
(1990) 06 KAR CK 0005
In the Karnataka High Court
Case No : C.R.P. No. 3407 of 1982

K. Aswathanarayana Setty

APPELLANT

Vs

Hindustan Finance Corporation

RESPONDENT

Date of Decision : 18-06-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 38, 39, 39 (3), 42

Citation : (1991) ILR (Kar) 2415

Hon'ble Judges : M.M. Mirdhe, J;K.A. Swami, J

Bench : Division Bench

Advocate : S.P. Shankar, for the Appellant; K.R. Ashok Kumar, for N.S. Sathyanarayana Guptha, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, J.—This Civil Revision Petition is preferred against the Order dated 21st September 1982 passed by the learned XII Additional City Civil Judge, Bangalore City, in Execution Case No. 191 of 1982. The learned single Judge has, by the order dated 12th October 1988, referred the case to a Division Bench on the ground that a Decision of this Court in Maganahalli Basappa Vs. Doddamani Basavarajappa, has not fully considered the Decision of the Supreme Court in Mahadeo Prasad Singh and Another Vs. Ram Lochan and Others, and has not taken into consideration the cumulative effect of Sections 7, 39(3), 42 Order 21 Rule 82 and also Order 50 of the Code of Civil Procedure.

2. Before we consider the contentions urged by Sri Shankar, learned Counsel for the petitioner, we notice the undisputed facts of the case:

The respondent obtained a money decree in S.C. No. 7570 of 1980 (Old No. 810 of 1979) from the Court of Small Causes, Bangalore City on 25th August, 1981 for a sum of Rs. 8,202.50 with interest on Rs. 7,000/- at 6 per cent per annum from the date of the suit till realisation and the costs of Rs. 1,029.75. The suit was filed on 26th March 1979.

The decree holder filed an Execution Case No. 151 of 1981 for execution of the decree. In the execution petition itself, the decree holder prayed for attachment and sale of moveable and Immovable properties and also prayed for transfer of the decree for execution to the City Civil Court, Bangalore. The Small Causes Court by the order dated 11-3-1982 directed transfer of the decree for execution to the City Civil Court, Bangalore City. On transfer, the City Civil Court numbered the case as Execution Case No. 191 of 1982. Before the transferee Court, objections were filed u/s 47 of the Code of Civil Procedure, inter alia, contending that the Immovable properties cannot at all be attached and sold because the decree under execution is passed by the Small Causes Court; that the Small Causes Court has no jurisdiction to execute a decree against Immovable property; therefore the transferee Court has to exercise the jurisdiction with this inhibition, because the decree is that of a Small Causes Court; hence the relief sought for by the decree holder for directing attachment and sale of the Immovable properties under Order 21 Rule 54 and 82 of the CPC cannot at all be granted.

The transferee Court has over ruled the objections. It has held that it is open to the transferee Court, which is not a Small Causes Court, to proceed against the Immovable properties, because once the decree of a Small Causes Court is transferred for execution the transferee Court can proceed to execute the decree as if it had been passed by itself. Objection was also raised to the effect that the transferee Court is not competent to try the suit in the light of the provisions contained in Section 39 of the CPC. In this regard, the transferee Court has held thus: "What the words "competent jurisdiction" in Section 39 mean the Court which is competent to execute the decree and not the Court which could have been competent to entertain the suit or take cognizance of the suit." The words "competent jurisdiction" only mean competence to entertain the execution petition and nothing more. Therefore reading of Sections 39 and 42 CPC will clearly show that a Court to which the decree is transferred for execution shall have all those powers as if the decree is passed by itself. Hence, if this Court has jurisdiction to attach Immovable property, the decree of the Small Causes Court transferred to this Court for execution can be executed by such a mode and this Court will have jurisdiction to grant such a relief." Accordingly, the transferee Court has rejected the contentions and directed the execution to proceed further and has further directed for filing a verified statement and encumbrance certificate.

3. Sri Shankar, learned Counsel appearing for the petitioner has put forth the following contentions:

(1) That in the Karnataka Small Cause Courts Act there is no provision enabling the decree holder to seek transfer of a decree to any other Court other than Small Causes Courts and to proceed against an Immovable property.

