

(1956) 10 KL CK 0006
In the High Court Of Kerala
Case No : A.S. No. 202 of 1955

Packianathan Nadar Maryarui Nadar

APPELLANT

Vs

Mathevan Pillai Nanu Pillai

RESPONDENT

Date of Decision : 16-10-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 150, 37, 39
Travancore-Cochin Civil Courts Act, 1951 — Section 11, 12, 28, 4, 6

Citation : (1956) 10 KL CK 0006

Hon'ble Judges : Koshi, C.J;Varadaraja Iyengar, J;Kumara Pillai, J

Bench : Full Bench

Advocate : P. Govindan Nair, K.V.R. Shenoy and P.K. Kurien, for the Appellant;
T.N. Subramonia Iyer and S. Subramonia Iyer, for the Respondent

Judgement

Kumara Pillai, J.—This appeal relates to a matter in execution, and raises for decision a question on which there is a conflict of judicial opinion. The case has therefore been referred by a Division Bench, of which one of us was a member, for decision by Full Bench.

2. The decree sought to be executed was passed by the District Court of Nagercoil on 11-649541 in O.S. No. 190 of 1951. It was obtained on foot of a hypothecation bond executed by Defendant 1 in favour of the Plaintiff, and it allows him to realise the decree amount from Defendant and by the sale of the hypothecated proper tea which are situated in Kappiyara Pakuthy, Kalkulam Taluk., By virtue of the powers vested in them under the Travancore-Cochin Civil Courts -Act, 1951 (XXII of 1951) the Government of Travancore cochin established a new Subordinate Judge") Court at padmanabhapuram ; on 1-11-1954 with Jurisdiction over the whole of the Vilavancode Taluk and Kapiarayara, Valvachaghostam, Thuckalika and Thiruvithamcode Pikuthies of the Kalkulam Taluk.

With the establishment of that Court, the District Court of Nagercoil ceased to have ordinary original-civil jurisdiction in the Vilavancode Taluk and the Pakuthies

of the Kalkulam taluk mentioned above, and the ordinary original civil Jurisdiction which it was exercising in this area till then passed over to the new Subordinate Judge's Court. . On 4-6-1955 the decree holder in O.S. No. 190 of 1951 of the District Court of Nagercoil applied in the Subordinate Judge's Court, Padmanabha-puram, for execution of the decree in that Built. When notice of the execution petition was given to Defendant 1 he put in an objection petition objecting to the execution on various grounds. The Subordinate Judge overruled all the objections and dismissed Defendant I's petition on 4-8-1955. The present appeal is filed by Defendant 1 against the above order of dismissal.

3. One of the grounds of objection taken by Defendant 1 was that the Subordinate Judge's Court was not competent to entertain the application for-execution as the decree was not one passed by that Court or one transferred to that Court for execution by the Court which had passed it, namely the District Court of Nagercoil. The Subordinate Judge overruled this contention on the ground that within the area in which the Subordinate Judge's Court has jurisdiction under the Government notification establishing it and in which the decree schedule properties are situated both the District Court and the Subordinate Judge's Court have concurrent jurisdiction and therefore it is competent to either of those Courts to execute a decree of the other.

4. The view taken by the learned Subordinate Judge is plainly wrong. Although the decree-holder's learned Counsel contended that the new Subordinate Judge's Court was competent to entertain--the application for execution without a specific transfer of the decree to that Court by the District Court he did not support the view of the learned Judge that after the establishment of the Subordinate Judge's Court at Padmanabha-puram both the District Court and the Subordinate Judge's Court have concurrent jurisdiction over Kappiyara Pakuthy and other areas over which the Subordinate Judge's Court has been given Jurisdiction by the Government notification. His attempt was to support the learned Judge's order on other grounds which will be referred to presently. The Government notification establishing the Subordinate Judge's Court, Padmanabhapuram, is published at page 1350 of the Travancore-Cochin Government Gazette dated 26-10-1954. It is as follows:

By virtue of the powers vested in them under Sections 4, 6, 8 and 11 of the Travancore-Cochin Civil Courts Act, 1951 (XXII of 1951), Government are pleased to establish a Subordinate Judge's Court at Padmanabhapuram, on and from 1st November 1954 having jurisdiction over the whole of the Vilavancode Taluk and Kappiyara. Valvachaghostam, Thukalai and Thiruvithamcode Villages, (Pakuthies) of the Kalkulam Taluk.

