior”.

Answer to the reference:

36. Therefore, in the light of foregoing discussion, we are of the considered view that the Principal District Judge would have the power to withdraw a suit, appeal or other proceeding pending on the file of one Additional District Judge and transfer the same to the file of another District Judge. As a corollary, we are also of the considered view that the decision of the learned single Judge in *Manchukonda Venkata Jagannadham* does not reflect the true spirit of Section 24 (3) (a) of the Code and does not reflect the correct law on the point.

37. Incidentally, we may also clarify that the general power of withdrawal and transfer is available to the High Court as well as the District Court concurrently as indicated by the Supreme Court in **Kulvinder Kaur v. Kandi Friends Education Trust (C.A.No.338 of 2008 dated 11-1-2008)**. Therefore, the availability of the power for the Principal District Court to transfer a case from the file of one Additional District Court to another, does not operate as a bar for the High Court to exercise the jurisdiction.

Fate of the present petitions:

38. Having pronounced our opinion on the conflicting views,

we shall now take up the present petitions for consideration. We do so in view of the fact that the learned Judge upon whose order these petitions are placed before us, has not merely placed a question for reference but also placed both the transfer petitions themselves for an adjudication before a Bench.

39. As stated in the first paragraph, the only ground on which the petitioners seek transfer is that the VI Additional Fast Track Court Judge had dismissed 45 appeals in a span of three days. As we have pointed out at the threshold, this cannot be a ground for an apprehension, much less a reasonable apprehension, that the petitioners may not get justice. When Courts, which move at snail's pace, are ridiculed, we do not know how Courts that proceed on fast track could also be condemned. These petitions are completely devoid of merits. Therefore, they are dismissed. There shall be no order as to costs.

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V. RAMASUBRAMANIAN, J

A. SHANKAR NARAYANA, J

Date: 21-06-2016

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Note: L.R. copy to be marked.

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