(2) That the right to proceed against Immovable properties is a matter of jurisdiction and not a matter of procedure.

(3) That the Karnataka Small Cause Courts Act 1964 (hereinafter referred to as the "Karnataka Act No. 11 of 1964") does not authorise or contemplate transfer of a decree to any other Court as provided by Section 31 of the Provincial Small Cause Courts Act.

(4) That Section 7 or Section 8 read with Order L or L1 of the CPC and also Order XXI Rules 4 and 82 CPC and the Karnataka Act No. 11 of 1964, bring about total bar of jurisdiction of a Court other than the Small Causes Court to try the suit of a small cause nature notwithstanding the intended exercise of power u/s 42 of the CPC.

4. Contentions 1 to 4 go together. Hence these contentions are considered together. There is no doubt that the Karnataka Act No. 11 of 1964 does not contain a provision enabling the Small Causes Court to transfer a decree passed by it to any other Court for execution similar to the one contained in Section 31 of the Provincial Small Causes Courts Act. The fact that no such provision is contained in the Karnataka Act No. 11 of 1964 does not lead to a conclusion that there is no power in the Small Causes Court to transfer the decree passed by it for execution to any other Court. The provisions relating to the transfer of a decree from one Court to another Court as contained in the CPC do apply to the decree passed by a Small Causes Court. The contention of Sri Shankar is that Section 7 of the CPC excludes the jurisdiction of a Court of Small Causes in respect of the provisions mentioned therein. Section 7 of the Code of Civil Procedure, reads thus:

"7. The following provisions shall not extend to Court constituted under the Provincial Small Cause Courts Act, 1887 or under the Berar Small Cause Courts Laws, 1905, or to Courts exercising the jurisdiction of a Court of Small Causes under the said Act or Law, or to Courts in any part of India to which the said Act does not extend exercising a corresponding jurisdiction that is to say, -

(a) so much of the body of the Code as relates to -

(i) suits excepted from the cognizance of a Court of Small Causes;

(ii) the execution of decrees in such suits;

(iii) the execution of decrees against Immovable property; and (b) the following Sections, that is to say -

Section 9,

Section 91 and 92,

Sections 94 and 95 so far as they authorise or relate to -

(i) orders for attachment of Immovable property,

(ii) injunctions,

(iii) the appointment of a receiver of immovable property, or

(iv) the interlocutory orders referred to in Clause (e) of Section 94, and Sections 96 to 112 and 115."

From the aforesaid provisions it is clear that the provisions of the CPC in so far as they relate to suits excepted from the cognizance of a Court of Small Causes, cannot be exercised by the Court of Small Causes. Similarly, the decrees passed in such suits, namely suits which are excepted from the cognizance of the Court of Small Causes cannot also be executed by the Small Causes Court. The Small Causes Court cannot also execute the decree passed by it or transferred to it against Immovable property. The provisions contained in Clause (b) of Section 7 of the CPC are not relevant for our purpose. Thus, it is clear from Clauses (i) to (iii) of Section 7(a) that those are the limitations which are placed on the jurisdiction of a Small Causes Court. Similarly, Order L of the CPC provides that Small Causes Court is not entitled to exercise jurisdiction in respect of the matters provided under Schedule I to the CPC in so far as they relate to suits excepted from the cognizance of the Court of Small Causes and execution of decrees against Immovable properties or the interest of a partner in a partnership property. The other restrictions on the exercise of jurisdiction by a Small Causes Court, contained in Order L of the CPC are not relevant for our purpose. Therefore, the same are not referred to. Order II of the CPC further provides:-

"Save as provided in Rules 22 and 23 of Order V, Rules 4 and 7 of Order XXI and Rule 4 of Order XXVI and by the Presidency Small Cause Courts Act, 1882, this schedule shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay."

Thus, the provisions contained in Order LI are not relevant for our purpose, because this Order excludes the applicability of the provisions contained in the Schedule of the C.P.C. except to the extent mentioned therein, to any suit or proceeding in any Court of Small Causes established in Calcutta, Madras and Bombay.