Jurisdiction in respect of original suits and civil proceedings arising from the area mentioned in this notification was admittedly with the District Court of Nagercoil before the establishment Of the Subordinate Judge's Court. It is because the Government notification does not in terms take away this jurisdiction which the District Court had over the area and u/s 12 of the Travancore-Cochin Civil Courts

Act, District Courts and Subordinate _ Judge's Courts have jurisdiction over all original suits and proceedings of a civil nature that the learned Judge has taken the view that after the establishment of the subordinate Judge's Court, Padmanabhapuram, both the Subordinate Judge's Court and the District Court of Nagercoil have concurrent jurisdiction over the area mentioned in the notification. Section laid of the Travancore-Cochin Civil Court Act expressly provides that the jurisdiction referred on District Courts-and Subordinate Judge's Courts by that section is subject to the rules contained in the Code of Civil Procedure. The relevant portion of that section reads: " The jurisdiction of a District Judge or Sub ordinate Judge extends subject to the rules contained in the Code of Civil Procedure, 1908, to all original suits and proceedings of a civil nature".. Section" 15 of the CPC proboscides.

Every suit shall be instituted in the Court of? the lowest court competent to try it.

The gradation of Courts envisaged in this section is provided for by Section 4 of the Travancore Cochin Civil Courts Act. That section enacts:

There may be four classes of Civil Courts sub, ordinate to the High Court, viz., (i) the District Court.

(ii) the Court of the Subordinate Judge;

(iii) the Court of Small Causes; and

(iv) the Court of the District Munsiff.

Section 28 of the Civil Courts Act also pro-vides for the general control over all the Civil: Courts constituted under that Act in any District; being vested in the District Judge." There are therefore be no doubt- of the fact that the Sub ordinate Judge's Court is lower in grade than the. District Court: and it is quite clear from Section 12 of the T. C. Civil Courts Act read with Section 15 of the CPC that, when a new Sub ordinate Judge's Court is established in a particular area over which a District Court was exercising jurisdiction till then, all original suits arising thereafter from that area will have to be filed in the new Subordinate Judge's Court and not in the old District Court.

Therefore, even though the notification establishing the new Subordinate Judge's Court does not in terms take away or abrogate the jurisdiction which the District Court had till then over the area for which the Subordinate Judge's Court Is established, the effect of the establishment of the new Court would be to terminate the ordinary; original civil jurisdiction of the District Court in the area and to transfer that jurisdiction to the new Subordinate Judge's Court. The Subordinate, Judge's Court, Padmanabhapuram, and the District Court of Nagercoil do not, therefore, have concurrent jurisdiction in the same area.

The two decisions relied upon by the learned Subordinate Judge, Rameshwar Lal Bhagat V. Jagadeshwar Dayal Singh AIR 1919 Pat 367 (A), and Chaturbhuj Marwari v. Walker, 4 Ind Cas 510 (Cal) (B), also do not support his view that

even after the establishment of the new Subordinate Judge's Court the District Court continues to have original civil jurisdiction in the area for which the Subordinate Judge's Court has been established. 4 Ind Cas 510 (Cal) (B), does not touch this question at all. AIR 1919 Pat 367 (A); was a case in which a decree passed by the Court of a Special Subordinate Judge was sought to be executed. There was a dispute in that case as to?

Whether the court of the Special Subordinate Judge had ceased to exist after the decree was passed. - "Within the area in which the Court of the Special Subordinate Judge was functioning there was a permanent Subordinate Judge's Court at the time the decree was sought to be executed, and the application for execution was presented to the permanent Court on the ground that the special court had ceased to exist. The Allahabad High Court held that the special court had as a matter of fact ceased to exist and that the permanent Court was therefore competent to execute the decree u/s 37 (b) of the Code of Civil Procedure.

Alternatively the High Court also held that if the special Court was deemed to be in existence at the time the decree was sought to be executed, the special Court and the permanent Court would be having concurrent jurisdiction within the same area and so either of them was competent to execute the decree of the other. In AIR 1919 Pat 367 (A), the existence of the two Courts having concurrent jurisdiction in the same area was thus assumed as a fact, and the question whether the two Courts had concurrent jurisdiction in the same area did not arise for decision.

5. The rules in the CPC relating to the competency of courts to execute decrees are contained in Sections 37 and 38. Section 38 of the CPC is as follows:

A decree may be executed either by the Court which passed it, or by the court to which it is sent for execution.

Defendant 1's objection to the execution of the decree in this case by the Subordinate Judge's Court, Padmanabhapuram, is based on Section 38. According to him, the jurisdiction to execute the decree is conferred by the said section and under 1 a decree can be executed only by the Court which passed it or the Court to which it is sent for execution. As the decree in this case was passed by the District Court of Nagercoil, and neither the District Court nor the High Court has sent it for execution to the Subordinate Judge's Court, it is contended on behalf of Defendant 1 that the Subordinate Judge's Court is not competent to execute it.

