

(1972) 02 KAR CK 0005
In the Karnataka High Court
Case No : Ex. First Appeal No. 31 of 1970

B. Lakshminarayana Setty	Vs	APPELLANT
R. Rajmall and Another		RESPONDENT

Date of Decision : 14-02-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 37 (b)
Karnataka Civil Courts Act, 1964 — Section 10 (1), 6 (1)

Citation : AIR 1972 Kar 342 : (1972) 1 MysLJ 652

Hon'ble Judges : M.S. Nesargi, J; E.S. Venkataramaiah, J

Bench : Division Bench

Advocate : C.N. Kumar, for the Appellant; M.V. Srinivasan Iyengar and M. Raghavendra Rao, for the Respondent

Final Decision : Dismissed

Judgement

Nesargi, J.—The 1st Judgment-debtor B. Lakshminarayana Setty, in Execution Case No. 56 of 1970. on the file of the Civil Judge. Civil Station. Bangalore, has filed this appeal against the Order passed by the learned Civil Judge on 18-11-1970, directing execution to proceed. The 1st Additional Civil Judge, Bangalore, passed decree in O. S. No. 494 of 1964. on 4-2-1966. This decree is sought to be executed in Execution Case No. 56 of 1970. Execution Case No. 56 of 1970 was instituted in the Court of the Civil Judge, Civil Station, Bangalore on 14-4-1970.

2. The appellant-judgment debtor contended that the Execution is incompetent inasmuch as it could not have been initiated in the Court of the Civil Judge, Civil Station. Bangalore, without securing a certificate of transfer from the Court which passed the decree. Reliance was placed on a decision of this Court in Gopalkrishna v. Gavisandraya Laxman (AIR 1964 Mys 34). The learned Civil Judge rejected this contention and directed execution to proceed.

3. Sri C. N. Kumar, the learned counsel for the appellant, urged that the Court of the Civil Judge, Civil Station, Bangalore, was created by the Government on

5-1-1970 and till then the area over which the Court of the Civil Judge, Civil Station, Bangalore, "had jurisdiction was within the jurisdiction of the Court of the Civil Judge Bangalore City, and that Court still exists and, therefore, it was incumbent on the decree-holder to secure a certificate of transfer of the decree from the Court of the Civil Judge, Bangalore City to the Court of the Civil Judge, Civil Station, Bangalore, before instituting Execution Case No. 56 of 1970. Sri M. V. Srinivasa Iyengar, the learned counsel for the decree-holder, contended that it is not correct to state that the Court of the Civil Judge, Bangalore City, continued to exist even after 5-1-1970 because it was abolished by the Government with effect from 5-1-1970 and in its place a new Court was created simultaneously with the erection of the Court of the Civil Judge, Civil Station, Bangalore and, hence, the provisions of Section 37(b) of the CPC would be applicable.

4. In regard to the subject of creation of Civil Courts at Bangalore, two notifications came to be issued on 26-12-1969 by the Government of Mysore. Those are as follows:

"Government of Mysore Mysore Government Secretariat. Vidhana Soudha, Bangalore, dated the 26th December 1969. No. LAW 116 LCE 69. NOTIFICATION I.

S. O.....In exercise of the powers conferred by the proviso to Sub-section (1) of Section 6. Sub-section (1) of Section 10 and Sub-section (1) of Section 13 of the Mysore Civil Courts Act. 1964 (Mysore Act 21 of 1964), and in supersession of all previous orders on the subject, the Government of Mysore, in consultation with the High Court of Mysore, hereby establishes with effect from the 5th January 1970 a Court of Civil Judge for the area comprised within the Civil Station of Bangalore as constituted under the Bangalore Municipal Law, 1897. and fixes Civil Station, Bangalore, as the place at which the said Court shall be held and also fixes the local limits of the said Court to be the area covered by the local limits of the said Civil Station of Bangalore.

By Order and in the name of the Governor of Mysore. Sd./- S. V. Papa Reddy, Secretary to the Government. Dept. of Law & Parliamentary Affairs.

Government of Mysore. Mysore Government Secretariat. Vidhana Soudha, Bangalore, dated 26th December. 1969. No. LAW 116 LCE 69.

NOTIFICATION II

S. O.....In exercise of the powers conferred by the proviso to Sub-section (1) of Section 6. Sub-section (1) of Section 10 and Sub-section (1) of Section 13 of the Mysore Civil Courts Act. 1964 (Mysore Act 21 of 1964), and in supersession of all previous orders on the subject, the Government of Mysore, in consultation with the High Court of Mysore, hereby establishes with effect from the 5th January 1970, a Court of Civil Judge for the area comprised within the area comprising the Bangalore City as defined under the Mysore City Municipalities Act, 1933, and fixes Bangalore City as the place at which the said Court shall be

held and also fixes the local limits of the said Court to be area covered by the local limits of the said Bangalore City.

