

(1929) 02 MAD CK 0019
In the Madras High Court

Gade Govinda Rao Pantulu

APPELLANT

Vs

Parankusam C. Jagannadham and Another

RESPONDENT

Date of Decision : 27-02-1929

Acts Referred:

Tamil Nadu Civil Courts Act, 1873 — Section 11

Citation : AIR 1929 Mad 787 : (1929) 30 LW 381 : (1929) 57 MLJ 234

Hon'ble Judges : Anantakrishna Aiyar, J

Bench : Division Bench

Judgement

Anantakrishna Aiyar, J.—This Letters Patent Appeal arises out of an application for execution of the decree in O.S. No. 273 of 1915 on

the file of the Additional District Munsif's Court at. Berhampore. In Berhampore there existed at that time two District Munsifs' Courts, one called

the Principal District Munsif's Court and the other the Additional District Munsif's Court, Berhampore. The latter Court seems to have been

sectioned in 1911 under a notification of the High Court. By this notification the Additional District Munsif's Court had jurisdiction throughout the

Berhampore District Munsifi. The plaintiff filed his suit in the Court of the Principal District Munsif of Berhampore. It was transferred for disposal

by the Additional District Munsif who gave a decree in plaintiff's favour. There was an appeal, in which also plaintiff succeeded. In 1912 the then

District Judge, now Mr. Justice Kumaraswami Sastri, passed proceedings, dated 31st July, 1912. What exactly is the purport of the said

proceedings is one of the points to be decided in this case. It runs as follows:

The notification R.O.C. No. 1108 of 1911 of the High Court is specific and directs the Additional Munsif to try only such suits as may be by

general or special order transferred to it. The Court has no power to receive complaints or applications except those specifically transferred. When a

suit which is transferred is disposed of, the Additional Court has no further power over it and the records must go back to the Court from which it

is transferred, which alone has power to do anything further.

The powers of a Court have to be determined by the order constituting it and the limitations imposed by the order.

As I am of opinion that the powers of the Additional Court over a suit transferred to it for disposal cease when the decree is passed, the record in

each case disposed of should be sent to the Court from which the suit was transferred as stated in paragraph 3 of the Berhampore Munsif's

Court's (sic) letter.

2. The decree-holder filed successive applications for execution, within the period of limitation, before the Principal District Munsif of Berhampore.

Finally he filed the present execution application--E.P. No. 79 of 1920 in the Court of the Additional District Munsif of Berhampore. That

application was resisted by the judgment-debtor on the ground that it was barred by limitation, the ground of objection being that the applications

for execution filed in the Court of the Principal District Munsif were filed in a Court not having jurisdiction and consequently those applications

could not be taken to be starting points for subsequent applications for execution. The District Munsif gave effect to this contention and dismissed

the application on the ground of limitation. The decree-holder appealed and the Additional Subordinate Judge of Ganjam at Berhampore reversed

the District Munsif's order and held that the application for execution should not in the circumstances be held to be barred by limitation. Against

that decision, the judgment-debtor preferred C.M.S.A. No. 76 of 1923 to the High Court. That appeal came on for hearing before a learned

Judge of this Court and he held that the Additional District Munsif's Court of Berhampore was the Court to which execution applications ought to

be made and consequently the various applications for execution filed by the decree-holder in the Court of the Principal District Munsif of

Berhampore could not prevent the running of limitation in this case. Against the judgment of the learned Judge, the decree-holder has preferred this

Letters Patent appeal. It was contended on his behalf by Mr. C.S. Venkatachari,

the learned advocate, who appeared for him, that the proceedings passed by Mr. C.V. Kumaraswami Sastri as District Judge in the years 1912 and 1919 respectively, printed at pages 1 and 2 of the printed papers, in effect declared under the terms of Section 11 of the Madras Civil Courts Act that the Additional District Munsif of Berhampore should not have jurisdiction in respect of execution matters. If we are able to agree with this argument of the learned advocate, then it is clear that the ground of the decision of the learned Judge of this Court and of the District Munsif, namely, that the present application is barred by limitation, is not sustainable. The relevant clause of Section 11 of the Madras Act III of 1873, which was added by Madras Act XXI of 1885, Section 3, runs as follows:

If the High Court assigns the same local jurisdiction to two or more District Munsifs, it shall declare which of them shall be deemed the Principal

District Munsif, and the other or others shall be called Additional District Munsifs, and shall take cognisance only of such suits and applications as

may, by special or general order in this behalf, be directed by the District Judge.