Section 38, read above, undoubtedly supports this contention. But Section 37 gives an extended meaning in certain cases to the expression "Court which passed a decree", and the learned Counsel for the decree holder relies upon that section and Section 150 of the CPC to repel this contention and support the order of the learned Subordinate Judge dismissing Defendant 1's objection petition. Section 37 provides;

The expression "Court which passed a decree or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

And Section 150 is as follows:

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 disposed by or under this Code upon the Court from which the business was so transferred.

The learned Counsel for the decree holder contended that with the establishment of the Sub-ordinate Judge's Court Padmanabhapuram, the Dist. Court of Nagercoil has ceased to exist in the area for which the Subordinate Judge's Court has been established, or, at any rate ceased to have jurisdiction in that area and that as the Subordinate Judge's Court is the Court which has jurisdiction to try the suit in which the decree was passed if that suit was instituted on the date of the execution application, the Subordinate Judge's Court must be deemed u/s 37(b) to be the Court which passed the decree and would therefore be competent to execute the decree.

He contended that u/s 38 read in the light of Section 37 (b) the Subordinate Judge's Court, Padmanabhapuram, is the only Court competent to execute the decree and the District Court, Nagercoil, is not competent at all to execute it; & that, even if the District Court, Nagercoil, is deemed to have jurisdiction to execute the decree u/s 38 as the court which actually passed the decree/ the Subordinate Judge's Court also has concurrent jurisdiction to execute the decree by virtue of Section 37 (b).

Alternatively he urged that by the establishment of the Subordinate Judge's Court for the area, specified in the Government notification all business of the District Court of Nagercoil arising from that area has been transferred to the Subordinate Judge's Court and that therefore the Subordinate Judge's Court has obtained by virtue of Section 150 of the CPC all the powers which, the District Court had in respect of the transferred, work and would consequently be competent to execute the decree in this case.

6. Reading Sections 37 and 38 together it is clear that the CPC ordinarily permits execution of the decree only by the Court which passed the decree in the suit in the first instance (i.e. the first Court as distinguished from the appellate Court)

or the Court to which the decree is sent for execution, and that Clause (b) of Section 37 only provides for exemption from this ordinary rule in two special cases in which execution of the decree by the Court which passed it has become impossible. The first part of Clause (b) of Section 37 applies when the court which passed the decree has ceased to exist. The second part of the clause applies when the Court which passed the decree has lost or ceased to have jurisdiction to, execute it.

In both these cases execution of the decree by the Court which passed it would be impossible, and so the argument that on account of the operation of Clause (b) the Court which passed the decree and the Court which is substituted in its place will both be competent at the same time, or have concurrent jurisdiction, to execute the decree cannot be accepted.

According to the learned Counsel for the decree-holder, what is meant by the words "where the Court of first instance has ceased to exist" occurring in the first part of Clause (b) is "where the Court of first instance has ceased to exist in the area in which the decree schedule properties are situated or the cause of action for the suit had arisen", and so by the operation of the first part of the clause it is possible to have two Courts competent at the same time, or possessing concurrent jurisdiction, to execute the decree one being the Court which actually passed the decree and which is competent u/s 38 read by- itself to execute the decree, and the other being the Court which comes within the expression "Court which passed the decree" because of the operation of the first, part, of Clause (b) of S. W and which becomes competent under that clause read with Section 38 to execute the decree.

But, the first part of Clause (b) contains only the words "has ceased to exist", & the plain meaning of those words, is the complete extinguishment of the Court of first instance and not a mere withdrawal from it of a part of its territorial jurisdiction. As pointed out in Chivalry's Code, of Civil Procedure, 1951- edition, volume I, page 494, a Court does not cease to exist for the purpose of Section 37 (b) by ceasing to have local jurisdiction after the decree. Unless some words which are not there are read into the section after the words "has ceased to exist" it is not possible to accept the contention of the decree-holder's learned Counsel.

Similarly it was contended by the decree-holder that by the operation of the second part of Clause (b) also there could be two Courts competent at the same time to execute the decree one being the Court which actually passed the decree and the other being the Court which is empowered by the second part of Clause (b) when the Court which passed the decree has ceased to have jurisdiction.

This argument ignores the words "to execute it" following the words "to have jurisdiction", occurring in the second part of the clause. The words used in the clause are "ceased to have jurisdiction to execute it" (i.e., ceased to have jurisdiction to execute the decree) and not "ceased to have jurisdiction in the

area in which the decree schedule properties are situated or the cause of action for the suit arose". In other words the loss of jurisdiction required for the operation of the second part of Clause (to) is the loss of jurisdiction to execute the decree and not the loss of local or a part of the territorial jurisdiction.

