

(1993) 09 MAD CK 0047
In the Madras High Court

Paramount Group Pvt. Ltd.

APPELLANT

Vs

Tamil Nadu Industrial Investment Corporation Ltd.

RESPONDENT

Date of Decision : 06-09-1993

Acts Referred:

Citation : (1993) 2 LW 534 : (1994) 1 MLJ 258

Hon'ble Judges : Pratap Singh, J

Bench : Division Bench

Judgement

Pratap Singh, J.—This civil revision petition is directed against the order passed in E. A.No.290 of 198, on the file of the Sub Court,

Poonamallee.

2.The short facts are: The respondent had filed a suit in O.S. No. 29 of 1971 on the fact of mortgage and obtained a preliminary decree on

4.3.1972 and final decree on 24.4.1976 in the court of Sub Judge, Chengalpattu. He filed some execution petitions, but those were not pursued

and they were dismissed for non-prosecution. While, so, Saligramam where the mortgage property is situated was brought within the jurisdiction of

Sub Judge, Poonamallee while so Act 42 of 1985 was passed ending the Original Side jurisdiction of Madras High Court to Saligramam and thus

Saligramam where mortgage property is situated was brought within the original side jurisdiction of Madras High Court with effect from 2.9.1985.

Then this E.P.No.61 of 1986 was filed on 24.3.1986, in Sub Court, Poonamallee. The revision petitioner filed E.A.No.290 of 1987 raising the

question of jurisdiction and praying for dismissal of the execution petition. That was resisted by the respondent. After enquiry, the court below had

dismissed the E.A.No.290 of 1987. Aggrieved by the said order, the petitioner in

E.A.No.290 of 1987 has once come forward with this revision petition.

3. Mr.Prakash Goklaney, the learned Counsel appearing for the revision petitioner, would submit that after Act 42 of 1985 came into force with effect from 2.9.1985, the Sub Court, Poonamallee, has got no jurisdiction to entertain the execution petition. He would submit that by virtue of explanation to Section 37, Civil Procedure Code, the court of first instance namely the Sub Court, Chengal-pattu, on the Original Side of the High Court to which the area covered by the mortgage was transferred, alone, has jurisdiction to entertain the execution petition and not the Sub Court, Poonamallee. He would further submit that the reasoning of the court below that this E.P. must be construed as a continuation of the earlier E.P., and so this must be taken as a pending proceedings on the date of coming into force of Act 42 of 1985 and the further reasoning that Sub Court, Poonamallee, has got jurisdiction to entertain execution proceedings because it will have the jurisdiction to set aside the ex Parte decree are all erroneous and cannot be sustained. Per contra Mr.R.Viduthalai, the learned Counsel appearing for the respondent, would submit that the Sub Court, Poonamallee, has got the jurisdiction to entertain the execution petition and would further submit that by virtue of Section 21(3), C.P.C., only if this question of jurisdiction was taken at the first instance and if there is failure of justice, this ground can be urged in the revision court and in this case there was no failure of justice and so this ground cannot be urged in the revision court.

4. I have carefully considered the submissions made by the rival counsels I shall first take up the ground put forward by Mr.Prakash Goklaney that under explanation to Section 37, C.P.C., only the Sub Court, Chengalpattu or the Original Side of the High Court alone has got jurisdiction to entertain the execution petition. For the purpose of convenience, I shall extract the Explanation to Section 37, C.P.C., which reads as follows:
Explanation: The court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that court to the jurisdiction of any other court; but in every such case, such other court shall also

have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.

Under the first limb, the Sub Court, Chengalpattu, will come. Under the second limb, inasmuch as the area covered by the mortgage was brought

within the jurisdiction of the Original Side of Madras High Court on 2.9.1985 and inasmuch as this E.P. was filed on 24.3.1986, on the date of

filing of the E.P., this area under the mortgage was within the jurisdiction of the Original Side of the High Court and that alone will fall under the

second limb of the explanation extracted above. The Sub Court, Poonamallee, will not come either under the first limb and hence, I accept this

submission of Mr. Prakash Goklaney.

5. The next question that falls for consideration is whether the E.P. is to be construed as continuation of the earlier E.Ps., filed by the respondent.

The earlier E.Ps., were dismissed for non-prosecution. There is no material to come to a conclusion that they were dismissed for statistical reasons.

So, I am unable to accept the submission of Mr. Viduthalai that this E.P. should be construed as a continuation of the prior E.P. The finding of the

court below that this E.P. must be construed as a continuation of the prior E.Ps., cannot be sustained.

6. If the ex pane order is to be set aside the defendant has to go the original court. But, that is not a consideration for finding whether a particular

court Has got jurisdiction to execute the decree or not.

7. Mr. Viduthalai, submits that by virtue of Sec 21 (3), C.P.C., the question of jurisdiction cannot be canvassed in this civil revision petition. Section

21(3), C.P.C., reads as follows:

21. Objections to jurisdiction: (1) no objection as to the place of suing shall be allowed by any appellate or revisional court unless such objection

was taken in the court of first instance at the earlier possible opportunity and in all cases where issues are settled at or before such settlement and

unless there has been a consequent failure of justice.

(2) No objection as to the competence of a court with reference to the pecuniary limits of its jurisdiction shall be allowed by any appellate or

revisional court unless such objection was. taken in the court of first instance at the earlier possible opportunity, and in all cases where issues are

settled, at or before such settlement and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing court with reference to the local limits of its jurisdiction shall be allowed by any appellate

or revisional court unless such objection was taken in the executing court at the earliest possible opportunity and unless

there has been a consequent failure of justice.

In this regard Mr. Viduthalai would rely on Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others, . In the ruling, the Apex Court

had occasion to consider the objection to territorial jurisdiction of the court before the Court of Appeal u/s 21(1), C.P.C. The Apex Court has laid

as follows:

In order that an objection to the place of suing may be entertained by an appellate or revisional court, the fulfilment of the following three conditions

is essentials:

1. The objection was taken in the court of first instance.

2. It was taken at the earliest possible opportunity and in cases where issues are settled at or before such settlement.

3. There has been a consequent failure of justice.

All these three conditions must be co-exist.

[emphasis supplied]

In the instant case, objection to jurisdiction was taken in the first instance. But the revision petitioner had not shown that there has been failure of

justice. The ratio of the above ruling is clearly applicable to this case in which we are concerned with the application of Section 21(3), C.P.C. It

would also be relevant to point out that u/s 21(3), C.P.C., also the two conditions which are required are: (1) The objection was taken in the

executing court at the earliest possible opportunity, and (2) there has been a consequent failure of justice. The second requisite is not shown to

exist in this case. So, I am clear that the question of jurisdiction cannot be raised in this civil revision petition. 8. In view of the above, this civil

revision petition fails and shall stand dismissed.