
(1924) 01 MAD CK 0007
In the Madras High Court

Ramani alias Venkataramani and Others APPELLANT
Vs
M. Narayanasami Aiyar and Others RESPONDENT

Date of Decision : 29-01-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 21, 47

Citation : 87 Ind. Cas. 341

Hon'ble Judges : Wallace, J;Odgers, J

Bench : Division Bench

Judgement

Odgers, J.—In this case the suit was on a usufructuary mortgage bond executed by the 1st and 2nd defendants to the plaintiff-the 1st

defendant being the father of defendants Nos. 2, 3 and 4. The last two are the appellants before us. The 3rd and 4th defendants, who are

undivided members of a joint Hindu family, which owns apparently large properties, have brought the suit to set aside the suit mortgage alleging

inter alia that the document was only intended to operate if, on taking the accounts between the defendants and the plaintiff, any amount was

found due from the latter to the former. The matter before us arises directly out of the petition for the appointment of a Receiver in the Mayavaram

Sub-Court in which the suit had been instituted. The suit was numbered 98 of 1922. Argument was heard; on the 19th September, 1923 the

petition was adjourned for orders to the 21st September. For various reasons the order was not pronounced till the 2nd October, 1923, when the

plaintiff was appointed Receiver. The difficulty arises from the fact that on the 1st October 1923, a notification of Government took effect by which

the local limits of the jurisdiction of the Mayavaram, Sub-Court were changed and the Nannilam Munsif, in which the lands in question are situate,

was transferred to the Tiruvalur Sub-Court. The first question raised before us in appeal from the order appointing the plaintiff Receiver is that on

the 2nd October the learned Subordinate Judge of Mayavaram had no jurisdiction to pronounce the order which is, therefore, void. The

notification unfortunately does not say "" pending suits,"" and we had a long argument chiefly based on Subbiah Naicker v. Ramanathan Chettiar 22

Ind. Cas. 899 : 37 M.P 462 : 26 M.L.J. 189 : (1914) M.W.N. 205 : 1 L.W. 251 and Seeni Nadan v. Muthuswamy Pillai 53 Ind. Cas. 213 : 42

M.P 821 : 37 M.L.J. 284 : 26 M.L.T. 223 : (1919) M.W.N. 640 : 11 L.W. 63 on a question whether the Court to which the jurisdiction has been

transferred is the only Court which can execute a decree passed by the Court from which the jurisdiction has been transferred. In my opinion, it is

quite unnecessary to examine the cases on this subject, for the learned Vakil for the petitioner at a late stage of his argument propounded other

authorities to show that the learned Subordinate Judge had no jurisdiction. It may be premised that authority on this question is scanty. We have,

however, a Full Bench decision of this Court, the Zamindar of Ettiyapuram v. Chidambaram Chetty 58 Ind. Cas. 871 : 43 M.p 675 : 28 M.L.T.

75 : (1920) M.W.N. 460 : 12 L.W. 217 : 39 M.L.J. 203 which lays down that Section 21, C. P.C. applies to objections with regard to want of

territorial jurisdiction. Further, Wallis, C.J., then said....

Section 21 forbids any Appellate or Revisional Court to allow any objection as to the place of suing unless it was taken in the Original Court and

even then unless there was a consequent failure of justice. The effect of the section, in my opinion, is that objections which the Appellate or

Revisional Court is thereby precluded from allowing must be considered cured for all purposes unless taken before the passing of the decree in the

original Court.

