

(1946) 07 MAD CK 0007
In the Madras High Court

P. Ramakrishna Ayyar and Brothers	APPELLANT
Vs	
Mandayapurath Unni Moopan	RESPONDENT

Date of Decision : 29-07-1946

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 35(1)

Citation : AIR 1947 Mad 36 : (1947) ILR (Mad) 81 : (1946) 59 LW 589 : (1946) 2 MLJ 315

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—This petition raises the question whether the Division Bench which decided the reference in Zamindar of

Vallur and Guaur v. Adinarajudu ILR (1896) Mad. 445 correctly interpreted the effect of Section 35(1) of the Provincial Small Cause Courts Act,

1887, in respect of execution proceedings. The interpretation which was placed upon the section has been accepted by this Court for half a

century and we see no reason to read it in a different way.

2. On the 17th February, 1933, the petitioner obtained a decree in a small cause suit tried by the District Munsiff of Tirur. At that time the District

Munsiff had jurisdiction to try small cause suits up to the value of Rs. 300. The decree was for Rs. 247-14-3. After the decree had been passed

the pecuniary jurisdiction of the District Munsiff in small cause matters was reduced to Rs. 100. This was the position when the decree-holder

sought to execute the decree on the 9th August, 1935

3. Section 35(1) of the Provincial Small Cause Courts Act reads as follows:

Where a Court of Small Causes, or a Court invested with the jurisdiction of a

Court of Small Causes, has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the Suit out of which a proceeding has arisen, were about to be instituted, would have jurisdiction to try the suit.

4. The decree-holder read the section as applying to proceedings in execution in view of the words "" any proceeding in relation to the case,

whether before or after decree."" In these circumstances he decided to apply to the Subordinate Judge of Calicut to execute the decree which was

for an amount then beyond the pecuniary jurisdiction of the District Munsiff's Court. Accordingly on the 9th August, 1935, he applied u/s 39, Civil

Procedure Code, for permission to execute the decree on the original side of the Subordinate Court and for an order directing the transmission of

the decree to the District Munsiff for execution. It is admitted that, if the Court having jurisdiction to execute the decree was the Subordinate

Court, the Subordinate Judge had power to transfer the decree for execution to the District Munsiff, notwithstanding the reduction of the pecuniary

jurisdiction of his Court in small cause suits. The Subordinate Judge granted the application of the decree-holder and by an order dated the 30th

September, 1935, he directed the decree to be transferred to the Court of the District Munsiff for execution. Unfortunately, the decree-holder did

not take steps to execute the decree and eventually it was returned by the District Munsiff to the Court of the Subordinate Judge.

5. On the 29th August, 1938, the decree-holder filed another application in the Subordinate Court. This was a similar petition to that filed by him

on the 9th August, 1935. Again the Subordinate Judge took the application on his file and ordered its transfer to the District Munsiff's Court. In

this case the order was passed on the 1st October, 1938. On the 24th September, 1941 the decreeholder applied to the Subordinate Court for an

order in execution. This application was rightly rejected on the ground that the decree had already been transferred to the District Munsiff's Court

for execution. On the 1st October, 1941, the decree-holder applied to the District Munsiff for an order of attachment in execution, but he did not

proceed with the matter and the application was "" closed "" on the 6th January,

1942. On the 17th November, 1943, he filed in the District

Munsiff's Court another petition for execution. This is the application which has given rise to the revision petition now before the Court.

6. The District Munsiff held that the application for execution was barred by limitation. In his opinion the proceedings before the Subordinate Judge

were all invalid because the power to execute the decree remained throughout in the District Munsiff's Court, notwithstanding the reduction in its

small cause powers. If this were the position, the petition for execution filed on the 17th November, 1943, was certainly out of time. On appeal the

District Judge of South Malabar agreed with the District Munsiff. He considered that the decision of the Calcutta High Court in *Abdus Sattar Vs.*

Mohini Mohan Das and Others, was directly in point and that it correctly stated the law. The decree-holder then applied to this Court to revise the

District Judge's order. The petition has been placed before a Full Bench for decision as it involves an important question of law.

7. In *Zamindar of Vallur and Gudur v. Adinarayadu* I.L.R.(1896)Mad. 445 a District Munsiff made a reference to this Court u/s 617 of the Civil

Procedure Code, 1882, which corresponds to Order 46, Rule 1 of the present Code. The facts there were on all fours with the facts in the present

case, except that there the extended powers of the District Munsiff had been completely withdrawn. In making the reference, the District Munsiff

expressed the opinion that by reason of Section 35(1) of the Provincial Small Cause Courts Act, 1887, he had no jurisdiction to hear an

application for execution of a decree passed in a small cause suit when the Court had lost its small cause powers. The opinion was accepted by

this Court in these words :

We are of opinion that execution proceedings in such suits must be had in that Court in which the jurisdiction now vests, that is the Subordinate

Judge's Court.

The parties were not represented at the reference and therefore the Court had not the advantage of hearing counsel. The question has, however,

been fully argued before us.

8. As we have seen, Section 35(1) relates to all proceedings, whether before or after the decree, in a small cause suit where the Court has ceased

to have jurisdiction in the case. All further proceedings must be taken in the

Court which would have jurisdiction if the suit were then about to be instituted. In our opinion, there is no justification for reading this section as excluding proceedings in execution. Execution is a proceeding after decree. If the Legislature had intended execution proceedings to be excluded from the purview of the section, it would surely have expressed itself differently. Moreover, Section 35 of the Provincial Small Cause Courts Act has much in common with Section 37(b) CPC and Section 37(b) relates only to execution.

9. It is well settled law, so far as this Province is concerned, that subsequent loss of territorial jurisdiction does not prevent the Court which passed the decree from executing it. See *Ramier Vs. Muthukrishna Aiyar and Others*, where all the earlier cases were discussed. A Bench of the Calcutta High Court applied the same principle in *Abdus Sattar Vs. Mohini Mohan Das and Others*, . This is the case on which the District Judge relied.

We consider that he was not justified in so doing. The Calcutta High Court was not considering the effect of Section 35(1) of the Provincial Small Cause Courts Act. It was considering the effect of Section 37, CPC in ordinary suits. In the case now before us the Court is not concerned with the question whether the principle in *Ramier Vs. Muthukrishna Aiyar and Others*, can be applied in a case falling u/s 37, Civil Procedure Code.

The only section which has application is Section 35 of the Provincial Small Cause Courts Act, and it says in words which leave no room for doubt

that where a Court with small cause powers has lost such powers, it cannot continue to exercise jurisdiction in a case which came before it when in

possession of those powers. By reason of this section the decree-holder had no other course open to him on the 9th August, 1935, than to apply

for execution to the Court of the Subordinate Judge. This he did, and having obtained permission to execute the decree on the original side of that

Court he rightly obtained an order transferring it to the District Munsiff's Court for execution. It follows that we hold that *Zamindar of Vallur and*

Gudur v. Adinarayudu 1 was correctly decided and that it governs this case.

10. The result is that the revision petition is allowed and the case remanded to the District Munsiff's Court with directions to the District Munsiff to

hear and decide the application for execution filed on the 17th November, 1943, in the light of this judgment. The petitioner is entitled to his costs

in the District Court and in this Court. The costs in the District Munsiff's Court will abide the result of the application for execution.