By Order and in the name of the Governor of Mysore, Sd/- S. V. Papa Reddy. Secretary to Government, Dept. of Law & Parliamentary affairs".

5. A reading of these notifications makes it plain that the notifications superseded all the previous orders on the subject covered by these notifications. The words "in supersession of all previous orders on the subject" make it manifest that the orders passed by the Government prior to these notifications did no longer exist with effect from 5-1-1970. It is an undisputed fact that before passing of these notifications by the Government of Mysore, there was one Civil Judge's Court at Bangalore and it was the Court of the Civil Judge, Bangalore City. The jurisdiction of this Court covered Bangalore City Corporation area which admittedly included the area of the Civil Station of Bangalore. Additional Civil Judges were attached to this Court. One of such additional Civil Judges used to hold Court at Civil Station, Bangalore. The decree in question came to be passed by one of these additional Civil Judges. Now the question is whether this Court ceased to exist from 5-1-1970 because of the notifications referred to above.

6. Notification II states as follows: "..... hereby establishes with effect from the 5th January 1970, a Court of Civil Judge for the area comprised within the area comprising the Bangalore City as defined under the Mysore City Municipalities Act, 1933, and fixes Bangalore City as the place at which the said Court shall be held and also fixes the local limits of the said Court to be the area covered by the local limits of the said Bangalore City". Notification I stated as follows:--

"..... hereby establishes, with effect from the 5th January 1970 a Court of Civil Judge for the area comprised within the Civil Station of Bangalore as constituted under the Bangalore Municipal Law, 1897, and fixes Civil Station, Bangalore, as the place at which the said Court shall be held and also fixes the local limits of the said Court to be the area covered by the local limits of the said Civil Station of Bangalore".

The contents of Notification II as excerpted above read with the fact that the previous orders passed by the Government on the very same subject were superseded by these notifications, show that with effect from 5-1-1970 the Court of the Civil Judge, Bangalore City, was abolished. That means it ceased to exist from that date. Hence, we have no hesitation in holding that on the passing of these two notifications by the Government of Mysore, the Court of the Civil Judge, Bangalore City, as established by the previous orders passed by the Government of Mysore, was abolished and in its place two new Courts of Civil Judges came to be established.

7-8. The facts in the decision cited above are as follows:--

There was only one Civil Judge's Court in the District of South Kanara and that

was located at Mangalore. On 1-8-1961 a new Subordinate Judge's Court was established at Udipi by the State Government in exercise of its powers. By another notification, the areas over which the Subordinate Judge's Court at Mangalore had jurisdiction, came to be delimited. The relevant portion of this notification is quoted at page 36 of the above decision. It reads as follows:

"The Subordinate Judge's Court at Mangalore. shall with effect from the first day of August.....cease to exercise jurisdiction over the local limits comprising the Taluks of Coondapur. Udipi and Karkala of the South Kanara District".

The question in that decision was whether a decree passed by the Subordinate Judge's Court at Mangalore. i.e., before 1-8-1971 could be in the first instance executed, i.e.. without securing a certificate of transfer from that Court, in the Subordinate Judge's Court at Udipi, which came to be established with effect from 1-8-1961. It was held that the Subordinate Judge's Court at Mangalore. evidently had not ceased to exist; therefore Section 37(b) of the Civil P. C. had no application; and hence an order of transfer of the decree was essential before instituting execution in the Subordinate Judge's Court at Udipi. We therefore find that this decision had no application to the case on hand.

9. Section 37(b) of the CPC reads as follows:--

"37. The expression "Court which passed a decree", or words to that effect, shall in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,--

(a)

(b) where the Court of first instance had ceased to exist or to have jurisdiction to execute it the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit".

It has been already shown that the Court which passed the decree, i.e.. the additional Civil Judge's Court. Bangalore, ceased to exist from 5-1-70, the same having been abolished. It is not in dispute that this case falls within the jurisdiction of the Court of the Civil Judge. Civil Station, Bangalore and that this decree could have been passed if the suit were to be instituted in the Court of the Civil Judge, Civil Station. Bangalore, on 14-4-1970, the date on which the execution petition came to be filed. In our opinion, therefore, the provisions of Section 37(b) of the CPC would be applicable to the facts of the case. Hence, we hold that the contention raised by the appellant is not sustainable. We, therefore, dismiss this appeal. No order as to costs under the circumstances of the case.