2. Section 21 is inapplicable in terms to the present case because issues have been settled in the mortgage-suit, and the section provides that any

objection should be taken at or before such settlement and that no objection shall be allowed unless there has been consequent failure of justice. It

is quite obvious that the objection could not in this case have been taken before or at the settlement of issues, at which date the Mayavaram Sub-

Court had full territorial jurisdiction over the subject-matter in dispute. It is

objected that, the transfer having been made on the 1st October, when something in the nature of an application in arrest of judgment should have been put in by the appellant on the 1st or 2nd October, before the learned Subordinate Judge delivered his order, and he not having done so, the appellant must be debarred from raising any objection now to the validity of the judgment. With this contention I agree. It has been held in the Full Bench referred to that if no objection to jurisdiction is raised on the passing of a preliminary decree on a mortgage, it cannot be raised afterwards in execution. There the reasons are based on the wording of Section 47, C. P. C, but it seems to me that the principle is that objection should be taken u/s 21 at the earliest possible opportunity, and if it is not then taken, the objector is barred from raising it afterwards. The objection further will be disallowed unless there has been a failure of justice.

3. The cases of *Jyoti Prokash Chatterjee v. Bagala Kanta Choudhury* 70 Ind. Cas. 822 : 35 C.L.J. 124 : AIR (1922) (C.) 274 and *Vajechand*

Jiamaji v. Nandram Daluram 31 B.k 515 : 9 Bom.L.R. 1028 and *R. v. Denton* (1852) 18 Q.B. 761 : Dears C.C. 3 : 21 L.J.M.C. 207 : 17 Jur.

453 : 118 E.R. 287 were all cases of jurisdiction over subject-matter and, therefore, do not apply to the present case. As pointed out by

Mookerjee, J., in the first of these cases, the distinction between territorial jurisdiction and that as to the subject-matter is fundamental.

4. Moreover, it was held by *Phillips and Venkatasubba Rao, JJ.*, in the *Chokkalinga Pillai v. Ramasami Pillai* 87 Ind. Cas 152 : 17 M.L.J. 448 :

AIR (1925) (M.) 117 that the principle underlying Section 21, C. P.C., is that objection to territorial jurisdiction may be waived. So here it may be

said that the appellant not having taken objection to the passing of the Sub Judge's order must be held to have waived his objection to his; doing

so on the ground of want of jurisdiction.

5. As to this question, the Full Bench thought it unnecessary to deal with it, or whether the words "" place of suing"" were not wide enough to include

objections to the place of prosecuting as well as of instituting suits. *Wallis, C.J.*, however, with whose judgment the other members of the Court

agreed, appears to me to have been inclined to the opinion that they were. This really concludes the point under discussion.

6. I am, therefore, of opinion that this objection ought to have been taken before

the judgment was pronounced, and that no objection having been taken, the appellant must be taken to have waived all objections to the pronouncement, by the Subordinate Judge, of this order. In any case, the question is entirely technical as regards the circumstances of the present appeal and I am, for the reasons given, of opinion that the objection to the appeal u/s 21, C. P.C., must be upheld.

7. Moreover, I am of opinion that no failure of justice has taken place. It is, therefore, necessary to shortly consider the merits which have been argued before us at great length. The appellant argued that there was no case made out for a Receiver. I am not prepared, on a consideration of the whole of the documents filed, to come to a conclusion against that of the Subordinate Judge in this matter. The plaintiff and defendants, or at least the 1st defendant's father, have been close friends for a number of years and "the friendship was apparently only broken when the question of settlement of accounts occurred between them. The defendants are rich men. The plaintiff was in management of the properties, it is said, by the defendants' consent. The plaintiff is also said to have been trusted by the 1st defendant as a man of business to look after the properties as his agent. For a number of years, the plaintiff appears to have occupied a position of trust with regard to the 1st defendant, but it is said by the latter that at the end of 1921 the plaintiff was removed from his position. If that is so, it is rather significant" that the plaintiff in January 1922, appears; to have paid the kist on the plaintiff land. The allegation for the plaintiff is, of course, that he was never a manager but that he was in possession in his own right. The plaintiff is not in possession of the mortgage bond on which he sues, but that is apparently in the possession of defendants' agent who was also the Kariasthan. The Subordinate Judge has come to the conclusion that the plaintiff ought to remain in possession until the decision of the suit. I am not prepared to say that he has exercised his discretion wrongly. I refuse to interfere with his appointment of the plaintiff as Receiver and dismiss the Civil Miscellaneous Appeal with costs.