5. Learned Counsel next placed reliance on Order XXI Rules 4 and 82. Rule 4 of Order XXI relates to transfer of a decree to a Court of Small Causes. It provides that where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes, and the Court which passed it wishes it to be executed, in Calcutta, Madras or Bombay, such Court may send to the Court of Small Causes in Calcutta, Madras or Bombay, as the case may be, the copies and certificates mentioned in Rule 6; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself. Thus Rule 4 of Order XXI provides for transfer of a decree passed in a suit wherein the plaint claim did not exceed Rs. 2,000/- to Small Causes Court at Calcutta, Madras or Bombay. In other words, it provides for transferring a decree passed by a Court other than the Court of Small Causes to

the Court of Small Causes at Calcutta, Madras or Bombay. Therefore, the said provision is not of much relevance to us. This Rule is relied upon to show that there is a specific provision made for transfer of a decree passed by a Court other than the Court of Small Causes to a Court of Small Causes situated in the cities of Bombay, Calcutta and Madras, for execution provided the claim made in the suit should not have been excepted from the cognizance of such Small Causes Court, situated in the aforesaid cities.

Rule 82 of Order XXI provides that sales of Immovable property in execution of decrees may be ordered by any Court other than a Court of Small Causes. It is submitted that apart from the provisions contained in Section 7 and Order L of the Code of Civil Procedure, Rule 82 of Order XXI specifically provides that the Court of Small Causes cannot order sale of Immovable property in execution of a decree. Based on the aforesaid provisions, it is submitted that there is a total bar on the jurisdiction of a Court of Small Causes for executing decrees against Immovable property, and this bar is not only on the jurisdiction of the Court of Small Causes, it is also the limitation on the decree passed by the Small Causes Court. Therefore, it is contended that where there is a total bar on the jurisdiction of the Court of Small Causes either to pass a decree against the Immovable property or to execute a decree against Immovable property, the same restriction would be there on the decree passed by the Small Causes Court; therefore, a mere fact that the decree passed by the Small Causes Court is transferred to a Court other than the Court of Small Causes, which has all the powers to execute a decree passed by it against Immovable property, will not be available because the transferee Court would be executing a decree passed by the Small Causes Court and not a decree passed by it. Learned Counsel submitted that whatever may be the position prior to the Central Amendment Act No. 104 of 1976, the position is altered after the amendment to Section 39 of the CPC by the Central Act No. 104 of 1976. Therefore, the contentions raised by the Judgment-debtor are fortified by the amendment to Section 39 of the CPC. Support was also sought from the provisions contained in Sections 8 and 9 of the Karnataka Act No. 11 of 1964 and Entries 4 and 40 in the Schedule of Karnataka Act No. 11 of 1964. Section 8 of the Karnataka Act 11 of 1964 provides that a Court of Small Causes shall not take cognizance of the suits specified in the Schedule as suits excepted from the cognizance of a Court of Small Causes. It further provides that subject to the exceptions specified in the Schedule and the provisions of any law for the time being in force, all suits of a civil nature of which the value does not exceed ten thousand rupees shall be cognizable by a Court of Small Causes. Proviso to Sub-section (2) of Section 8 of the Karnataka Act 11 of 1964 is not relevant for our purpose. Hence, it is not referred to. Section 9 of the Karnataka Act 11 of 1964 further provides that save as expressly provided by this Act or by any other law for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable. Thus, the total effect of Sections 8 and 9 of

the Karnataka Act 11 of 1964 is that Section 8 bars the jurisdiction of the Court of Small Causes to take cognizance of the suits specified as excepted from its purview, whereas Section 9 takes away the jurisdiction of other Courts in respect of the matters/suits which are triable or cognizable by the Court of Small Causes. The Entries in the Schedule relate to matters/suits which are excepted from the purview of the Small Causes Court. There is no doubt that Entry No. 4 excludes the jurisdiction of the Small Causes Court from dealing with a suit for possession of immovable property or for recovery of an interest in such property but not including a suit for ejectment subject to satisfying Clauses (a), (b) and (c) of the Entry No. 4 in the Schedule. The last Entry namely Entry No. 40 provides that a suit the cognizance whereof by a Court of Small Causes is barred by any law for the time being in force, is also excepted from the purview of the Small Causes Court.