7. On the strength of three cases decided by the High Court of Calcutta it is contended that, when the local jurisdiction is taken away from the Court which passed the decree after the date of the decree, that Court has ceased to have jurisdiction to execute the decree and that therefore under Clause (b) of Section 37 the Court which passed the decree and the Court to which the local jurisdiction has been transferred have concurrent jurisdiction to execute the decree and entertain the application for execution. The earliest of these cases is *Latchman Pundeh v. Maddan Mohun Shye*, ILR 6 Cal 513 (C). No doubt this was the position accepted by Garth C. J., in that case. The learned Chief Justice has said therein:

Now it is to be observed that this clause, which explains the meaning of the expression the Court which passed the decree, does not exclude the Court which originally passed the decree as being a Court to which the application should be made, but only includes another Court; and I take the meaning of the clause to be this, that where the Court which passed the decree has ceased to have jurisdiction to execute it, the application for execution may be made either to that Court, although it has ceased to have jurisdiction to execute the decree, or to the Court which, if the suit wherein the decree was passed were instituted at the time of making application to execute it, would have jurisdiction to try the suit.

But the other learned Judge, Field J., who eat with the learned Chief Justice has not accepted this position. In that case the application for execution was made to the Court which passed the decree and not to the Court to which the local jurisdiction had been transferred, and the question which arose for decision was whether the Court which passed the decree (which was in existence and which had jurisdiction to execute the decree had ceased to have jurisdiction by the mere transfer of the local jurisdiction from it.

The decision of both Garth O. J. and Field, was that in such circumstances the Court which passed the decree had not ceased to have jurisdiction to execute the decree. The observations of Garth C. J. extracted above were purely obiter and were not accepted by Field, J. They have also been dissented from in *Masrab Khan Vs. Debnath Mali alias Abhu Mali and Others*, to which reference will be made later. Regarding the meaning of the two expressions "ceased to exist" and "ceased to have jurisdiction to execute", Field J has said to ILR 6 Cal 513 (C):

The words in Section 649, which have reference to the Court which passed the decree ceasing to exist, refer to a class of cases not uncommon in these provinces, in which a Small Cause Court having been" in existence for a certain number of years has afterwards been abolished by an order of the Local

Government (see Section 3 of Act XI of 1865). The application for execution of a decree passed" by such an abolished court must now be made to the Munsiff who would have jurisdiction to entertain the suit in which such decree was made. If such suit were instituted at the time when application for such execution is made.

The words cease to have jurisdiction to execute it" in Section 649 were intended to meet such a case as the following: for example, where an Additional or Subordinate Judge, attached to more than one district, having passed a decree in one district, leaves this district and sits in another district under the provisions of Section 15 of the Bengal Civil Courts Act, such Additional Subordinate Judge is a Court. When such a Court is sitting in a district other than that in which the decree was passed, it has not ceased to exist, but it has ceased to have jurisdiction to execute that particular decree. Under the provisions of Section 649, application for execution can then be made to the Court which at the time of making the application would have jurisdiction to entertain the suit in which the decree was passed.

These passages make it absolutely clear that Field, J., was of the view that the first part of Clause (b) of Section 37 would apply only to a case in which the Court which passed the decree was not in existence at all and that the second part would apply only to a case in which the Court which passed the decree had ceased to have jurisdiction to execute the decree otherwise, than by mere transfer of local jurisdiction.

The two other Calcutta cases referred to are *Jahar v. Kamini Debi*, ILR 28 Cal 238 (E) and *Udit Narain v. Mathura Pershad*, ILR 35 Cal 974 (F). In both these cases the position that both the Courts which passed the decree and the Court to which local jurisdiction was transferred after the date of the decree have jurisdiction to execute the decree has been accepted. But the decisions in those cases are based on the assumption, that it was so decided in ILR 6 Cal 513 (C).

8. All these cases and the specific question whether two Courts can have concurrent jurisdiction to execute the decree by virtue of the provisions in Sections 37 and 38 of the Code of CPC have been considered in AIR 1942 Cat 321 (D). B.K. Mukherjea, J., who subsequently became Chief Justice of India, has said in that case:

Mr. Roy, however, relies on certain observations made by Garth, C.J. in course of his judgment, which were to the effect that the Court of the Munsiff of Katra could also be regarded as a Court which passed the decree within the meaning of Section 649 of the old Code of Civil Procedure, which corresponds to Section 37 of the present Code. In construing

3. 649r(now Section 37), CPC the learned Chief Justice observed as follows:

This clause which explains the meaning of the expression "the Court which passed the decree" does not exclude the Court which originally passed the

decree, as being a Court to which the application should be made, but only includes another Court; and I take the meaning of the clause to be this that when the Court which passed the decree had ceased to have jurisdiction to execute it, Misapplication for execution may be either to that Court, although it had ceased to have Jurisdiction to execute the decree, or to the Court Which, if the suit wherein the decree was passed were, instituted at the time of making the application to execute it, would have jurisdiction to try; the suit.

