
(1949) 08 MAD CK 0013
In the Madras High Court

Kakumanu Pattabhiramayya

APPELLANT

Vs

Mekala Mallareddi and Others

RESPONDENT

Date of Decision : 26-08-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 21

Citation : (1949) 2 MLJ 747

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The appellant instituted a suit in a Village Munsiff's Court which had no jurisdiction; and a decree was passed. In execution, he

sought to proceed against the property of the defendant. Various objections raised by the defendant to the execution of the decree were overruled

and execution ordered to proceed. In appeal to the Court of Subordinate Judge, a question was taken as to the jurisdiction of the Village Court;

and it was held that since the suit was instituted in a Court having no territorial jurisdiction, the decree was a nullity and could not therefore be

executed. The appeal was therefore allowed and the execution petition dismissed.

2. In revision, various contentions have been raised. The only argument of substance is that the lower appellate Court was wrong in holding that

the decree was a nullity. The learned Subordinate Judge overlooked the provisions of Section 21 of the Civil Procedure Code, which says:

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.

As pointed out in Raja Jaga Veera Rama Venkateswar Ettapa Nayakar Avergal, Zamindar of Ettyapuram Vs. Chidambaram Chetty and Others,

the question of territorial jurisdiction could not be raised in the executing court; for a person against whom a decree has been passed in a Court

which had no jurisdiction must raise the matter by way of an appeal or in revision. If he does not do so, he can- not raise the matter in execution or

by way of collateral proceedings. The lower appellate Court relied on a Calcutta decision which we have been unable to trace and on Sri Rajah

Kotagiri Madhavarao Bahadur, Zamindar and Others Vs. Vutukuru Papayya Rao, . This case was one in which a Revenue Court passed a decree

in a case over which it had no jurisdiction; and it was held by the learned Judges of this Court that the decree of the Revenue Court was a nullity.

That case, however, can be distinguished from the case under consideration, in that Section 21, Civil Procedure Code, did not apply to that case

as it does to this. Section 21, Civil Procedure Code, would not render valid a decree passed by a Revenue Court having no jurisdiction in a

matter that should have been brought in a Civil Court. Section 21 relates only to matters which affect the territorial jurisdiction of Courts.

3. The petition is therefore allowed, the order of the lower appellate Court set aside, and the order of the District Munsiff of Narasaraopet

restored. The respondents will pay costs to the petitioner in this Court and in the lower appellate Court.