

(1947) 01 MAD CK 0006
In the Madras High Court

Nagi Reddi Seetharami Reddi and Another	APPELLANT
Vs	
Thikkavarapu Kotamma and Others	RESPONDENT

Date of Decision : 10-01-1947

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 48

Citation : AIR 1947 Mad 431 : (1948) ILR (Mad) 117 : (1947) 60 LW 130 : (1947) 1 MLJ 156

Hon'ble Judges : Bell, J

Bench : Division Bench

Judgement

Bell, J.—This appeal arises out of an execution petition No. 15 of 1945, filed in the District Court of Nellore, in O.S. No. 91 of 1932. The

decree-holders obtained their decree on 6th December, 1932, and in the course of subsequent execution proceedings it was, in 1933, transferred

for execution to the District Munsiff's Court, Nellore. On 4th December, 1944, within two days of the period of limitation laid down by Section 48

of the Code of Civil Procedure, the execution petition now in question was filed, the decree-holders asking: (a) that the decree transmitted in 1933

to the District Munsiff's Court should be ordered to be re-transmitted to the District Court; (b) for the issue of notice to the judgment-debtors and

(c) for attachment and sale of their Immovable properties. On 1st August, 1945, the District Judge made the following order:

It is open to the applicant to treat this petition as a step-in-aid of execution and invoke its aid when he files the next execution petition. But he

cannot ask me to treat this as a substantive execution, application when the decree has been transferred and there is no decree before me to

execute and the copy of the decree with the non-satisfaction certificate has not

been returned by the District Munsiff's. Court, Nellore. This petition is therefore incompetent and is hereby dismissed.

The District Judge is thus saying that while he would have made an order simpliciter for re-transfer of the decree, yet he could not allow a substantive execution application which E.P. No. 15 of 1945 was in form.

2. Counsel for the appellants has cited a number of cases in support of his contention that although a decree may have been transferred for execution to another Court, the decree-holder nevertheless can always present an execution petition to the Court which passed the decree. He contends therefore that despite the fact that the decree in the present case had been transferred to the District Munsiff and was still in his Court and that no certificate had been returned in accordance with Section 41 of the Code of Civil Procedure, yet the District Judge was competent to entertain it and ought to have entertained it in the fullest possible way as an execution petition.

3. He has cited a number of cases in Madras, viz., 21 CWN 162 (Privy Council) Thadapalli Pedda Subba Rao Vs. Lavu Ankamma and Another, and Seeni Nadan alias Virakumaru Nadan Vs. Muthusami Pillai and Others, which support the view, which indeed we think to be well settled, that an application may always be made to the Court which passed the decree for an order re-transferring it if it has been transferred elsewhere and that such an application is a step-in-aid of execution and prevents limitation running against the decree-holder. The first sentence therefore of the District Judge is correct.

4. The further question whether the District Court can execute the decree although the decree is in fact in the custody of another Court for execution, is not however to be answered in the appellant's favour upon the cases which have been cited to us. Three cases may be mentioned at once which at first sight are somewhat in favour of the appellant's contention. The first is Makkanlal v. Bhagwan Kuer (1936) A.L.J. 277. There a decree had been transferred for execution against certain property to a Court other than the Court which passed the decree and the property was attached in that other Court. Nevertheless, the decree-holder applied to the decreeing Court for execution by arrest of the judgment-debtor. It was held that while the law was well settled that execution against the same property