Wallace, J.

8. There is no need to restate the facts of this case. The first point for decision is whether any want of jurisdiction exists. This depends on the answer to the question whether, when a particular local jurisdiction of one Court

is transferred to another by notification u/s 10 or Section 11 of the Madras Civil Courts Act, such transfer carries with it automatically all pending suits and proceedings of any and every sort arising out of that local jurisdiction, so that the Court in which they were originally filed loses jurisdiction and the Court to which the local jurisdiction is transferred assumes it. This seems to be a point not free from difficulty and I can find no, direct authority on it. If a Court having a particular local jurisdiction is abolished and another Court takes over that jurisdiction, it seems to me that the latter takes over all pending proceedings in the former. The principle is that only the Court, in whose local jurisdiction the suit arises, can deal with all proceedings of a civil nature in that jurisdiction, whether previously pending in other Courts or not, so if any fresh application had to be put in a suit arising in a local jurisdiction, since transferred to another Court, the applicant would have to be guided as to the forum for his application by considering not whether the suit had been instituted in a particular Court but which Court has local jurisdiction within the local limits from which his application arises. It is difficult to see why a Court having local jurisdiction should not have jurisdiction to receive such an application, and, if it has such jurisdiction, the other Court cannot have that jurisdiction also.

9. As regards the cases cited before us, that of Subbiah Naicker Vs. Ramanathan Chettiar, is at least authority for the proposition that when, after an order for sale in execution was passed by one Court, the local limits of the jurisdiction of that Court were so altered that the property fell within the local limits of another Court's jurisdiction, the former Court loses its control over the execution proceedings which pass automatically to the latter Court. The case of Subbayya v. Rachayya 26 Ind. Cas. 519 : 37 M.p 477 also favours the view that the Original Court, in which a suit on contract was first instituted, ceased to have jurisdiction when the place, where the contract was made, was taken away from its limits. I do not find that the Pull Bench case in Seeni Nadan v. Muthuswami Pillai 53 Ind. Cas. 213 : 42 M.p 821 : 37 M.L.J. 284 : 26 M.L.T. 223 : (1919) M.W.N. 640 : 11 L.W. 63 in any way overrules this general proposition. It proceeded on the general bearing of Sections 37 and 38 of the C. P. C, which allow a decree-holder to apply for execution to the Court which passed the

decree as well as to the Court having local jurisdiction, if that is a different Court. There is in that report no expression of any doubt as to the proposition that, generally and apart from the provisions of Sections 37 and 38 of the C. P. C, when the local jurisdiction has been transferred from one Court to another pending civil proceedings in the former Court are automatically transferred to the latter; and Sadasiva Aiyar, J., held to his former view in Subbiah Naicker v. Ramanathan Chettiar 22 Ind. Cas. 899 : 37 M.p 462 : 26 M.L.J. 189 : (1914) M.W.N. 205 : 1 L.W. 251 see his remarks, in Seeni Nadav v. Muthuswamy Pillai 53 Ind. Cas. 213 : 42

M.k 821 : 37 M.L.J. 284 : 26 M.L.T. 223 : (1919) M.W.N. 640 : 11 L.W. 63

The fact that at a particular time the Court was competent to pass a decree for sale cannot mean that its jurisdiction to proceed further could be retained for ever.

10. The cases in J.V. Srinivasa Rao Minor by father and next friend J.V. Ranganatha Rao Vs. Hanumantha Rao and Others, and Mouna

Gurusamy Naicker Vs. Sheik Muhammadhu Rowther and Another, also support the general proposition advanced above; and also all the cases in

which the power of a Court, which passed the decree, to execute it after its local jurisdiction has been transferred have been, considered, for

example, K.C. Manavikraman alias Anujan Raja Averghal Vs. N.C. Ananthanarayana Ayyan and Others, all of which cases assume that with the

transfer of local jurisdiction the power to execute follows automatically. See also Rajana Venkoba Rao v. Sastha Aiyar 28 Ind. Cas. 269 : 2 L.W.

