
(1937) 05 CAL CK 0001
In the Calcutta High Court

Kirshna Prosanna Lahiri and Another

APPELLANT

Vs

Sarojini Debi

RESPONDENT

Date of Decision : 27-05-1937

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 38, 41

Citation : 174 Ind. Cas. 12

Hon'ble Judges : Costello, Acting C.J.; Edgley, J

Bench : Division Bench

Judgement

Edgley, J.—In this case an appeal has been preferred against the order of the Subordinate Judge of Rangpur, dated March 5, 1937, under which he directed that a certain decree should be sent for execution to the Deputy Commissioner of the Garo Hills in Assam. The facts of the case appear to be briefly as follows: The respondent, Sm. Sarojini Debi, obtained a decree in M.S. No. 91 of 1936 in the Court of the Subordinate Judge of Rangpur. During the course of the subsequent execution proceedings this decree was at the instance of the decree-holder transferred for execution to the Court of the Subordinate Judge at Goalpara who attached a certain fund belonging to the judgment-debtor which happened to be in the hands of the Deputy Commissioner, Garo Hills. Admittedly this attachment was illegal on the ground that the fund which was attached was situated beyond the territorial jurisdiction of the Goalpara Court; so on February 6, 1937, the decree holder applied to the Subordinate Judge of Rangpur for the issue of a precept u/s 46, Civil Procedure Code, for the attachment of the fund in question, and on the same day the Subordinate Judge issued directions that the precept should be sent to the Deputy Commissioner of the Garo Hills. A few days later, viz., on February 25, 1937, the decree-holder filed a petition in the Goalpara Court to the effect that she did not wish to continue the execution proceedings in that Court, and she requested that the requisite certificate of non-satisfaction might be sent back to the Court of the Subordinate Judge at Rangpur. On the following day, viz., on February 26, 1937, the Subordinate Judge of Goalpara withdrew the attachment order, dismissed the execution case and directed that

the Subordinate Judge, Rangpur, should be informed accordingly. The next day, viz., February 27, 1937, the decree holder applied to the Rangpur Court for an order directing the transfer of the decree to the Deputy Commissioner, Garo Hills, for execution, and she attached to her petition a certified copy of the order which the Goalpara Court had made on February 26, 1937. The Subordinate Judge of Rangpur heard the Pleaders for both parties at length on March 5, 1937, granted the decree-holder's application and directed that the decree in M.S. No. 91 of 1936 should be sent to the Deputy Commissioner, Garo Hills, for execution.

2. The first point raised by the learned Advocate-General on behalf of the appellants in this appeal is that the Court of Deputy Commissioner of the Garo Hills is not a Court within the meaning of Section 38, CPC and that in these circumstances the learned Subordinate Judge of Rangpur had no jurisdiction to make the order against which this appeal is directed, With reference to this point it appears that the Garo Hills form at Scheduled District, and this being the case, u/s 6 of Act XIV of 1874, the Government of Assam are empowered (1) to appoint officers to administer civil and criminal justice within the district, (2) to regulate the procedure of the officers so appointed, and (3) to direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment for the time being in force in such district shall be exercised or performed. In exercise of these powers the Government of Eastern Bengal and Assam issued a Notification on September 11, 1907, under which rules were prescribed for the administration of justice in the Garo Hills. This Notification is reproduced on Page 252 of the Manual of Local Rules and Orders made under enactments applying to Assam. Civil Rule 24 provides that the administration of civil justice in the Garo Hills is entrusted to the Deputy Commissioner, his assistants and the laskars. Under Rule 32 there is an appeal from the decision of the laskar or other duly appointed village authority to the Deputy Commissioner or his assistant duly authorized, and Rule 35 provides for an appeal to the Deputy Commissioner against the decision of any of his assistants. It is, therefore, clear that the Court of the Deputy Commissioner is the principal Civil Court in the Garo Hills, and we think that there is no substance whatever in the arguments that have been put forward on this point.

3. It is next urged that in any event the order transferring the decree was made without jurisdiction because the CPC is not in force in the Garo Hills. With regard to this point admittedly certain sections of the Civil Procedure Code, relating to the execution of decree, e.g., Sections 38, 39, 41, 42 and Order XXI, Rules. 4 to 9, are in operation in the Garo Hills. Further, it is provided by Rule 36 of the Civil Rules prescribed u/s 6 of the Scheduled District Act that the Court of the Deputy Commissioner shall be guided by the spirit but not be bound by the letter of the Civil Procedure Code. It, therefore, appears that Government by virtue of the authority conferred upon them under the provisions of the Scheduled District Act, have placed at the disposal of the Deputy Commissioner adequate powers and the requisite legal machinery for executing any decree which may be transferred to him for execution, and this being the case, it is not necessary that the whole

