

(1923) 08 MAD CK 0080
In the Madras High Court

K.C. Manavikraman alias Anjun Raja Avergal	APPELLANT
Vs	
N.C. Ananthanarayana Ayyan and Others	RESPONDENT

Date of Decision : 28-08-1923

Acts Referred:

Citation : 79 Ind. Cas. 806

Hon'ble Judges : Spencer, J;Devadoss, J

Bench : Division Bench

Judgement

1. In O.S. No. 6 of 1919, a decree for redemption of a kanom demise was passed by the Subordinate Judge of Ottapalam, on March 5th, 1920. An execution petition was filed on August 6th, 1920, for having a revaluation made of the improvements and for delivery of the property. On the 1st October, 1920, the place where the mortgaged property was situated, was transferred from the jurisdiction of the Ottapalam Subordinate Judge's Court, to that of the Palghat Subordinate Judge's Court. The Subordinate Judge of Ottapalam disposed of the execution petition, and in the course of so doing, he ordered on the 16th December, 1920, that there should be a re-valuation of the property, and on the April, 1921, he ordered that a warrant for delivery of the property should be issued, returnable on the 21st June 1921, and he adjourned the further hearing of the petition for disposal of other matters referred to therein.

2. On appeal to the District Judge, an objection was taken for the first time to the jurisdiction of the Subordinate Judge of Ottapalam to pass an order for delivery of the property, after the executing Court had lost jurisdiction over the locality, where the property was situated. This objection was upheld by the District Judge and the lower Court's order was set aside.

3. It is clear from the above dates that both at the time of passing the decree and at the time when the execution petition was presented, the Ottapalam Sub-Court had territorial jurisdiction over the subject-matter of the suit. It follows, therefore, that the Ottapalam Court was " the Court which passed the decree," within the definition, in Section 37(d), Civil Procedure Code. Section 38 provides

that:

a decree may be executed, either by the Court which passed it, or by the Court to which it is sent for execution.

Section 39 (c) provides that the Court, which passed the decree, may, on the decree-holder's application, send it for execution to another Court:

if the decree directs the sale or delivery of Immovable property, situate outside the local limits of the jurisdiction of the Court which passed it.

4. As Mukerjee, J, has observed in *Begg Dunlop and. Co. v. Jagannath Marwari* 11 Ind. Cas. 417 : 14 C.L.J. 228 : 39 C. 104 ; 16 C.W.N. 402. these provisions read together plainly indicate the general principle that no Court can execute a decree, in which the subject matter of the suit, or of the application for execution, is property situate entirely outside the local limits of its jurisdiction, and he quotes the Full Bench decision of the Calcutta High Court in *Prem Chand Dey v. Mohhoda Debi* 17 C. 699 : 8 Ind. Dec. 1008. in support of this elementary principle. We are not inclined to accept the suggestion that Section 38 makes it optional to a Court to execute its own decree, or to transmit it to the Court, which has territorial jurisdiction, if the original Court has lost jurisdiction over the subject matter of the suit. Although the words in Section 39 are "the Court may send it for execution," we think that in all cases the Court should send its decree to the Court which has territorial jurisdiction, if between the passing of the decree and the executing of it, the jurisdiction has passed to another Court. In this view of the case, it is unnecessary to canvass the correctness of the decision of the Full Bench of the Calcutta High Court, in *Prem Chand Dey v. Mohhoda Debi* 17 C. 699 : 8 Ind. Dec. 1008, to the effect that a Court has no jurisdiction, in execution of a decree, to sell property, over which it has no territorial jurisdiction, at the time when it passes the order of sale.

5. In the present case, the objection to jurisdiction was not taken in the executing court, but was taken for the first time in the grounds of appeal to the lower Appellate Court. The question, therefore, arises whether the submission by the defendant to the jurisdiction of the Ottapalam Subordinate Judge's Court cures its want of jurisdiction. There can be no doubt that u/s 21 of the Civil Procedure Code, such an objection will not be admissible, if it is not raised, to the trial of a suit by a Court, which has no jurisdiction over the place of suing. This section makes it imperative that such objection should be taken in the Court of first instance at the earliest possible opportunity, in any case, before issues are settled; and there must further be a consequent failure of justice for sustaining the objection.(

6. The respondents pleader has conceded that he submitted to the jurisdiction of the Ottapalam Court, so far as it issued directions for re-valuing the improvements, that being a matter, which the executing Court has jurisdiction to dispose of, u/s 6 of the Malabar Compensation for Tenants' Improvements Act. There is nothing in the statement put in by the first counter-petitioner at the

time of execution or in the B diary, to show that he took this objection, even at the stage when delivery was ordered.

7. The question whether Section 21 of the CPC is applicable to execution proceedings was referred to a Full Bench, in *Zamindar of Ettiyapuram v. Chidambaram Chetty* 58 Ind. Cas. 871 : 43 m. 675 : 12 L.W. 217 : (1920) M.W.N. 460 : 28 M.L.T. 75 : 39 M.L.J. 203.(F.B.), but was not directly decided. From the order of reference by Seshagiri Aiyar, J., and from the opinion of Sir John Wallis, C.J., it appears that both those learned Judges were inclined to extend the same principle to execution proceedings; but they decided the case upon other considerations, which were that in execution no party had a right to question the correctness of the decree, which was being executed, or the jurisdiction of the Court which passed it. Following this Full Bench decision, in C.R.P. No. 372 of 1921, one of us applied the same principle to an objection to jurisdiction, which was taken only in the executing court.

8. We are of opinion that the objection in the present case is one of form only and not of substance. The District Judge's order will only have the effect that the property will have to be re delivered to the defendant, and then it will be open to the plaintiff to apply to the Palghat Subordinate Court, for a fresh order for delivery, and all the formalities of issuing a commission and handing over property by means of an amin will have to be repeated, without any advantage to any one.

9. In the circumstances of the case, as the defendant took no objection at the time but submitted to the jurisdiction of the executing Court and only raised this objection, after the order had been passed, we think that the District Judge would have been well advised to have refused to allow such an objection to be taken in appeal and that he should have declined to interfere with the executing Court's order, upon an objection which was utterly devoid of merits.

10. In this view, we set aside the District Judge's order and restore the order of the Subordinate Judge with costs here and in the District Court.