6. Reliance is also placed on the decisions of the Supreme Court reported in *Badri Prasad Jagan Prasad v. Commissioner of Income Tax, Lucknow* AIR 1986 SC 359, *Shaukat Hussain alias Ali Akram and Others Vs. Smt. Bhuneshwari Devi (Dead) by Lrs. and Others*, and *Mahadeo Prasad Singh and Another Vs. Ram Lochan and Others*,

7. It is not possible to accept the contention that as there is no provision in the Karnataka Act 11/1964 for transferring a decree of a Small Cause Court to any other Court for execution, therefore, the decree of a Small Causes Court cannot be transferred to any other Court for execution. In this regard, it is relevant to bear in mind that the Karnataka Act 11/1964 is only intended to provide for a uniform law relating to Court of Small Causes in the State of Mysore, now the State of Karnataka. The Act only provides for establishment and administration of Small Cause Courts and the jurisdiction of Courts of Small Causes. The procedure to be followed by a Small Cause Court in respect of the cases filed before it, and all other matters connected thereto including execution of decree are governed by the Civil Procedure Code. Therefore, transferring of a decree from the Court which has passed it to another Court is a matter for which there is a provision in the C.P.C. A person who has obtained the decree from a Small Cause Court can request that Court either to execute it or to transfer the same to another Court for execution. (See Sections 38 and 39 of the C.P. Code). It is the right given to the decree-holder. Therefore, the absence of a specific provision in the Karnataka Act 11/1964 similar to the one contained in Presidency Small Cause Courts Act will not in any way affect the jurisdiction of Small Causes Court to transfer the decree to another Court, as may be requested by the decree-holder and the jurisdiction of a transferee Court to execute it.

8. Of course in this connection, we have to bear in mind that the transfer of a decree passed by a Small Cause Court cannot be to any other Court. The transferee Court must be a Court of competent jurisdiction. The position that was obtaining prior to Central Act 104/1976 was that there was no such restriction imposed on the jurisdiction of a Court of Small Causes for transferring the decree

for execution. Section 39 of C.P.C., before it was amended by Central Act 104/1976, provided that the Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court. The result was that the decree of a Small Cause Court was even being transferred to a Court which had no pecuniary jurisdiction/competence to deal with the claim involved in the suit in which the Small Cause Court passed a decree. Therefore, the situation led to several conflicting decisions. The legal position became uncertain.

9. SHAMSUNDER v. ANATH BANDHU ILR 1910 Cal 574, DURGA CHARAN v. UMA TARA ILR 1889 Cal 465 and Firm Ganeshdas Badrinarain Vs. Amuluk Chand Oswal, took a view that a decree cannot be transferred to a Court if the amount or the value of the decree exceeded the pecuniary jurisdiction of that Court; whereas in ABDULLA SAHEB v. AHMED HUSSAIN SAHEB AIR 1914 Mad 206 a contrary view was expressed. It was held that a decree sent on the application of the decree-holder u/s 39(1) could be executed because the Section 39(1) did not contain any such limitation. Therefore, the High Court of Madras took a view that there could not be any embargo on the jurisdiction of the Court to execute the decree transferred to it. Contrary view was taken in Mt. Anchahi Vs. (Firm) Birjmohan Lall, Madan Lall and Others, Matrumal Vs. Madanlal Gourishankar, RUSTOMJEE v. MAHADEV, AIR 1940 Bombay 277. It was held that the value of the suit in which the decree was passed must be within the pecuniary jurisdiction of the Court to which the decree was proposed to be sent. In addition to these three views, there was also another view expressed in SHANTI LAL v. JAMAI KUER AIR 1940 All 318 in which it was held that the decretal amount determines pecuniary jurisdiction. The Supreme Court in Merla Ramanna Vs. Nallaparaju and Others, held that the Court which passed a decree does not actually lose its jurisdiction to execute it by reason of the subject matter thereof being transferred subsequently to the jurisdiction of another Court. The Court to which the subject matter of the decree is transferred acquires inherent jurisdiction over the same by reason of such transfer and that if it entertains an execution application with reference thereto, it would at the worst be an irregular assumption of jurisdiction and not a total absence of it, and if objection to it is not taken at the earliest opportunity, It must be deemed to have been waived, and cannot be raised at any later stage of the proceedings. Of course, the point considered by the Supreme Court in Merla Ramanna Vs. Nallaparaju and Others, is not relevant for our purpose.