As it was not necessary to decide for purposes of that case as to whether the Katra Court was a competent Court to which the application for execution could properly be made, these observations could rank only as obiter, though, coming from such a high authority, they are entitled to the greatest respect. It is pertinent, however, to point out that Field, J., who sat with the learned Chief Justice did not endorse that view of the law, and, on the other hand, expressly held in course of his judgment that the Court at Manbazar did not cease to have jurisdiction to execute the decree within the meaning of Section 649 (now Section 37), Code of Civil Procedure, by reason of the alteration of the local limits of its jurisdiction.

Speaking for ourselves, we find it somewhat difficult to accept the interpretation which Garth, C. J., put upon Section 649, Code of Civil Procedure. It seems to us, that the word "includes" as used in the section, though it extends the meaning of the expression "Court which passed the decree" in one sense, does in; another sense restrict it, and that the effect of the word is to exclude, under the circumstances specified, in Clause (a) and Clause (b) of the section, the original Court and substitute for it another Court which, for purposes of the section, is to be regarded as the only Court which passed the decree. Thus, when a decree is passed in exercise of appellate jurisdiction as contemplated by Clause (a) of, Section 37, it cannot be said that the word "include" would not exclude the appellate Court which passed the decree & that both the original and the appellate Courts are proper Courts for execution to either of which an application for execution of the decree could be made. Similarly, to bring a case within the purview of Clause (b) of the section, it is essential that the Court which originally passed the decree has ceased to exist or to have jurisdiction to execute it, and then only can the other Courts, which would be entitled to try the suit if it was then instituted, be regarded as the Court which passed the decree. The other Court is substituted for and not added to the original Court, If the original Court has ceased to exist, no question arises of applying to it for purposes of execution. If it still exists, but has ceased to have jurisdiction to execute the decree, it is a contradiction in terms to say that it still remains a competent Court for purposes of execution. We cannot imagine how an application for execution could be made to the original Court, if it had ceased to have jurisdiction to execute the decree."

Referring to ILR 28 Cal 238 (E), his Lordship says at page 323 of the report:

It is not necessary to say anything further with reference to the case in ILR 28

Cal 238 (E) which was relied on by Mr. Roy. That case followed the opinion of Garth, C. J. in ILR 6Cal 513 (C), but expressly laid down that Section 649 (now Section 37), Code of Civil Procedure, would not apply when there was no transfer of jurisdiction u/s 13 XI), Civil Courts Act, but only a redistribution of business under Clause (2), of Section 13 of the Act. This decision, therefore far from supporting the contention of Mr. Roy is decidedly against him.

Even prior to the decision in AIR 1942 Cal 821 (D), the High Court of Madras also had taken this view. Reaffirming an earlier Full Bench decision in *Seeni Nadan v. Muthuswami* AIR 1920 Mad 427 (G), a Full Bench of that Court has held in *Ramier v. Muthukrishna* AIR 1932 Mad 418 (H), that too the mere transfer of territorial jurisdiction the Court which passed the decree does not lose the jurisdiction to execute it, and that therefore the Court to which the local jurisdiction is transferred cannot take the place of the first Court under Clause (b) of Section 37. Ramesam, J. has said in that case:

The learned Advocate contended that the word "jurisdiction" in Section 37 has two meanings: (1) the general territorial jurisdiction over the properties and (2) jurisdiction to execute the decree, and that after the notification the first Court had certainly, lost its territorial jurisdiction over the properties and therefore the first Court ceased to have jurisdiction and the second Court is the only Court that can be regarded as falling within the definition of the words "Court Which passed a decree", in Section 37.

But assuming for a moment that this distinction in the two meanings of the word "jurisdiction" can be supported, the distinction does not avail the learned Advocate because the words used in Section 37(b) are not merely "where the Court of first instance has ceased to have jurisdiction" In which case some countenance may be given to his argument, but they are "where the Court of first instance has ceased to have jurisdiction to execute it" that is, only when the first Court had lost jurisdiction to execute the decree that the second Court will take the place of the Court, which passed the decree by reason of the section.

This is the particular point which was dealt with by the Full Bench and the Full Bench held that the first Court never lost its jurisdiction to, execute the decree. Apart from the binding nature of the decision of the Full Bench, we entirely agree with the actual decision in that case, namely, that the first Court which passed the mortgage decree never lost its jurisdiction to execute the decree by reason of the later notification by which the mortgaged properties are taken off from its jurisdiction. If so, the first Court continues to be "the Court which passed a decree" within the meaning of Section 37 and the second Court cannot take its place.

