

(1912) 05 MAD CK 0015
In the Madras High Court

Maharaja of Bobbli

APPELLANT

Vs

Sree Raja Narasaraju and Another

RESPONDENT

Date of Decision : 02-05-1912

Acts Referred:

Citation : (1914) ILR (Mad) 231 : (1912) 23 MLJ 236

Judgement

1. The question is whether the plaintiff's application is barred by limitation. The plaintiff obtained a decree in O.S. No. 11 of 1903, on the file of

the District Court of Vizagapatam. The decree was transferred to the District Munsiff's Court of Parvatipur for execution on the 3rd of October

1904. The decree-holder got certain Immovable properties attached but the petition was dismissed on the 10th of March 1905 and no further

steps were taken in the District Munsiff's Court. The decree-holder then applied to the District Court at Vizagapatam on the 13th December 1907

for the sale of property attached by the District Munsiff. The petition was returned for amendment u/s 235 of the CPC of 1882. It was re-

presented without amendment and was then recorded without being registered. The decree-holder makes this present application on the 21st April

1910 for notice and for the realization of the amount by sale of the properties already attached. The question whether the last application is barred

by limitation depends upon the question whether the application of the 13th December 1907 to the District Court was in accordance with law and

to the proper Court.

2. The application of the 13th of December 1907 prayed for notice u/s 248 of the CPC of 1882 and the decision of the District Judge that such

application must be treated as a step-in-aid of execution is in accordance with

the decision in *Pachi-appa Achari v. Poojali Seenen* ILR (1905) M.

557.

3. The only question that remains therefore for decision is whether the application is made to the proper court. The District Judge decides that the

proper Court to which the application should have been made was the District Munsif's Court of Parvatipur to which the decree had been

transferred for execution and that therefore the present application is barred. u/s 223 of the CPC of 1882 (Section 38 of the present Code) the

Munsif's Court of Parvatipur to which the decree was sent for execution has to certify to the District Court of Vizagapatam the fact of such

execution or if the Munsif's Court fails to execute the decree the circumstances attending such failure. Till that is done the Munsif's Court retains its

jurisdiction to execute the decree. See *Abia Begam v. Muzafar Husain Khan* ILR (1897) A. 129. There is no doubt therefore that the Munsif's

Court had jurisdiction to entertain a similar application for execution in 1905. This was not denied in argument before us.

4. The next question is, whether that is the only court to which this application could be made or had the District Court also jurisdiction to order the

sale of the property. u/s 38 of the CPC of 1908 (Section 223 of the Code, Act XIV of 1882) the decree may be executed either by the Court

which passed or to which it is sent for execution. This in itself does not authorise the District Court of Vizagapatam which passed the decree to

execute it after it had been sent for execution to the Munsif's Court of Parvatipur. Section 39 states the condition under which a decree may be

sent to another court for execution. Under Clause (c) it may be sent for execution to another court if the court directs the sale or delivery of

Immovable property situated within the limits of the jurisdiction of the court to which it is sent for execution. The reason for the transfer of this case

is plain enough. By Clause (a) it may also be sent to another court if the judgment-debtor resides there or carries on business or work for gain

within the limits of the jurisdiction of that court. Under Clause (b) if the judgment-debtor has no property within the jurisdiction of the court which

passed the decree sufficient to satisfy the decree and has property within the limits of the jurisdiction of the court to which it is sent, the decree may

be sent to that court for execution. Under Clause (d) of Section 39 if the court

which passed the decree considers for reason which shall be recorded in writing that the decree should be executed by another court, then also the decree may be sent to another court for execution. This section does not say that after the decree has been sent to another court for execution, the court passing the decree may not simultaneously carry on execution proceeding, but it is plain enough that Section 39 intends that it is only for special reason that the decree should be sent to another court for execution. Thus, if there is sufficient property by the sale of which the debt may be realised ordinarily, no Court would be justified in sending the decree to another Court for execution. At the same time it is quite possible that concurrent execution may be necessary. If for instance a property within the jurisdiction of this Court which passed the decree is comparatively not of much value and the property within the jurisdiction of the Court to which the decree is sent is also not comparatively of much value then there can be no injustice to the judgment-debtor in carrying out the execution proceedings in both the Courts. If the decree sent for execution to two or more Courts to be executed at the same time the amount realised in the aggregate may be much higher than the judgment-debt, it would manifestly be an injustice to the judgment-debtor to allow the execution proceedings to go on at the same time. Furthermore, if the full amount of the decree is realised by two or three courts it is difficult to see how matters can be worked out--which of the sales is to be held valid and on what grounds and, what interests would be acquired by the purchasers at those sales. It is true the judgment-debtor may apply for stay of execution proceedings under Order 21, Rule 26 but he is not entitled to get the execution proceedings stayed. While therefore these sections may not show that concurrent execution cannot be carried on, they certainly show that such execution should be allowed only in exceptional circumstances. It is only when such execution is necessary in the interest of the decree-holder and when it can be carried on without hardship to the judgment-debtor that it ought to be allowed by the court which passed the decree. The other provisions show that such court apparently retains control over the execution proceedings. When the decree has to be executed against the representative of the judgment-debtor then according to Section 50 the application has to be made to that court which passed

the decree. When the decree has to be executed at the instance of the assignee of the decree-holder then also the application has to be made

under Order 21, Rule 16 to the same court. Then again, power is given to such court to stay the execution proceedings in the court to which

decree is sent for execution. When therefore concurrent execution is necessary the court which passed the decree may order it. But such order is

passed and permission is given to the decree-holder to execute the decree simultaneously in more than one court, he is not entitled to carry on

execution proceedings at the same time. The decision seems to be one of this view. In *Sarada Prasada Mullick v. Lachmipat Singh Doogur* (1872)

14 M.L.A. 529 their Lordships of the Privy Council held that it was open to a court to send the decree for execution to three courts at the same

time. This decision was passed under CPC of 1859. It may be pointed out that u/s 285 of that Code, the court was bound to transmit the decree

for execution to another Court, "unless there be special reasons to the contrary;" under the Codes of 1882 and 1908 it is optional with the court to

send it to another court. u/s 284 of the Code 1859 their Lordships pointed out that when the decree is sent for execution to another court

conditions may have to be imposed upon the decree-holder. This also shows the necessity of the exercise of judicial discretion. In the case in

Kristo Kishore Dutt v. Rooplal Dass ILR (1882) C. 687 also, there was an order by the court which passed the decree for simultaneous

execution. These decisions are authorities for the proposition that decree may be executed simultaneously in more than one court; but in all these

cases there were orders allowing such execution and the consideration that I have already set out would seem to indicate the necessity of

permitting concurrent execution before such execution proceedings can be carried out. In the present case after the decree was transferred for

execution to Parvatipur Munsif's Court that court had the seisin of the execution proceedings and it was bound to carry them out until execution

was obtained or further execution became impossible. There was no order of the District Court of Vizagapatam staying execution in that court for

the purpose of executing the decree in the Vizagapatam Court itself. I am therefore of opinion that the judge is right in holding that the application

for sale in 1907 should have been made to Parvatipur Munsif's Court and that the District Court was not "therefore the proper court to entertain

such an application. The present application is therefore barred, I confirm the order of the District Court and dismiss the appeal with costs ILR 28

M. 466.