10. Having regard to the uncertain position that prevailed as to execution of a decree transferred by the Court which has passed it to another Court, the Law Commission of India took a serious note of it and made a recommendation for amendment to Section 39 of the Act in its 27th Report (C.P.C) December 1964. While dealing with Section 39, the Law Commission has recommended thus:

1. At present, there is a conflict of decisions on the question whether (i) the transferee Court must be a Court of competent pecuniary jurisdiction; and (ii) if

so, whether the competence should be judged with reference to the decree or the suit.

2. One view is, that provisions of this Section are controlled by Section 6 and a decree cannot be transferred under Sub-section (1) for execution to another Court if the amount or value of the decree exceeds its pecuniary jurisdiction. See the under mentioned cases.

The contrary view was taken in a Madras case, where the decree was sent on the applications of the decree-holder. Section 39(1), it was said, does not contain any such limitation, though Section 39(2) does.

3. It has also been held, that the value of the suit in which the decree was passed must be within the pecuniary limits of the jurisdiction of the Court to which the decree is proposed to be sent. See the under-mentioned cases.

For a different view, to the effect that the decretal amount determines pecuniary jurisdiction, see the under mentioned cases.

4. See also the discussion about the Section in a recent Supreme Court case.

5. It is considered, that the position should be made clear and that the transferee Court must have pecuniary competence to deal with the suit in which the decree was passed; amount of the decree is immaterial, as pecuniary jurisdiction of a Court is ordinarily judged with reference to the nature of the claim in the suit, and not the nature of the relief decreed. Hence the amendment.

In Section 39(1) of C.P.C., the following words "competent jurisdiction" came to be inserted by Central Amendment Act, 1976 (104/1976). The Object and Reasons stated in support of this amendment are also relevant for our purpose. The Object and Reasons are as follows:-

"Section 39 of the Code provides for the transfer for execution of a decree by the Court which passed the decree to another Court. There is a conflict with regard to this Section as to whether -

- i) the transferee Court must be a Court of competent pecuniary jurisdiction; and
- ii) If so, whether the competence should be judged with reference to the decree or suit. The Section is being amended to clarify" the position by providing that the transferee Court must have pecuniary competence to deal with the suit in which the decree was passed."

Thus it is clear that the object with which the Law Commission recommended for the amendment of Section 39 of the C.P.C., and the object with which the Section 39 of C.P.C., came to be amended was only to remove the conflict that was prevailing among the Decisions of the various High Courts on the question as to whether the transferee Court should have pecuniary jurisdiction to try the claim involved in the suit or the sum for which the decree is passed. Therefore, it is clear from the Objects and Reasons, referred to above, that the words

"competent jurisdiction" came to be inserted in Section 39 of the C.P. Code only to make it clear that the transferee Court must have pecuniary competence to deal with the suit and nothing else. When the very object of inserting the words "competent jurisdiction" is to clarify the aforesaid position and it only relates to competence of a pecuniary jurisdiction of a transferee Court to deal with the suit, Sub-section (3) of Section 39 which is added by the very same amendment Act 1976 (104/1976) and which is only intended to explain the words "competent jurisdiction" inserted in Sub-section (1) of Section 39 of the C.P. Code cannot be construed in a different way. Therefore, Sub-section (3) of Section 39 of the C.P. Code can only be read as meaning that a Court shall be deemed to be Court of competent jurisdiction if at the time of making application for transfer it had the pecuniary competence to try the suit. Cases are not wanting where in between the date of making an application for transfer of a decree and passing an order transferring the decree, transferee Court ceasing to have jurisdiction to try such suit in which decree is passed due to reducing the quantum of pecuniary jurisdiction. Therefore, one of the objects of Sub-section (3) of Section 39 in explaining the words "competent jurisdiction" is to ensure that the pecuniary competence of the transferee Court must be judged with reference to the date of the application made for transfer. If Sub-sections (1) and (3) of Section 39 are read keeping in view the objects and reasons for introducing the amendment and the object of the Law Commission in making such a recommendation, there will not be any difficulty in coming to the conclusion or to put it in other words, there is no escaping from the conclusion, that the amendment, is only intended to provide, and it provides, that the transferee Court must have pecuniary jurisdiction to try the suit at the time the application for transfer of a decree is made. If that be so, the amendment effected by Uttar Pradesh Legislature by substituting Sub-section (3) of Section 39 of the Act becomes unnecessary. Whenever the law is vague or it is represented to be vague, the vagueness can be removed or clarified by way legislation or by way of judicial pronouncement. Therefore, we are of the view that though it is recommended to us that a suggestion be made to the State Legislature to amend or substitute Sub-section (3) of Section 39 of the C.P.C., in the manner it has been done by Uttar Pradesh Legislature, such substitution is only intended to clarify the law. As we have clarified the legal position as indicated above, it is not necessary to make any such suggestion.