255 : 17 M.L. 190. It is difficult, therefore, to say that the view, that a Court must have territorial jurisdiction all through the trial of a suit before it,

is an unsound one, and I am inclined, as at present advised, to the view that the transfer of local jurisdiction does automatically effect the transfer of

all pending suits and proceedings arising originally from that local jurisdiction. In the present case, then, the Sub-Court, Mayavaram, lost

jurisdiction over this suit and all proceedings therein on the 1st of October and had, therefore, no jurisdiction to deliver the order under revision.

11. The next question is whether the petitioner is estopped by force of Section 21 of the C. P. C, from raising in this Court the plea of want of

jurisdiction in the Mayavaram Sub-Court. He is met by the other side by the argument that, as he did not, on the 2nd October on which date the

Sub-Court passed the order in this case, object to the Sub-Court so pronouncing its order, he is precluded by Section 21 of the C. P. C, from

now raising that contention. Again there is some lack of authority to guide us on this point. The nearest case on the point which I am able to trace in

the Full Bench case is Raja Jaga Veera Rama Venkateswar Ettapa Nayakar Avergal, Zamindar of Ettyapuram Vs. Chidambaram Chetty and

Others, where it was held,. first, that Section 21 governs all cases of lack of territorial jurisdiction," secondly that it applies to execution

proceedings, that is, to proceedings after the decree in a suit, and thirdly that a party cannot plead in execution that the decree under execution was

passed without jurist diction. The third point is not applicable to the present case. The answer to the second does not appear to be of much help in

deciding as to the validity of applying Section 21 to proceedings in suits after issues have been "framed and before decree is passed. The answer

of the Full Bench was given on the narrow ground that the want of jurisdiction to pass" a decree is ordinarily not open as a ground of attack on

appeal or revision, and that Section 21 forbids such attack unless it was made in the Original Court and unless the want of jurisdiction led to a

failure of justice. The reasoning set out at page 686 * seems to suggest that Section 21 forbids any objection, as to want of territorial, jurisdiction

being raised on appeal or revision unless it was raised in the Original Court, that again being based on an interpretation of the-phrase " objection

as, to the place of suing in the section, which was held to mean objection to the institution of the suit on the ground that the Court in which it was

instituted had no jurisdiction over the property which was the subject-matter of the suit. I am not sure that the Court further held that the phrase

"institution of the suit ". covered all proceedings in the suit after the institution. That the Court felt this difficulty is plain from the passage in page

687:

it is unnecessary to consider whether those particular words may not be read as applying only to cases where it is possible to take the objection at

or before the settlement of issues, and whether the words "place of suing" are not wide enough to include objections to the place of prosecuting as

well as of instituting suits,"" and the case was finally decided on the assumption that, even if Section 21 did not apply, the jurisdiction of the Court

which passed the decree could not be questioned in execution, for which proposition there" was direct authority. So, I find no clear guidance in this ruling as to whether Section 21 applies when, during the pendency of a suit and after the framing of issues, the local jurisdiction from which the suit arose has been transferred to another Court, and whether all proceedings in that suit after the transfer, if taken in the Original Court, would be void.

12. On this point I find myself most in agreement with the referring judgment of Seshagiri Aiyar, J., who points out that to hold, that the phrase "place of suing" is synonymous with territorial jurisdiction is to hold that jurisdiction may be conferred by consent or at least by silence and by refraining from objecting to it.

13. I consider, however, that I must follow the Full Bench ruling in so far" as it lays down that Section 21 governs all cases of want of territorial jurisdiction. In that case, this plea of want of jurisdiction shall, under the section, not be entertained, unless less, inter alia, there has been a consequent failure of justice. On the merits, I agree with my learned brother, for the reasons given by him, that the petitioner has not made out any case of failure of justice consequent on this want of jurisdiction, and I, therefore, agree that the Civil Miscellaneous Appeal must fail and be dismissed with costs.