

(1919) 04 MAD CK 0019
In the Madras High Court

Seeni Nadan alias Virakumaru Nadan	APPELLANT
Vs	
Muthusami Pillai and Others	RESPONDENT

Date of Decision : 04-04-1919

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 150

Citation : (1919) ILR (Mad) 821 : (1920) 11 LW 63 : (1919) 37 MLJ 284

Hon'ble Judges : Wallis, C.J;Sadasiva Aiyar, J;Ayling, J

Bench : Full Bench

Judgement

Wallis, C.J.—The terms of the reference have, if I may say so, been very properly framed with reference to the terms of Article 182, Clause

5 of the Limitation Act (4 is a misprint) which makes the date of applying in accordance with law to the proper court for execution or to take some

step-in-aid of execution of the decree a fresh starting point for the purposes of the Article which deals generally with applications for the execution

of decrees. The question really is, whether a litigant who has been authorised to bring his suit in a particular court and has obtained a decree in such

court in his favour, which he is strictly bound to execute within the time limited in Article 182, is not entitled to apply as of course to that court as

the proper Court for the purpose of saving limitation under the Article, or whether, when he decides to apply for execution possibly at the last

moment, he is bound to stop and enquire whether the limits of the territorial jurisdiction of the court which passed the decree have been altered,

and if so, whether the Immovable property which is the subject of the suit or the place where the cause of action arose was within the limits of the

transferred area, on pain of losing his right to execute under the Article if he omits to make these enquiries or comes to a wrong conclusion when

he makes them. This last proposition is so unreasonable and involves such hardships to the decree-holder in a country such as India with a stringent law of limitation that we should hesitate to impute such an intention to the legislature if we can possibly avoid it.

2. Under the Code of 1859 it was open to the decree-holder to apply to the court which passed the decree to execute it itself or to transmit it to

another court for execution, and such an application, would have been sufficient for the purpose of saving limitation under Article 167 (now 182) of

the Limitation Act of 1871. The question is, when and how has the decree-holder been deprived of this right. In 1877 and again in 1882, the Code

was repealed, and re-enacted with some re-drafting and re-arrangement which included the insertion of the present Sections 37 and 38 in the

Code of 1877. Now there is a well-known presumption that such re-drafting and re-arrangements leave the substance of the law unaltered, and it

follows that such a serious change as the abolition of the decree-holder's right to apply in all cases to the court which passed the decree in the first

instance cannot be raised by implication but should plainly and clearly appear on the language of the sections. Now at the time when the Code of

1908 was enacted there was a long and unbroken series of express decisions that this was not the effect of these sections. *Latchman Pundeh v.*

Maddan Mohun Shye ILR (1880) Cal. 513, *Kartick Nath Pandey v. Tilukdhari Lall* ILR (1888) Cal. 667, *Kali Pado Mukerjee v. Dino Nath*

Mukerjee ILR (1897) Cal. 315, *Jahar v. Kamini Debt* ILR (1900) Cal. 238, and *Pandu Ranga Mudaliar v. Vythilingam* ILR (1907) Mad. 537 :

17 M.L.J. 417. So that the legislature was well warranted in considering this point as settled. Two questions only had arisen under these sections,

one whether the court which passed the decree had jurisdiction to execute fully a decree for the sale of Immovable property by selling it where the

area in which the Immovable property was situated had been removed to another jurisdiction. It was held by the Full Bench in *Prem Chand Dey v.*

MoKhada Debi ILR (1890) Cal 699 (F.B.), that it had not; but it was assumed in that case and expressly decided in *Girindro Chunder Roy v.*