This decision has been subsequently followed in another Madras case, namely, *Venkamamidi Balakrishnayya Vs. Nannapaneni Linga Rao*, to which reference will be made later. The argument of the decree-holder's learned Counsel that even if the District Court of Nagercoil is deemed to have jurisdiction to execute the

decree u/s 38 the Subordinate Judge's Court, Padmanabhapuram, also has concurrent jurisdiction to execute the decree by virtue of Clause (b) of Section 37 cannot therefore be accepted. The jurisdiction to execute the decree in this case must be either with the District Court of Nagercoil or with the Subordinate Judge's Court, Padmanabhapuram, and cannot be with both of them at the same time.

9. The next question for consideration is on which of these - two courts is the competent court to execute the decree. To make out also that it is the Subordinate Judge's Court and not the District Court which has the jurisdiction to execute, the decree, the decree holder's learned Counsel relied upon both parts of Clause (b) of Section 37. The argument based on the first part of Clause (b) is that as the District Court of Nagercoil has ceased to have jurisdiction in the area in which the decree schedule properties are situated after the establishment of the Subordinate Judge's Court Padmanabhapuram, the District Court "has ceased to exist in that area and that therefore, under the first part of Clause (b) of Section 37 the Court which is competent to execute the decree is the Subordinate Judge's Court, Padmanabhapuram.

It has already been pointed out in the preceding paragraph that what is required to attract the first part of Clause (b) of Section 37 is the abolition or total extinguishment of the Court which passed the decree and not the mere alteration of the local limits of its jurisdiction. Since the District Court of Nagercoil is still in existence it is not possible to hold that by virtue of the first part of Clause (b) of Section 37 the Subordinate Judge's Court has become competent to execute the decree.

The contention based on the second part of the clause also is equally untenable. What is required to attract that part is not the loss of local jurisdiction by the Court which passed the decree, but its loss of jurisdiction to execute the decree. The Supreme Court has said in *Merla Ramanna Vs. Nallaparaju and Others*, that - "it is settled law that the Court which actually passed the decree does not lose its jurisdiction to execute it by reason of the subject matter thereof being transferred subsequently to the jurisdiction of another Court".

After this authoritative pronouncement of the law, the jurisdiction of the Court which passed the decree to execute it cannot be questioned on the ground of a mere transfer of the local jurisdiction to another court. If the Court which passed the decree has jurisdiction to execute the decree even after the transfer of the local jurisdiction it would naturally follow that the second part of Clause (b) of Section 37 would not be attracted, for the part would be attracted only when the Court which passed the decree has ceased to have jurisdiction to execute it.

As the District Court of Nagercoil, which passed the decree in this case, has not lost the jurisdiction to execute that decree no other Court has acquired jurisdiction to execute the decree under the second part of Clause (b) of Section 37. This view is supported by the Full Bench decision in AIR 1932. Mad 418 (H),

and the decisions in Venkamamidi Balakrishnayya Vs. Nannapaneni Linga Rao, and Masrab Khan Vs. Debnath Mali alias Abhu Mali and Others,

10. An argument based on Section 39 of the Code of CPC was also advanced by the decree holder's learned Counsel to make out that the District Court of Nagercoil has ceased to have jurisdiction to execute the decree and that the Subordinate Judge's Court, Padmanabhapuram, was the Court competent to execute the decree under clause of Section 37 read with Section 38. When the decree is for the sale or delivery of immovable property situated beyond the local limits of the jurisdiction of the court which passed the decree, that Court has, under Clause (c) of Section 39 of the Code of Civil Procedure, to send the decree for execution to the Court within whose limits the property is situated. The relevant portion of Section 39 reads as follows:

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court:

(c) if the decree directs the sale or delivery of immovable property situate outside the local "limits of the jurisdiction of the Court which passed it....

The argument based on this section has been thus dealt with by Mukherjea, J. in AIR 1942 CaJ 321 (D):

A distinction indeed has been drawn In some cases between executing a decree and entertaining an application for its execution vide Sreenath Chakravarti and Others Vs. Priyanath Bandopadhyaya and Others, and it has been said that even if the original Court cannot execute the decree In the sense that it cannot do it effectively by selling a property which is beyond its territorial jurisdiction, it can certainly entertain the application itself and then transmit the decree for execution to another Court. In our opinion the expression "jurisdiction to execute it" as used in Section 37 (b), Code of Civil Procedure, does mean and include that competency of the Court to entertain an application for execution of the decree.

Even, if the circumstances of a particular case, a Court cannot effectively execute the decree that would not mean that it has Dessed to have jurisdiction to execute it. It still remains the competent. Court for purposes of execution, though the decree holder might have to apply for transmission of the decree to another Court for the purpose of obtaining the relief which he wants. This was the view taken by Field, J. in ILR 6 Cal 513 (C), and in that view we respectfully agree.