of the CPC should be in operation in the Garo Hills. In support of his argument in this point, the learned Advocate-General placed some reliance upon some observations contained in the judgment of Mookerjee and Holmwood, J.J. in *Prabhu Narain Singh v. Saligram Singh*.³⁴ C. 576 : 11 C.W.N. 622, in which the learned Judges stated that they were disposed to hold that the necessary and sufficient test of the applicability of Section 223, CPC of 1882, which corresponds to Section 38 of the present Code, was whether the provisions of the Code regulate the procedure of the Court which makes the decree as also of the Court to which it is transferred for execution. However, from the body of the judgment in that case it appears, that the learned Judges were merely considering the effect of The extension to the domains of the Maharaja of Benares of the provision in the CPC relating to the execution of decrees, and they held that as Chapter XIX. Civil Procedure Code, which relates to the execution of decrees, had been made applicable to those domains, the inference was irresistible that a decree of a Court established in the domain of the Maharaja of Benares might be transferred to and executed by the Court of the Subordinate Judge at Saran. In our view the judgment in the case in question can certainly not be regarded as an authority for the proposition that it is necessary that the whole of the Code should be in operation in the jurisdiction of the transferring Court and in that of the transferee Court. This contention, therefore, fails.

4. The next point which was taken by the learned Advocate-General is to the effect that it has not been shown that the conditions of transfer prescribed by Section 39, Civil Procedure Code, were present in this case and that the, transfer of the decree by the, Rangpur Court was, therefore, invalid. The case for the decree holder is to the effect that there was sufficient compliance with Section 39(b) of the Code. In this connection the learned Subordinate Judge seems to have considered the petitions filed by the parties dated respectively February 27, 1937, and March 5, 1937, both of which were supported by affidavits. These affidavits are not as satisfactory in form as one would desire to see, but, having regard to the circumstances of the case, we are not prepared to say that the learned Subordinate Judge had insufficient materials before him to enable him to decide that the conditions required by Section 39(b) of the Code had been fulfilled. He apparently believed the facts disclosed in the decree-holder's petition dated February 24, 1937, and these facts certainly indicated that the judgment-debtor's property within the jurisdiction of the Rangpur Court was insufficient to satisfy the decree; and as regards the existence of property belonging to the judgment-debtor within the local limits of the jurisdiction of the Deputy Commissioner, Garo Hills, it appears to have been admitted in the petition of the judgment debtor dated March 5, 1937, that such property in fact existed. We, therefore, think that there was a sufficient compliance with the requirements of Section 39 of the Code.

5. In conclusion, we have been asked to hold that, as the Goalpara Court had not actually sent a certificate of non-satisfaction to the Rangpur Court, it was not competent for the latter Court to transfer the decree to the Deputy

Commissioner, Garo Hills, before the receipt of such certificate. Section 41, Civil Procedure Code, provides that:

The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution or where the former Court fails to execute the same, the circumstances attending such failure.

6. It will be observed in the case now before us that, when the Subordinate Judge of Goalpara dismissed the execution case pending before him on February 26, 1937, he directed that the Subordinate Judge of Rangpur should be informed, and we find that a certified copy of this order was actually filed on the following day in the Rangpur Court with the decree-holder's petition in which he asked that his decree might be transferred to the Deputy Commissioner, Garo Hills, for execution. Learned Counsel for the appellant contends that the decree-holder's petition dated March 27, 1937, was not presented to the proper Court, and in support of his contention, he relies on the decision of the Privy Council in *Maharaja of Bobbili v. Raja Narasaraju* 43 I.A. 238 : 36 Ind. Cas. 682 : AIR 1916 P.C. 16 : 39 M 640 : 31 M.L.J. 300 : 18 Bom. L.R. 909 : 14 A.L.J. 1129 : 20 M.L.T. 472 : 24 C.L.J. 478 : 4 L.W. 558 : (1916) 2 M.W.N. 541 : 21 C.W.N. 162 : 1 P.L.W. 26(P.C), and on a judgment of this Court in *Jatendrakumar Das Vs. Mahendrachandra Banikya*, . Those cases may, however, be distinguished on the facts from the present case. They both relate to questions of limitation in connection with execution proceedings and in neither case does it appear that a certified copy of the order of the transferee Court had been supplied to the Court which passed the decree. The cases cited above were discussed by Mukerji and Guha, JJ. in *Rajani Kanta Pattadar Vs. Kazi Saiyed Golam Mahiuddin and Others*, , in which the learned Judges pointed out that the date which is of any relevancy in a case of this kind is the date of the certificate of the transferee Court and not the date of its arrival in the Court which passed the decree, and that a petition for execution in the latter Court would be competent provided that no other execution proceedings were pending elsewhere in respect of the decree even if the certificate of non-satisfaction had not arrived.

7. In our view the order of the Goalpara Court dated February 26, 1937, contained all the essentials of a certificate of non-satisfaction of the decree, and we think that this order, implemented as it was by the production of a certified copy of this order before the Rangpur Court on February 21, 1937, was a sufficient compliance with the requirements of Section 41, Civil Procedure Code. In view of what is stated above the decision of the lower Court is affirmed and this appeal is dismissed with costs. The respondent is released from the undertaking given by Mr. Sanyal on his behalf on March 20, 1937. Hearing fee five gold mohurs.

Costello, Ag. C.J.

8. I agree.