Jarawa Kumari ILR (1891) Cal. 105, *Piggott, J.*, being a party to both decisions, that in such a case it was a proper course to apply to the court

which passed the decree to send the decree for execution to the other court. Then there was a difference of opinion as to whether this was the only

proper course, or whether after such a transfer the court which passed the decree could be treated as ""having ceased to have jurisdiction to execute the decree "" within the meaning of Section 649, now Section 37, so as by virtue of that Section to cause the court to which the area had been transferred to be regarded as a court which passed the decree within the meaning of Section 223 (now 38). One view was taken in *Latchman Pundeh v. Maddan Mohun Shye* ILR (1880) Cal. 513, and *Jahar v. Kamini Debi* ILR (1900) Cal. 238 and another in *Kali Pado Mukerjee v. Dino Nath Mukerjee* ILR (1897) Cal. 315 and *Panduranga Mudaliar v. Vythilingam* ILR (1907) M. 537. This was the state of the authorities when the Code of 1908 was enacted, and we are told by Messrs. Woodroffe and Amir Ali that it was proposed to enact expressly that application might be made to either court, The draft section to that effect which dealt with other complicated questions was not adopted" but it seems to me that the legislature brought about the same result in another way. The jurisdiction of the court which passed the decree was sufficiently recognised by the decisions as I have pointed out and indeed had never been doubted up to that time, and there was therefore no need to re-affirm it. The case of direct application to the court to which the area had been transferred was met by the enactment of the new Section 150 which was in terms wide enough to authorise that court to entertain in the first instance any application which might have been made to the court which passed the decree.

3. This I think should have settled the question. Unfortunately in *Alagappa Mudaliyar v. Thiyagaraja Mudaliyar* (1910) M.W.N. 477 when I was sitting with Krishnaswamy Aiyar, J., the Advocate-General cited certain American treatises to us, passages from which are cited in the later case of *Subbiah Naicker v. Ramanathan Chettiar* ILR (1914) Mad. 462 and formed the main ground for that decision, and though we came to no decision, we were sufficiently influenced by them to leave the point open and proceed by way of transfer in the particular case. In this I think we were wrong. The Privy Council has since deprecated the tendency of Indian Courts to resort unnecessarily to American instead of the English authorities, that is how I understand their observations in *Imambandi v. Matsaddi* (1917) L.R. 45 IndAp 73, and in this case it would have been

better to see how the question had been dealt with in England, especially as the case of the County Courts affords a complete analogy. Those

courts were established some years before the Code of 1859, and have jurisdiction over irnmoveable property. Power to transfer particular areas

from one court to another was given and has been freely exercised, but it has never been suggested that the fact of such a transfer takes away the

power of the court which passed the decree to entertain application for execution. The power of sending the decree to another court, if the court

itself was not in a position to execute it, has been found sufficient to meet the case. That it seems to me was the scheme of the Code as held in

Pandu Ranga Mudaliar v. Vythilingam ILR (1907) Mad. 537, until 1908 when Section 150 then conferred upon the court of the transferred area

power to entertain the application in the first instance; but this cannot be read as taking away from the court which passed the decree the power

which it then had according to the unbroken current of authorities for many years which the legislature must be taken to have recognised. Again, as

the American writers allow, in questions of the kind the particular statutes must always be looked to, and where, as in the present case, the Code

provided two methods of executing decrees both originating in the court which passed the decree and one of them admittedly applicable to the

case of the area having been transferred to the jurisdiction of another court before the application for execution, this sufficiently indicated the

procedure which the legislature desired to be followed, and removed all occasion for raising inferences which might possibly have had to be raised

if the legislature had provided no method at all of executing decrees where the areas had been transferred. It only remains to refer to the arguments

which have been addressed to us on the language of Sections 37 and 38 (formerly 649 and 223) to show that all the decisions on this point down

to 1908 were wrong. The words to be interpreted are "" a decree may be executed by the court which passed it"" in Section 38 (223), a section first

inserted in 1877 and merely declaratory of the existing law. These words again have to be interpreted in the light of Section 37, an interpretation

clause reproduced from Section 649 of the Code. Section 37 provides that the words "" court which passed a decree shall 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 an argument has