We are in respectful agreement with these observations: It may also be added that even though the properties directed to be sold by the decree are situated beyond the local jurisdiction of the Court which, passed the decree, that Court would still be competent to execute the decree as against the judgment-debtor personally if he could be found within the local limits of its jurisdiction and against his assets, if any, within that jurisdiction. There-: fore, in any view of the

case, it is not correct to say that the Court which passed the decree has ceased to have jurisdiction to execute it because the decree has to be sent to another Court for the sale of the properties directed to be sold by, it.

11. Lastly it was contended by the decree-holder's counsel that by the establishment of the Subordinate Judge's Court, Padmanabhapuram, all business of the District Court of Nagercoil arising from the area which was transferred to - the jurisdiction of the Subordinate Judge's Court has been transferred to the Subordinate Judge's Court, that such business would include applications made after the establishment of the Subordinate Judge's Court for execution of decrees passed by the District Court in respect of properties situated within the transferred area, and that therefore the Subordinate Judge's Court, which has acquired u/s 150 of the CPC all the powers of the District Court in respect of the said business, has jurisdiction to execute the decree.

Reliance was placed in support of this contention on two decisions, namely, *Abraham v. Kalloor Desiga Bank Ltd.*, 1952 Ker LT 294 : AIR 1952 Ker 390 (L) and *Muthukumara Pillai Vs. Thirunarayana Pillai and Another*, In 1952 Ker LT 294 : AIR 1952 Trav. C. 390 (L) the question which arose for decision was when the jurisdiction over a particular area was transferred from one Court to another whether u/s 150 of the CPC the application for execution of a decree of the first Court could be made to the transferee Court, and it was held in that case that since by the transfer of territorial jurisdiction from one Court to another all powers of the first Court are automatically transferred to the transferee Court, the application for execution made to the transferee Court was rightly made in the Court. The question is discussed at page 295 of the report and what has been said there is this:

By the transfer of territorial jurisdiction from one Court to another all the powers of the first Court are automatically transferred to the transferee Court. The provisions of Section 114 Travancore Code of Civil Procedure, (that section corresponds to Section 150 of the Indian: CPC Code) are mandatory in this respect. It is laid down in that section that where the business of any Court is transferred to any other Court the latter Court shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under the Code upon the Court from which the business is so transferred. When a portion of the territorial jurisdiction of the Changanacherry Munsiff's Court was transferred to the Thiruvella Munsiff's Court, the business of the Changanacherry Munsiff's Court, pertaining to such territorial jurisdiction has become transferred to the Thiruvella Munsiff's Court.

This is the view taken by Justice Pandalai also in *Muthukumara Pillai Vs. Thirunarayana Pillai and Another*, Following the observations of Wallis C. J. in AIR 1920 Mad 427 (G), it was held in *Muthukumara Pillai Vs. Thirunarayana Pillai and Another*, that Section 150 is intended to apply not merely to cases where there is a judicial transfer of special business but the section is in terms wide enough to authorise the Court to which the area had been transferred, including a fortiori

the business not directly depending on territorial jurisdiction, to entertain In the first instance any application which might have been made to the Court which passed the decree. But a different view has been taken in the Pull Bench decision in AIR 1932 Mad 418 (H). When the business of one Court is transferred from that Court to another Court it is the latter Court that has the power u/s 150 to deal with that business, and it follows necessarily from the section that the Court from which the business is transferred cannot deal any further with the transferred business.

..But as has been pointed out already the Supreme Court has held in (S) AIR 1956 SO 87 (J), that the Court which actually passed the decree does not lose its jurisdiction to execute it by reason of the subject matter thereof being transferred subsequently to the jurisdiction of another Court., If in spite of the transfer of local jurisdiction the Court which passed the decree is competent to execute the decree passed by it before the transfer of local jurisdiction, it must necessarily follow that the execution of such decrees will not form part of the business of the Court referred to in Section 150 as transferred to any other Court. If by the mere transfer of local jurisdiction a transfer of all the business of the Court, including execution of decrees already passed is also effected the Court which passed the decree and from which the local jurisdiction is transferred will not have jurisdiction any further to execute tire decree.

In the light of the Supreme Court decision referred to above, execution of the decrees passed before the date of the transfer of local jurisdiction cannot, therefore, be taken as a part of the transferred business contemplated in S. 150. The expression "business of the Court" must undoubtedly include the judicial work that was pending before it at the time of the transfer of local jurisdiction. It is now well settled that a mere change of local jurisdiction does not automatically transfer pending cases from the old Court to the new Court and that even after the change of local jurisdiction the old Court is competent to proceed with the trial of suits which were pending before it and which had arisen from the transferred area. Philips, J., has said in Chokkalinga Pillay Vs. Velayudha Mudaliar and Others, .

