
(1921) 08 CAL CK 0037
In the Calcutta High Court

Munshi Mahamad Kazem Ali and Another	APPELLANT
Vs	
Munshi Naimuddin Ahmed and Others	RESPONDENT

Date of Decision : 24-08-1921

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 150

Citation : 70 Ind. Cas. 210

Hon'ble Judges : N.R. Chatterjea, J;Chotzner, J

Bench : Division Bench

Judgement

1. This appeal arises out of proceedings in execution of a decree for money. The decree was passed by the Third Subordinate Judge's Court, 24-Parganas, in respect of a claim, the cause of action of which arose within Diamond Harbour. The previous application for execution of the decree was made in that Court. Subsequently, the business arising within the local limits of the Munsif of Diamond Harbour was assigned to the Fourth Subordinate Judge Court by the District Judge u/s 13(2) of the Bengal and Assam Civil Courts Act (Act XII of 1887). The present application for execution was made in the Fourth Subordinate Judge's Court, and a question was raised in the Court below whether the latter Court had jurisdiction to execute it. The question was answered in the affirmative by the Court below. The judgment-debtors have appealed to this Court, and it is contended on their behalf that u/s 13(2) of Act XII of 1887 the business is not transferred but is merely assigned to the Subordinate Judges, so that the case does not come u/s 150 of the Code, and that even if it does, the provisions of that section are subject to those of sections 37 and 38 of the Code.

2. Section 13 of Act XII of 1887 runs as follows:

(1) The Local Government may, by notification in the Official Gazette, fix and alter the local limits of the jurisdiction of any Civil Court under this Act.

(2) If the same local jurisdiction is assigned to two or more Subordinate Judges or to two or more Munsifs, the District Judge may assign to each of them such

civil business cognizable by the Subordinate Judge Munsif, as the case may be, as, subject to any general or special orders of the High Court, he thinks fit.

3. The effect of re-distribution of business by the District Judge, u/s 13 of Act XII of 1887, upon the power of the Court to execute decrees was considered in some cases under Act XIV of 1882. In the case of *Kali Pado Mukerjee v. Dino Nath Mukerjee* 25 C. 315 : 13 Ind. Dec. (N.S.) 211 A. obtained a decree against B. in the Court of the First Munsif of Howrah. After the decree, the local area within which the cause of action arose and the judgment-debtor resided, was transferred (evidently u/s 13 of Act XII of 1887) from the First to the Second Munsif. On an application by A. for the execution of his decree in the Court of the Second Munsif which allowed execution, it was held that the Second Munsif had no jurisdiction to entertain the application and allow execution, and that the application ought to have been made in the Court of the First Munsif which passed the decree. Similarly, in the case of *Bachu Koer v. Golab Chqnd* 27 C. 272 : 14 Ind. Dec. (N.S.) 180 it was held that the Court of a Subordinate Judge which passed a decree is the only Court competent to execute it, and that the District Judge is not competent u/s 13(2) of Act XII of 1887 to assign to them different areas so as to limit or define their respective jurisdiction, the local limits of their Jurisdiction being fixed by the Local Government u/s 13(1) of the Act.

4. In cases of transfer of local jurisdiction by order of the Local Government, it has been held, with reference to the provisions of Section 649 of Act XIV of 1882, that the application for execution of the decree may be made either to the Court which passed the decree, or to the Court to which the local jurisdiction has been transferred. See *Latchman Pundeh v. Maddan Mohun Shye* 6 C. 513 : 7 C.L.R. 521 : 5 Ind. Jur. 414 : 3 Ind. Dec. (N.S.) 333; *Jahar v. Kamini Debi* 28 C. 238 : 5 C.W.N. 150 and *Udit Narain Chaudhuri v. Mathura Prasad* 35 C. 974 : 12 C.W.N. 859

5. The Court below relied upon the provisions of Section 37(b) and Section 150 of the present Code. There were no provisions in the old Code corresponding to those of Section 150 of the present Code. Section 150 lays down: "Save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred."

6. We think that an assignment of business u/s 13(2) of Act XII of 1887 is not the same thing as transfer of business u/s 150 of the Code and, that being so, the provisions of Section 150 do not apply to the present case.

7. In *Aminuddin Mullick v. Atormoni Dasi* 57 Ind. Cas. 879 : 24 C.W.N. 899 : 47 C. 1100 there was no assignment of business by the District Judge u/s 13(2) of Act XII 1887 as in the present. It was held, in the circumstances of that case, that the Subordinate Judge's Court so far as it related to suits up to the value of

Rs. 2,000 must be taken to have been transferred to Second Munsif's Court, upon that Court being vested with powers to try suits up to Rs. 2,000 in value which evidently was conferred by the Local Government u/s 19(2) of Act XII of 1887. The question what effect the words "save as otherwise provided in the opening line of Section 150 has upon the power of the Court to which business is transferred to execute decree passed by the Court from which the business is transferred does not in the view we take of this case arise for decision.

8. The Fourth Subordinate Judge's Court did not pass the decree, nor was the decree sent to it for execution, and the Third Subordinate Judge's Court has not ceased to exist nor has ceased to have jurisdiction to execute the decree.

9. We are accordingly of opinion that the Fourth Subordinate Judge's Court had no jurisdiction to entertain the application for execution of the decree passed by the Third Subordinate Judge's Court in this case. The appeal is accordingly allowed, and the order of the Court below set aside. The application for execution of the decree will be returned to the decree-holder for presentation to the proper Court. No order as to costs. Let the record be sent down at once.