been based on this clause. Now it may well be that under Sections 37 and 38 the appellate court has no jurisdiction to execute its own decree, but that is not because such jurisdiction is excluded by the use of the word "include" as has been argued, but because it had no such jurisdiction u/s 362 of the Code of 1859, and it may well be questioned, having regard to the presumption already referred to, whether, when that section was eliminated in re-drafting and the matter was dealt with in Sections 649 and 223 (now 37 and 38), there was any intention to confer on the appellate court jurisdiction which it had not till then possessed. We have however to deal with Clause (b), and where the decree-holder had a valuable right under the Code of 1859 to apply to the court which passed the decree at least for execution by way of transmission, and where the present Code provides expressly that a decree may be executed by the court which passed it, the contention that this important right must be held to have been taken away because of the provision in Section 37 that these words shall be deemed to "include" another court appears to me to be altogether untenable. It may be that in some rare and exceptional instances the category of things "included" in a definition may be held to be exhaustive, but ordinarily, as observed in Stroud's Dictionary it is "a phrase of extensive and not of restrictive jurisdiction," and it cannot in my opinion be used here to deprive the decree-holder of the important right which he had till then of applying in all cases in the first instance to the court which passed the decree, especially having regard to the fact that the section itself was inserted when the Code was in process of re-drafting and re-arrangement, when, as I have already said, there is a presumption against alterations by implication only. In Subbiah Naicker v. Ramanathan Chettiar ILR (1914) Mad. 462 the question does not seem to have been sufficiently argued from the point of view of the decree-holder's rights, and attention was not called to the history of the section. Further the decision is opposed to a long line of authorities which I think the legislature accepted in 1908, and is also mainly based on citations from American treatises which I now think do not afford a satisfactory basis for the decision of a question of this kind, or afford any sufficient reason for answering the question in the negative. Both on principle and on the balance of authority and convenience my answer is that the court which passed the decree is a proper court for the purpose mentioned in the question referred to us.

Ayling, J.

4. I agree. After careful reconsideration in the the light of the arguments now adduced before us, I am inclined to think that, in our Judgment in

Subbiah Naicher v. Ramanathan Chettiar ILR (1941) M 462 we went too far in saying that the court which passed the decree for sale of a

property could not even entertain an application for safe of such properties, once they had been transferred out of its territorial jurisdiction. This

decision was not necessary for the disposal of the case before us, where the question was whether such an application could be properly made to

the court to whose jurisdiction the property had been transferred. I think it could, if only by reason of Section 150, CPC : for this section certainly

seems to me to cover the case of the transfer of all the litigations arising out of a tract of country from one court to another. I would prefer to base

this proposition on Section 150, rather than on an interpretation of Section 37 regarding which I must confess to considerable difficulty. But I am of

opinion that the latter section, whatever it means by ceasing to have jurisdiction to execute, does riot operate to exclude the court which actually

passed the decree, and to substitute for it another court: and that it is still open for the decree-holder to apply to the former for execution by way of

transmission of the decree to the court which has territorial jurisdiction.

Sadasiva Aiyar, J.

5. The question referred to the Full Bench is ""whether the court which passed the decree is not the proper court for execution within the meaning of

the Clause 4 of Article 182 of the Limitation Act by virtue of the fact that the property over which it had jurisdiction at the time of the decree was

taken away from it and assigned to another court at the time of the presentation of the application for execution.

6. The answer to this question depends upon one's view on the following points:

(1) Does a court which passes a decree for sale of land within its jurisdiction at the time of the passing of the decree continue according to general

principles of jurisprudence to have jurisdiction to execute (a) such a decree by sale or (6) even to entertain an application for execution of such

decree by sale after it ceases to have territorial jurisdiction over that property; (2) even if it has not got the power according to general principles of

jurisprudence, has it got such power owing to the provisions of Section 37 of the

CPC (old Section 649 paragraph 2) read with Sections 38 and 39 (old Section 223)?