11. The decree passed by a Small Causes Court cannot at all be executed by it against immovable property. Therefore, it is contended by Sri S.P. Shankar, learned Counsel for the Judgment-Debtor, that as the decree is passed by the Small Cause Court which has no jurisdiction to proceed against an immovable property as such, it cannot at all be executed even by a transferee Court against immovable property. This contention ignores the fact that the transferee Court is not a Small Cause Court and its jurisdiction is not subjected to any such limitation. The decree passed by Small Cause Court does not suffer from any such limitation. It can be executed by the transferee Court just like any other

decree and in the same manner in which the decree passed by it is executed. No such limitation is attached to the jurisdiction of a transferee Court. Firstly, it is not a Small Cause Court. Secondly, Section 42 of C.P.C., specifically provides that the transferee Court can execute the decree in the same manner as if it had passed the decree by itself. So it follows that the transferee Court if it has got pecuniary competence to decide the suit in which the decree transferred for execution, is passed, it can execute the decree of a Court of Small Causes even against the immovable property. The limitation imposed on the jurisdiction of Small Causes Court does not affect the decree passed by it, when it is "transferred to the Court other than a Small Cause Court for execution. As such it can be executed against immovable property. The limitation imposed on the jurisdiction of a Small Cause Court regarding execution of a decree, will not operate on the jurisdiction of the Court to which such decree is transferred for execution in view of the provisions contained in Section 42 of the C.P. Code. In the absence of Section 42 of the C.P.C. probably the contention of Sri S.P. Shankar, learned Counsel for the Judgment-Debtor could have gained ground. In order to avoid such a contention and make the decree executable against immovable property, and to enable the decree-holder to realise the fruits of the decree, Section 42 is provided in the C.P.C., as otherwise in many cases a person obtaining a decree from a Small Cause Court if the movable property held by the Judgment-debtor was found to be inadequate were to go without realising the decree. In many cases, it is common knowledge that whenever an attachment of movable property is sought by the decree-holder by the time the Bailiff goes to effect attachment the movables are not found. Therefore, in order to meet such a situation and to make the decree passed by a Small Cause Court meaningful, the provision like Section 42 is provided in the C.P.C.

12. In *Mahadeo Prasad Singh v. Ram Lochan* the effect of U.P. Act 24/1954 was considered. By the U.P. Act 24/1954, Sub-section (1) of Section 42 of the CPC was amended. Sub-section (1) of Section 42 of the C.P. Code, after it was amended by U.P. Act 24/1954 read as under:

"The Court executing the decree sent to it shall have the same power in executing such decrees as the Court which passed it. All persons disobeying or obstructing the execution of the decree shall be punished by such Court in the same manner as if it had passed the decree and its order in executing such decree shall be subject to the same Rules in respect of appeal as if the decree had been passed by itself."

In that case the decree was passed by a Small Cause Court which was transferred to the Court of Munsiff, Varanasi for execution. The decree was executed against immovable property of the Judgment-debtor which was sold in execution and was purchased by the decree-holder on July 20, 1956. The sale was confirmed on August 29, 1956. The sale certificate was issued on 8th September, 1956. Thereafter the Judgment-debtor died. The sons of the Judgment-debtor instituted a suit for declaration that they are in possession of

the suit property as Bhoomidar and in the alternative claimed the relief of possession on the same ground on which the declaration was sought.

