

(1938) 11 MAD CK 0031
In the Madras High Court

Santhappa and Others

APPELLANT

Vs

Siddalingayya Eswarappa Bulla, minor by next friend and
mother Sangavva and Others

RESPONDENT

Date of Decision : 02-11-1938

Acts Referred:

Citation : AIR 1939 Mad 378 : (1939) 1 MLJ 827

Hon'ble Judges : Burn, J

Bench : Division Bench

Judgement

Burn, J.—These are appeals from the orders of the learned District Judge of Bellary passed on two execution petitions. The principal

objection raised on behalf of the judgment-debtor's was that the execution petitions were barred by limitation—They contended also that the

decree-holder had applied for the attachment of property which by the terms of the decrees he was not entitled to attach and sell. The decrees in

the suits were passed on the 10th March, 1927. These execution petitions were filed on the 5th April, 1936. Prima facie, they are barred by

limitation. But the decree-holder relies upon two earlier applications which he made on the 6th April, 1933, to the Court of the Additional First

Class Sub-Judge, Dharwar (the Court which passed the decrees) for transmission of the decrees to Bellary for execution. It is admitted that if

these applications of the 6th April, 1933, were applications made to the proper Court, and in accordance with law, the applications put in on the

5th April, 1936, are not barred by limitation. It is common ground that the applications of 6th April, 1933, were made to the proper Court. The

only ground upon which they are said to have been made not in accordance with law is that in applying to the Additional First Class Sub-Judge,

Dharwar, the decree-holder requested that the decrees might be transmitted for execution to "the First Class Subordinate Judge, Bellary. On the

6th April, 1933, there was no Sub-Court in existence in the District of Bellary, and the contention on behalf of the appellants therefore is that the

applications having been made for transmission to a Court which did not exist cannot be said to have been made in accordance with law. In

support of this contention we have been referred to the rulings in *Sital Prasad Shukul v. Babu Lal Shukul* I.L.R.(1932) 11 Pat. 785 *Amrit Lal v.*

Murlidhar I.L.R.(1922) 1 Pat. 651 21 CWN 162 (Privy Council) and *Peirce Leslie and Co. Ltd. Vs. E.J. Perumal alias Kochu Papi*, . We do not

think that any of these decisions has any bearing upon this case because in all of them the application was made for transfer to a Court actually in

existence but without pecuniary jurisdiction to execute the decrees; a mistake of law which the petitioner could have avoided. This is not, we think,

the same as applying for transmission to a Court which does not exist but which the petitioner wrongly believes to exist-That is a mistake of fact in

our opinion. It has to be borne in mind that Bellary is a District in which from time to time a Sub-Court is brought into existence temporarily. Up to

the end of February, 1933, there was a Sub-Court in the District of Bellary with its headquarters at Bellary and with jurisdiction over the whole

District. It was not a "First Class" Sub-Court for the simple reason that there are no trades of Sub-Courts in this Presidency. It appears to us that

earned Counsel for the respondent decree-holder is on firm ground when he contends that the applications made to the Dharwar Court were

entirely in accordance with law but were in one slight particular out of accordance with fact. The decree-holder could not be held responsible for

knowing that First Class Sub-Courts do not exist in this Presidency he being a resident in the Bombay Presidency. It is clear that even the

Additional First Class Sub-Judge of Dharwar was not aware of the fact that there are no First Class Subordinate Judges in this Presidency. There

is no ground for holding that the decree-holder was applying for transmission of his decrees for execution to a Court without jurisdiction to execute

them. It is not disputed on behalf of the appellants that the decree-holder wanted his decrees to be transferred to the Bellary District so that they

could be executed. He wanted them to be transferred to a Court with jurisdiction to execute them. The sole mistake which he made was not a

mistake of law but a mistake in the description of the Court to which he requested that his decrees might be transferred. That description would

have been more or less sufficient if the petition had been filed six weeks earlier. For these reasons we are clearly of opinion that the execution

petitions presented to the Additional Subordinate Judge of Dharwar on the 6th April, 1933, were applications made to the proper Court in

accordance with law. It follows that the execution petitions filed on the 5th April 1936, were not barred by limitation and that the decision of the

learned District Judge on this point is correct.

2. It is not necessary to deal with the point raised on behalf of the respondent that in any case the execution of these decrees for the whole of the

sums due under them would not have been barred by limitation because the decrees were decrees for payment by instalments and the execution

petitions were filed within three years after some, at any rate, of the instalments had fallen due. We are of opinion that for the whole amount due

under the decrees the petitions are not barred by limitation.

3. The only other point taken on behalf of the appellants is one which has not been dealt with by the learned District Judge though we see that it

was raised before him. This is to the effect that the decrees can only be executed by sale of the properties which are charged in the decrees with

liability for the amounts due. Both the decrees recite that certain properties are charged for the amounts due under the decrees. Mr. Somayya for

the appellants contends that this is the sole liability and that if the properties charged are insufficient to realise the amounts due under the decrees

there is no further liability and no other properties of the defendants can be attached and sold. On a perusal of the decrees we find ourselves

unable to accept this contention on behalf of the appellants. Both the decrees state explicitly that the defendants shall pay the plaintiff such and such

a sum. We think that these are clearly personal decrees and that they impose a personal liability in case the properties do not realise the amounts

due under the decrees. The executing Court will of course take care to see that the charged properties are proceeded against in the first instance

and that no other properties¹ of the defendants are sold until the charged properties have been exhausted.

4. These appeals are accordingly dismissed with costs of the first respondent.