

(1924) 01 MAD CK 0012
In the Madras High Court

Ramani alias Venkatramani and Others	APPELLANT
Vs	
M. Narayanaswami Iyer and Others	RESPONDENT

Date of Decision : 09-01-1924

Acts Referred:

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

Citation : AIR 1924 Mad 697

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

Bench : Full 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 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 that 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. Arguments were 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 [1914] 37 Mad. 462 and Seeni

Nadan v. Muthusami Pillai [1919] 42 Mad. 821 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 petitioner at a later 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 Chettiar [1920] 43 Mad. 675 which lays down that Section 21 C.P.C. applies to objections with

regard to want of territorial jurisdiction. Further Wallis, C.J. there 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 competent failure of justice The effect of the

section, in my opinion is that objection 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 of 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 case 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 be 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 debarred from raising it afterwards. "The objection further will be disallowed unless there has been a failure of justice.

3. The cases *Jyotish Prakash v. Bagala* 1922 Cal. 274 and *Vajechand v. Nandram* [1907] 31 Bom. 545 and *The Queen v. The Inhabitants of*

Denton [1852] 18 Q.B. 761 were all cases of jurisdiction over subject matter and therefore do not apply to the present case. As pointed out by

Mukerjee, 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 Venkata Subba Rao, JJ. in appeals 312 and 329 of 1920, 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 the 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 prosecutions 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 his 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, he has 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 the 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 plaint 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 the defendant's agent who was also the Kariastan. 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 C.M.A. with costs.

Wallace, J.

8. There is no need to re-state 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 under Sections 10 or 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 appellant 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 with 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 v. Ramanathan Chettiar [1914] 37 Mad. 462 is a 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 falls 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 Subbiah v. Rachayya [1914] 37 Mad. 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 Full Bench case in Seeni Nadan v. Muthusami Pillai [1919] 42 Mad. 821 in any way overrules this general proposition. I 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 & 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 Ayyar, J. held to his former view in Subbiah Naicker v. Ramanathan Chettiar [1914] 37 Mad. 462. See his remarks in Seeni Nadan v. Muthuswami Pillai [1919] 42 Mad. 821. "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". The oases in Ranganatha Rao Srinivasa Rao v. Hanumantha Rao 1922 Mad. 10 and Gurusami v.

Mahammadhu Rowther 1923 Mad. 92 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 Manavikraman v.

Ananthanarayana Ayyar 1924 Mad. 457, all of which cases assume that with the transfer of local jurisdiction the power to execute follows

automatically, See also Venkoba Rao v. Sastha Ayyar [1914] 2 L.W. 255. It is difficult then 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 of Mayavaram lost jurisdiction over this suit and all proceedings therein on the first of October and had therefore no

jurisdiction to deliver the order under revision.

10. The next question is whether the petitioner is estopped by force of Section 21 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, 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 is the Full Bench

case in Zamindar of Ettiyapuram v. Chidambaram Chettiar [1914] 37 Mad. 462, 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 jurisdiction. 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 S 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 has 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 p. 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 objections 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 insinuating 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.

11. On this point I find myself most in agreement with the referring Judgment of Seshagiri Ayyar, 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.

12. 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 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 consequence on this want of jurisdiction and I therefore agree that the C.M.A. must fail and be dismissed with costs.