13. The principal question that fell for consideration before the Supreme Court was as to whether the High Court was right in holding that the execution sale of the land in dispute was totally without jurisdiction and null and void. The Supreme Court on considering the effect of the amendment of Sub-section (1) of Section 42 of the Act, as amended by U.P. Act 24/1954, which held the field on the date of sale, held as follows:

"Thus, for the words "as if it had been passed by itself occurring in the first sentence of Sub-section (1) of Section 42, the Amending Act 24 of 1954 substituted the words "as the Court which passed it". The effect of such substitution was that the powers of the transferee Court in executing the transferred decree became conterminous with the powers of the Court which had passed it. The result was that if the power of the transferor Court to execute its own decree were in any respect restricted, the same restriction would attach to the powers of the transferee Court in executing the transferred decree; notwithstanding the position that the powers of the transferee Court in executing its own decree were not so restricted."

xxx xxx xxx Thus, the decree-holder's right to make an application for transfer of his decree u/s 39(1)(d) is a mere procedural right. The Court of Small Causes could in its discretion, for reasons to be recorded, refuse to transfer it to the Court of the Munsiff. In other words, the decree-holder had no vested or substantive right to get the decree transferred to the Court of the Munsiff for execution. The first limb of the issue is therefore answered against the appellant.

As regards the second limb of the issue, we find ourselves entirely in agreement with the High Court that the provisions of Section 51 are merely procedural in character. A decree-holder gets a right to execute the decree only in accordance with the procedure provided by law in force at the time when the execution is sought. If a mode of procedure different from the one which obtained at the date of the passing of the decree, has been provided by law, the decree-holder is bound to proceed in execution according to the altered procedure.

The Amendment Act XXIV of 1954 had taken away the power of the transferee Court to execute the transferred decree by attachment and sale of the immovable property by making it conterminous with that of the transferor Court which, in the instant case, was the Small Cause Court and in view of the prohibition contained in Order 21, Rule 82, Code of Civil Procedure, had no power to execute its decree by sale of immovable property. That being the position, the Court of the Munsiff to whom the decree had been transferred for execution, had also no jurisdiction to order sale of the immovable property of the Judgment-debtor. Thus considered, the sale of the immovable property ordered by the Munsiff in execution of the decree of the Court of Small Causes transferred to him, was wholly without jurisdiction and a nullity."

The amendment effected by U.P. Act 24/1954 was deleted by another U.P. (Amendment) Act 14/1970. Consequently, the limitation placed on the jurisdiction of the transferee Court to execute the decree transferred to it was removed but the said amendment was not given retrospective operation, therefore, the Supreme Court in this connection observed thus:

"Before we part with the Judgment, we may, however, note that the amendment made by the U.P. Act XXIV of 1954 was deleted by another U.P. (Amendment) Act XIV of 1970, and the unamended Sub-section (1) of Section 42, as it existed before the amendment of 1954, was revived. But, this Amendment Act (XIV of 1970) was not given retrospective operation. It did not affect the previous operation of the Amendment Act XXIV of 1954 or anything suffered or done thereunder."

14. Thus, the Decision in Mahadeo Prasad Singh's case turned upon the U.P. Act 24/1954 which amended Sub-section (1) of Section 42 of the C.P. Code. However, it is possible to infer from this Decision that in the absence of any such amendment, as effected by U.P. Act 24/1954, amending Sub-section (1) of Section 42 of the C.P. Code, the decree passed by a Small Cause Court transferred to any other Court of competent jurisdiction other than a Small Cause Court, can be executed by the transferee Court as if it had been passed by itself. In other words, the restriction attached to the jurisdiction of Small Cause Court for attachment and sale of immovable property of the Judgment-debtor will not be applicable to the Court to which a decree passed by the Small Cause Court is transferred for execution if that Court (i.e., transferee Court) is not a Small Cause Court.

