

**(1916) 02 MAD CK 0034**  
**In the Madras High Court**

Gamarti Venkatachellam

APPELLANT

Vs

Gamarti Sithayamma

RESPONDENT

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**Date of Decision :** 07-02-1916

**Acts Referred:**

Tamil Nadu Civil Courts Act, 1873 — Section 10

**Citation :** (1916) 31 MLJ 22

**Hon'ble Judges :** Sadasiva Aiyar, J; Moore, J

**Bench :** Full Bench

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**Judgement**

Sadasiva Aiyar, J.—The decree-holder is the appellant. He brought O.S. No. 4 of 1910 on the file of the District Court of Kistna at

Masulipatam. The District Court trans-ferred it to the Temporary Subordinate Judge's Court established in that place for disposal. The suit was for

partition of Immovable properties, for recovery of a half share therein and for mesne profits. The Temporary Subordinate Judge's Court was

established in 1910 at Masulipatam but no local limits were fixed for its jurisdiction, the notification leaving it to the District Judge to fix such local

jurisdiction as he thinks fit to do u/s 10 of the Madras Civil Court's Act III of 1873. When the suit was transferred by the District Court, the

District Judge had not fixed any such local limits for the Temporary Subordinate Judge's jurisdiction. The Subordinate Judge decreed the suit

including the relief of mesne profits on the 16th August 1912 and that decree was confirmed on appeal by the High Court.

2. The plaintiff put in an execution petition for the attachment of certain immovable properties of the defendant for recovery of the mesne profits so

decreed. This application was made on the 5th October 1914. The places where the Immovable properties sought to be attached are situated

have not been assigned to the local limits of the Subordinate Judge's jurisdiction even now. The question is whether the Subordinate Judge had

jurisdiction to entertain such an application and to effect attachment of the immovable properties mentioned in that application.

3. The Subordinate Judge held that he had no jurisdiction to so attach and on the judgmentdebtor's application, set aside the attachment which had been effected on an order issued ex-parte at the instance of the decree-holder. Hence this appeal.

4. The learned Vakil who argued the appellant's case relied upon Section 150 of the New CPC for his contention that the transfer of the suit by the District Court for disposal to the Temporary Subordinate Judge's Court gave the latter court jurisdiction to execute the decree just as if it had

been given jurisdiction over the whole territory within the District Court's jurisdiction for the purpose of executing the decree passed in the suit.

Section 150 was newly enacted in the present Civil Procedure Code. It is as follows : "ave as otherwise provided, where the business of any Court

is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as

those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred"" The learned Vakil's

argument was that when a particular suit is transferred from the District Court to a Sub-Court u/s 24, CPC the business of the District Court is

thereby transferred to the Sub-Court and the Sub-Court gets all the powers of the District Court in respect of such business. We are clear that this

argument is fallacious. As said in Subbiah Naicker v. Ramanathan Chettiar ILR (1914) M. 462 26 M.L.J. 189. Section 150 relates to the business

generally of a Court arising over the whole area or in defined particular areas within its jurisdiction being transferred to another Court owing to the

change of venue effected by legally competent notifications of the local Governments while Section 24 contemplates the transfer of a particular

case or cases pending at a particular time by a special, order of a superior Court. Reading Sections 37, 38, 39 and 46 of the Code and O. XXI

Rule 10 together and having regard to the observations in Subbiah Naicker v. Ramanathan Chettiar ILR (1914) M. 462 26 M.L.J. 189 we think

that the learned Subordinate Judge came to the right conclusion that he has no jurisdiction to execute the decree and that the proper course for the

decree-holder was to have applied u/s 39 to have the decree transferred for execution to the Court having jurisdiction over the properties sought

to be attached. As far as we know, the practice in cases where temporary courts are established without the assignment of any definite local

jurisdiction has been that execution against Immovable properties in respect of the decrees passed by such courts is effected in the Courts to which

have been assigned local jurisdiction, over the situs of such property the decrees being transferred to those courts for the said purpose. Such

transfer may become unnecessary when the temporary Courts cease to exist and their business is again taken up by the permanent courts. (See

Section 37 Clause 6). No doubt every Court has local jurisdiction within the area of its house and the compounds attached to it and can arrest

persons found within those limits in execution of its own decrees. (See also O. XXI Rule 11(1)). But a Temporary Court without assigned local

limits outside its Court house has, in our opinion no further power in execution even of its own decrees.

5. The appeal is therefore dismissed with costs.

Moore, J.

6. I agree. It is clear I think that the Temporary Subordinate Court, Masulipatam had no power to order the attachment and sale of the properties

as it has no territorial jurisdiction over the areas in which the properties are situate. Territorial jurisdiction is a condition precedent to the execution

of a decree. (See Prem Chand Dey v. Mokhade Debi ILR (1890) C. 699.

7. It appears that the local jurisdiction assigned to the Temporary Subordinate Court u/s 10 of the Madras Civil Courts Act III of 1873 by the

District Judge is confined to one village in the Nandigama Taluq. The learned Vakil for the appellant relies on Section 150 of the CPC but that

section merely provides for the whole business of one Court being transferred to another Court as for instance where owing to a change of venue

being made by a local Government it loses jurisdiction over a certain area and has no applicability to a case like the present one. See Subbiah

Naicker v. Ramanathan Chettiar ILR (1914) M. 462 26 M.L.J. 189.

8. The Temporary Subordinate Court has, it appears to me, the power u/s 39 Clause (b.) of the CPC on the application of the decree-holder to

send the decree for execution to the Court which has territorial jurisdiction over

the place in which the properties sought to be attached are situated.

9. The Subordinate Judge instead of dismissing the petition ought I think to have directed the decree-holder to apply to have the decree sent for execution to the proper Court.