cannot take place in two Courts at one and the same time, there is, however, no bar to execution in one Court against the Immovable property and in another Court by other means. In *Fatechand Rampratap v. Jitmal Rupchand* I.L.R.(1929) 53 Bom. 844 a single Judge held that the Court which passes a decree has jurisdiction to pass orders in execution proceedings notwithstanding that the decree has been transferred for execution to another Court. An analysis of the learned Judge's reasoning however leads one to the view that the proposition which he intends to lay down is not quite as wide as expressed above and that his decision goes no further than saying that because a decreeing Court has made an order of transfer it has not thereby deprived itself entirely of jurisdiction in respect of the decree which it has itself passed. Reliance was placed on *Kanti Narain v. Madan Gopal* AIR 1935 Lah. 465 a Full Bench case, in which the material question which was asked was "" when a money decree has been transferred by the Court which passed it for execution to another Court, is an application to the first Court (a) to execute the decree, (b) to transfer it to another Court for execution and (c) to transfer it for execution to the same Court, not a valid application unless the proceedings taken in the other Court have first been reported and certified by that Court? ""In a lengthy judgment it was decided that it was a valid application and was a step-in-aid of execution so as to save limitation. By a majority it was held that even without a certificate by the Court to which the decree has been transferred, nevertheless the transferring Court could consider an application for re-transfer and could presumably therefore grant the application which in this particular case had been made to it. It is, however, quite clear from the judgment in this case that not until the end of the arguments did it become known to the Court that the application which it was considering was an application not only for re-transfer but also for execution. It appears to us, reading the judgment, that the arguments were based mainly on the application for transfer, and were in the main directed to the question whether or not, as such, it was a step-in-aid of execution.

5. An earlier case in the same High Court *Rulia Ram v. Diwan Chand* I.L.R.(1934) Lah. 80 which appears to deal directly with the point now

before us, was not accepted by the majority of the Full Bench, but it seems to

us, with great respect, to be preferable. In this case, it was held that, Where a decree is transferred for execution, the original Court is not wholly divested of its jurisdiction but can still re-transfer the proceedings to itself or to some other Court. Where, however, a decree is transferred for execution without any limitation, the original Court has no longer the power to execute the decree until and unless the decree is returned by the transferee Court with a certificate of non-satisfaction.

Reference is made in the judgment to *Jatendrakumar v. Mahendrachandra* I.L.R. (1933) Cal. 1176 where the same view was expressed after

considering the Privy Council decision in 21 CWN 162 (Privy Council) . In *Maharaja of Bobbili Vs. Sree Raja Narasaraaju and Another*, , it was held that:

A Court to which a decree is sent for execution is the only Court which has seisin of the execution proceedings, and it retains its jurisdiction to

execute the decree till it certifies u/s 41 of the Civil Procedure Code, to the Court which passed the decree, the fact of execution, or if it fails to

execute the decree, the circumstances attending such failure. In such a case the Court which passed the decree has no jurisdiction to entertain an

execution application unless concurrent execution had been ordered or proceedings in the Court to which the decree was sent, had been stayed for

the purpose of executing the decree in the former Court,

This case has been widely discussed on many occasions, and not least, in the Privy Council to which it went on appeal: 21 CWN 162 (Privy

Council) . However it may have been shaken in other respects, in our opinion, on this particular point it was not overruled, and the proposition

quoted above may be taken to be well-settled law in this Court.

6. In *Abdul Hafiz Saheb Vs. Abdul Sukkur Saheb and Another*, , for example, *Varadacharia J.*, accepts the proposition as being perfectly clear

and well understood (sic) says at page 604 after referring to the provisions applicable in the Code:

Taking these three provisions (viz., Section 38, Order 21, Rule 10, and Section 42, Civil Procedure Code) together, it seems to me that their

natural effect is that, unless in the order of transfer there is any express limitation of the purpose for which the transfer is made--assuming that such

limitation, if any, can control the provisions of the Code as to jurisdiction--there

is no reason to limit the powers of the Court to which a decree has been transferred for execution. Indeed it is possible to construe the observations of the Judicial Committee in 21 CWN 162 (Privy Council) as depriving the original Court of jurisdiction to execute its decree once the decree has been sent to another Court for execution till the certificate u/s 41 is received from the transferee Court.

This view, moreover, is supported not only in the Calcutta and Patna High Courts but also in many decisions of the Bombay High Court.

7. In the result we hold that the learned District Judge was right in saying that he has no power to execute this decree in the absence of a certificate from the Court to which it has been transferred. If the appellants had been satisfied with an order for re-transfer intending, on the re-transfer of the decree, to present an execution petition, they would have been in order. They insisted, however, on having their petition dealt with as a substantive execution petition and so rightly failed. In the circumstances of this particular case the result is that the appellants are completely out of time for presenting an execution petition, because of the limit prescribed by the Code and no order in their favour now for re-transfer of the decree would be of any use to them.

8. The appeal is therefore dismissed with costs.