15. However, Sri Shankar, learned Counsel for the petitioner, tried to persuade us to hold that the position that was obtaining in U.P. by reason of U.P. Act 24/1954 is obtaining today by reason of Sub-section (3) of Section 39 of the C.P.C., as amended by Central Act 104/1976. Therefore, it is contended by the learned Counsel that the decision in Mahadeo Prasad Singh's case holds good as per the provisions of Sections 39 and 42 of the C.P.C. standing as on today. In this regard, we have already pointed out that the words "competent jurisdiction" and the scope of Sub-section (3) of Section 39 of the C.P. Code would only mean that the transferee Court could have a pecuniary competence to deal with the suit claim and the pecuniary competence of the transferee Court to deal with the suit claim should be determined with reference to the date on which the application is filed for transfer of a decree for execution. In Para 36 of the Judgment in Mahadeo Prasad Singh's case which is reproduced above, the Supreme Court has indicated that it would have upheld the sale if only the U.P. (Amendment) Act 14/1970 was given retrospective operation. Hence, we are of the view that the decision in Mahadeo Prasad Singh's case cannot be of any assistance to the petitioner.

16. In *Shaukat Hussain @ Ali Akram v. Smt. Bhuneshwari Devi* the transferee Court passed an order staying the operation of the decree transferred to it for

execution. In this connection, the question arose as to whether the transferee Court in the light of the provisions contained in Section 42 of the C.P. Code could pass such an order. The Supreme Court held that the transferee Court had no power under the terms of the Order 21 Rule 29 of the C.P. Code to stay the execution of the decree pending in its own Court because the decree was not passed by that Court. The transferor Court which passed the decree did not cease to have jurisdiction to execute the decree as contemplated by Section 37 of the C.P. Code. The Supreme Court also further held that even assuming that the transferor Court ceased to have jurisdiction to execute the decree, the transferee Court did not become the "Court which passed the decree" merely because u/s 42 of the C.P. Code it could exercise all the powers of the original Court. Therefore, it was held that the order passed by the transferee Court staying the execution of the decree transferred to it for execution was without jurisdiction and as such it could not affect the validity of the sale held in contravention of stay order. Thus, it is clear that the said Decision has no bearing on the case on hand.

17. Lastly, learned Counsel for the petitioner placed reliance on a Full Bench decision of the High Court of Calcutta in *Mati Lal Shah Vs. Chandra Kanta Sarkar and Others*, A special emphasis was also laid on Paras 28, 29 and 30 of the Judgment. On the basis of this Decision, it was contended that there was no vested right in the decree-holder to have the decree passed by a Small Cause Court transferred to another Court and execute the same against the immovable property of the Judgment-debtor. It is contended that it is a matter of jurisdiction and not a matter of procedure. We have already pointed out that the provisions contained in Section 7, Order 50 of the C.P.C., and Sections 8 and 9 of the Karnataka Act 11/1964, do not exclude the application of the provisions of the C.P.C. regarding the transfer of a decree for execution, passed by a Small Cause Court. The transferee Court in the light of the provisions contained in Section 42 of the C.P. Code can execute the decree passed by a Small Cause Court and transferred to it for execution as if it had been passed by itself. Therefore, it is not possible to hold that the decision in *Motilal Shan's* case is of any assistance to the petitioner. In view of this, the ultimate conclusion reached by the Executing Court does not call for interference.

18. In *Maganahalli Basappa v. Doddamani Basavarajappa*, the decree passed by Small Cause Court was transferred to the Munsiff Court for execution. The Munsiff Court returned the said decree to the transferor Court on the ground that it was not a Court of competent jurisdiction within the meaning of Section 39 C.P.C. This order was challenged in a Revision before this Court. Kulkarni J., while allowing the Civil Revision Petition has held thus:

"The words "as if it had been passed by itself used in Section 42 C.P.C. clearly show that the transferee Court will have to proceed with the execution as if a decree transferred to it is one passed by itself. Therefore the powers of the transferee Court would be wider than those of the transferor Court because

Section 42 C.P.C. lays down that the decree transferred to it will have to be treated as one passed by itself...If the Small Cause Court decree is transferred to the regular Munsiff Court, the powers of the transferee Executing Court would be wider than those of the transferor Small Cause Court and it can execute the decree even by attaching and selling of the immovable property of the Judgment-debtor."

Though the ultimate conclusion reached in Maganahalli Basappa's case is correct, but some of the reasons given therein are too widely stated. Therefore, we are of the view that the decision in Maganahalli Basappa's case should be read in the light of the reasons given by us in this order.

19. For the reasons stated above, all the contentions of the petitioners are negatived. Consequently, the revision petition fails and the same is dismissed.