3. It may be mentioned that this particular clause of Section 11 has been repealed by Madras Act III of 1925, Section 5. But as the present case is

governed by the section as it stood prior to 1925, I have quoted the wording of Section 11 in so far as the same is relevant for this purpose. In

construing the proceedings of the learned District Judge, we have got not merely his opinion on particular points as the learned advocate for the

respondent would argue, but we have got the very tangible fact, namely, that the learned District Judge directed that all the records that remained in

the Additional District Munsifs Court of Berhampore should go back to the Court from which the suits were transferred, which alone was

declared to have power to do anything further in the matter. Reading the proceedings as a whole, it seems to be reasonably clear that the learned

District Judge directed that no further execution applications should be taken in the Court of the Additional District Munsif. It is obvious that it is in

pursuance of these proceedings of the District Judge that the decree-holders, including the decree-holder in the present case, resorted to the Court

of the Principal District Munsif and filed execution applications there. That it was so understood is clear from the proceedings passed in 1919 by

the then District Judge, Mr. B.C. Smith. He had before him cases of execution applications filed in the Principal District Munsifs Court and the question arose whether the Additional District Munsif should be allowed to execute decree of the Principal District Munsif. Referring to the prior proceedings of Mr. Kumaraswami Sastriar, the learned District Judge, Mr. B.C. Smith, drew the attention of the Additional District Munsif of Berhampore to the effect of the proceedings passed in 1912. Reading the proceedings as a whole, it seems to be clear that they were passed by the District Judge with reference to the powers he had under Clause (2) of Section 11 of the Madras Civil Courts Act. It was argued that the word "transferred" is not there, but it is not really necessary. We have to look to the substance and not to the presence or absence of a particular word. In fact the word "transfer" does not occur in Clause (2), Section 11. If this view be correct, then it is quite intelligible why the present decree-holder and lots of others who had held decrees passed by the Additional District Munsif of Berhampore did, as a matter of fact, for years take steps in execution before the Principal District Munsif of Berhampore. In this view of the proceedings it is clear that the execution applications filed before the Principal District Munsif did confer fresh starting points under the relevant articles of the schedule of the Limitation Act. The learned Advocate for the respondents argued further that the wording of Section 11 covers only suits and original applications, and that execution applications are not "applications" within the meaning of the clause. I am not able to accede to that contention. Either execution applications come under the denomination of suits or they come within the term "applications." It cannot be said that execution applications are unprovided for. As a matter of fact there are instances where directions have been given that execution applications should not be filed in one particular Court but should be filed in another Court only. In this view the plea of limitation raised by the judgment-debtor is not sustainable and consequently the appeal is allowed with costs throughout and the execution application will be sent back to the District Munsif having jurisdiction to entertain it, who will proceed to dispose of the matter according to law.

4. The Chief Justice.--I am of the same opinion. I cannot help thinking that the learned Judge was inclined to disturb the decision of the Court

below because the Judge of that Court perhaps somewhat unfortunately observed that he thought that it was a hard case which was to be dealt with leniently. In my opinion only one reasonable construction can be put upon the order passed; and I think that the construction is that which my brother has outlined. Otherwise there seems to be no conceivable *raison d'être* for the order being made at all and it was purely otiose and would result in nothing more than the transfer of bundles of papers from one side of the building to the other. I cannot believe that the learned Judge did not mean to do more than that when he made the order. I am very glad to be able to come to this conclusion, because otherwise I think there would have been a triumph for a very bad technicality and a very unmeritorious one. I agree that the appeal must be allowed with costs.