

(1986) 07 KL CK 0017
In the High Court Of Kerala
Case No : C.R.P. 606 of 1981

K.A. Luiz

APPELLANT

Vs

Abdul Rahiman and Another

RESPONDENT

Date of Decision : 09-07-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16, 20, 21

Citation : (1986) 23 KLJ 781

Hon'ble Judges : Balakrishnan, J

Bench : Single Bench

Advocate : P.F. Thomas and K.N. Pradeepkumar, for the Appellant; M.M. Abdul Azeez, for the Respondent

Judgement

Balakrishnan, J.—The short question that arises for consideration in this civil revision petition is whether a decree passed by a Court having no territorial jurisdiction over the subject matter of the suit is liable to be thrown out by the execution Court, despite the fact that the Defendant had not raised the plea of want of jurisdiction at the trial Court.

2. The facts of the case missing out details are as follows. The Plaintiff filed a suit for realisation of the amount due under a chitty transaction. It seems that the Defendants had executed a mortgage deed in respect of property situated within the jurisdiction of the Munsiff's Court, Perumbavoor as a collateral security for the due payment of the chitty amount. The Defendants were residing within the territorial jurisdiction of Munsiff's Court, Ernakulam. The Defendants defaulted the payment and the Plaintiff filed a suit before the Munsiff's Court, Ernakulam. The Plaintiff had sought for a charge upon the immovable property given as security. The Defendants filed written statement and contested the suit. They did not raise any plea of want of jurisdiction. The suit was decreed and a charge also was granted for the immovable property for the decree amount. Plaintiff filed execution application before the Munsiff's Court, Ernakulam for realisation of the amount. As the property upon which charge was granted situated within the local

limits of Munsiff's Court, Perumbavoor, the execution petition was transferred to that Court, for further steps.

2A. The judgment-debtors raised an objection that the Plaintiff had sought for a charge upon immovable property and therefore as regards the question of jurisdiction Section 16(c) of the CPC governs the matter and the suit of this nature should have been filed before the Munsiff's Court, Perumbavoor. The objection raised by the judgment-debtors prevailed with the Court below and the execution petition was dismissed. The present revision is against that order.

3. The suit in question was essentially a suit for recovery of money due under a chitty bond. Since this suit is essentially for recovery of money under a chitty bond, the Munsiff's Court Ernakulam had also got jurisdiction to try the suit as the Defendants were residing within the jurisdiction of that Court. It is true that in a decision of this Court in *Rosy Joseph v. Union Bank of India* AIR 1979 Ker 209 this Court held that in a case which is directly governed by Section 16(c) of the Civil Procedure Code, Section 20 cannot be called in aid and it is not permissible for the Plaintiff to institute a suit in any other Court than the one within the local limits of whose jurisdiction the mortgaged properties are situated. Even if it is argued that the Munsiff's Court, Perumbavoor alone had jurisdiction to try this case, such a plea was not raised by the Defendants at the time of the trial of the case. As the Defendants did not raise that objection in the earliest opportunity, they are not entitled to raise the same at a later stage. Section 21 of the CPC will be a total bar to raise such a plea. Section 21 reads:

21. Objection to jurisdiction.-(1) No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.

4. The objection regarding want of jurisdiction should be raised at the earliest opportunity. By not raising that question the Defendant was acquiescing to the jurisdiction of that Court. He cannot be heard to say at a later stage that the Court had no jurisdiction to try the suit. An objection regarding want of territorial jurisdiction is not to be treated on par with an objection regarding the competence of the Court to try the suit. If there is total lack of jurisdiction it

would go to the root of the matter and the same can be raised in execution Court, where as the plea of want of territorial jurisdiction can be waived by the parties. Because of the failure to raise that plea the Defendant is estopped from raising the same in the execution Court. The law should not extend its benign protection to such a person. This principle has been enshrined in Section 21 of the Civil Procedure Code.

5. In order to sustain the plea of want of jurisdiction it must be established that there has been a consequent failure of justice. In a case where the Defendant who filed the written statement and contested the suit without raising a plea of want of jurisdiction, it cannot be said that there was consequent failure of justice. No injustice was caused to the Defendants. If the Defendants had raised that objection, the plaint could have been returned for presenting before the proper Court. It is also important to note that the Defendants did not file an appeal and they admitted the finality of the decree.

6. In a final decree proceeding the Defendant raised a plea that the Court which passed the preliminary decree had no territorial jurisdiction over the subject matter of the suit. Repelling that contention raised by the Defendant the Supreme Court held in Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others, as follows:

In order that an objection to the place of suing may be entertained by an appellate or revisional Court, the fulfilment of the following three conditions is essential:

- (1) The objection was taken in the Court of first instance.
- (2) It was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement.
- (3) There has been a consequent failure of justice.

7. The Respondents have not raised objection regarding jurisdiction at the earliest opportunity, and it is not also established that there was consequent failure of justice. I do not think that the Court which passed the decree had total lack of jurisdiction. The Court below was not justified in dismissing the execution application. Hence the impugned order is not sustainable and the same is set aside.

8. The Court below shall proceed with the execution application filed by the revision Petitioner. The C.R.P. is disposed of as above. The parties to bear their costs.