The jurisdiction of a Court consists in its power to entertain suits, and when once a suit has been properly entertained it is difficult to understand how that jurisdiction is removed unless it Is specifically so done by the order of a competent", authority.

Once the suit has been entertained, the" remaining proceedings taken therein are not taken by reason of any particular territorial Jurisdiction, but in the exercise of the powers vested in the Court to try suits generally and consequently the only time at which the territorial jurisdiction comes into operation is at the time of filing the suit. Once the Court has seisin of the case, it has jurisdiction to try it to its conclusion, unless there is any reason for holding that that jurisdiction has been removed.

In this view even the judicial work pending before a Court at the time of the change of local jurisdiction would not form part of the transferred business contemplated in Section 150. The inference, from these tests is that the expression "where the business of any Court is transferred to any other. Court" occurring in Section 150 does not refer to the transfer of work brought about by the mere change of local jurisdiction but to the transfer of work" brought about by other causes. Such transfer of work may be effected by specific or general orders of competent authorities or by legislation. There may also be specific directions for transfer of." all or particular classes of business in the notification effecting the change of local jurisdiction. In that case, whether there has been a transfer of all the business of a Court or only a transfer of a particular class of business would, as pointed out in *Ramier v. Muthukrishna* AIR 1932 Mad 418 (ED, depend upon the terms of the notification. A notification effecting a mere change of local jurisdiction from and on a particular date would not mean anything more than that all future work arising from the transferred area should go to the new Court and not to the old Court. If pending business or past business, which term would include execution of decrees passed before the change of local jurisdiction, is to be transferred, it must be said so, expressly or impliedly, the notification.

The numerous practical difficulties which would arise if it is held otherwise have been pointed out at length in AIR 1932 Mad 418, at p. 422 (FB) (H) of the report. We are in perfect agreement with that decision and the reasons there for given in that case. It may also be mentioned that in *Masrab Khan Vs. Debnath Mali alias Abhu Mali and Others*, also it has been held that when there has been only a change of local jurisdiction the decree-holder applying for execution in the transferee Court cannot invoke the provisions of S. 150 in his favour (see page 323 of the report).

We hold that by the mere transfer of territorial jurisdiction from one Court to another all powers of the first Court will not automatically be transferred to the transferee Court and that when there has been only a mere transfer of territorial jurisdiction from one Court to another and nothing is said whether expressly or impliedly about the transfer of pending or past business Section 150 of the Code of CPC cannot be invoked for the purpose of enabling the transferee Court to get jurisdiction in respect of the pending and past business.

12. The notification by which the Subordinate Judge's Court. Padmanabhapuram, was established has been set out in paragraph 4 above. That. notification does not direct anything more than a mere change of jurisdiction over the area mentioned therein from the District Court of Nagercoil to the Subordinate Judge's Court, Padmanabhapuram, with effect from 1-11-1954. We hold!, therefore that the Subordinate Judge's Court Padmanabhapuram, is not competent to execute the decree in this case and that the only Court competent to execute it is the District Court of Nager-coil. Since the decree" schedule properties are now situated within the local Jurisdiction of the Subordinate

Judge's Court Padmanabhapuram, the sale of the properties can be effected only by that" Court.

Therefore the decree-holder will have to apply to the District Court of Nagercoil under Clause (c) of Section 39 of the Code of CPC to send the decree for execution to the Subordinate Judge's Court, Padmanabhapuram, and the Subordinate Judge's Court will get jurisdiction to execute the decree only after the decree is so sent to it.

13. The decree holder's learned Counsel brought to our notice that in (S) AIR 1950 SC 87 (J). and Venkamamidi Balakrishnayya Vs. Nannapaneni Linga Rao, it has been held that when a Court to whose jurisdiction the subject matter of the decree is transferred, entertain the application for execution and sells the property without objection from the judgment debtor, he cannot be allowed to raise a subsequent objection to the jurisdiction of that court and that he must be deemed, to have waived his objection to the competency of the Court to execute the decree. Those observations cannot apply in this case as the judgment debtor here took objections to the competency of the Subordinate Judge's Court to execute the decree as soon as the notice of the application for execution was given to him and this appeal is from the order dismissing his objection.

14. In the result, the appeal is allowed, the order of the lower court is set aside and the decree holder's application for execution is dismissed on the ground that the Subordinate Judge's Court, Padmanabhapuram, is not competent to execute the decree until it sent to it for execution by the District Court of Nagercoil. We express no opinion on the other grounds of objections taken by Defendant 1 in the objection petition filed by him on 4-6-1955 and leave those matters to be decided afresh when a proper application for execution is made to the Court competent to execute the decree and the objections are again taken by Defendant 1. Parties will bear their respective costs.