7. On the first point I have very little to add to what has been said in the judgment of Ayling, J. and myself in *Subbiah Naicker v. Ramanathan*

Chettiar ILR (1914) M. 462. That was a considered judgment of ours in which we attempted to show that the Calcutta High Court from 1890 See

Prem Chand Dey v. Mokhada Debi ILR (1880) Cal. 513, Full Bench of five Judges including Justices Prinsep and O'Kinealy, who were Judges

learned in Procedure law) has uniformly held that a court though it passed a decree for sale ceases to have jurisdiction to execute that decree for

sale when the property has passed out of its territorial jurisdiction. The learned judges refer to Section 16 of the CPC as indicating that the Code

intended the courts in this country to have no power to determine any right or interest in any Immovable property lying wholly outside its

jurisdiction. The execution of a decree being only a continuation of the suit, there appears to be no legitimate reason "" why a court in the later stage

of a suit should have greater powers than it possessed at its institution."" The earlier case in *Latchman Pandeh v. Maddan Mohun Shye* ILR (1890)

Cal. 699, though quoted by Dr. Rash Behari Ghose in his arguments must be deemed to have been overruled by this Full Bench decision in *Prem*

Chand Dey v. Makhada Debi ILR (1880) Cal. 513.

8. Of course in a matter of procedure when there is a uniform practice of this court, that must no doubt override even the Full Bench decision of

the Calcutta High Court unless there is a decision of the Privy Council which settles the question for all courts. I cannot say that there are any such

pronouncements of the Privy Council. The case in *Kamini Sundari Chaudhrani v. Kaliprossunno Ghose* (1885) ILR 12 Cal. 224. (P.C.) relied on

in *Prem Chand Dey v. Makhada Debi* ILR (1880) Cal. 513 merely dealt with the power of the High Court as an appellate court making a remand

order to give jurisdiction to a court having no territorial jurisdiction over the suit land to deal with a question relating to that land. In *Maharajah of*

Bobbli v. Narasaraju Peda Baliarasimhulu Bahadur (1916) ILR 39 M. 640. (P.C.), it was held that after the District Court which had passed a

decree sent that decree to a District Munsif's Court for execution by the latter court with a copy of the decree, no execution application could be

presented to the District Court for the sale of the property attached by the District Munsif in execution unless the copy of the decree with a

certificate of non-satisfaction was returned back to the District Court. I do not think that any clear guidance can be obtained on the present point

from these two Privy Council decisions.

9. On principles recognised in the Civil Procedure Code, Section 16, it seem to me clear that no court has any jurisdiction either to entertain an

execution application for the attachment of property outside its jurisdiction or for the sale of Immovable property outside its jurisdiction or to sell it

in execution even though it had jurisdiction at the time of the passing of the decree to pass such a decree. The fact that at a particular time it was

competent to pass a decree for sale cannot mean that its jurisdiction to proceed further could be retained for ever. An extreme case might be taken

as an illustration. Supposing the District Munsif of Cuddalore passes a mortgage decree in 1918 for sale of a property within his jurisdiction but

situated near the French limits and suppose in this year, that property is ceded to the French by treaty with the British, can it be said that in 1920,

that decree could be executed by the Cuddalore Munsif or an application for execution of the said property could be entertained by him? On

principle, I do not see why the loss of territorial jurisdiction in any other manner not to a foreign power but to a Native State or to some other court

within British India should make any difference.

10. This question was further considered with reference to the new Section 150, Civil Procedure Code, in *Suhbiah Naiker v. Ramanathan Chettiar*

ILR (1914) M. 462 and also on general principles (pages 471 and 472 of ILR 37 Mad). It is also clear from Oldfield, J's opinion in this Order of

Reference to the Full Bench that from 1910 see *Alagappa Mudaliyar v. Thiagaraja Mudaliyar* (1910) M.W.N. 477 up to date see also C.M.S.A.

23 and 24 of 1917 decided in September 1917 and *Venkatasami Naik v. Sivanu Mudali* (1918) 36 M.L.J 199 the course of decisions has been

pretty uniform in this court on this point. In *Begg Dunlop & Co. v. Jagannath Marwari* (1910) Cri. L.J. 228, Mookerjee, J. with whom Carnduff,

J. agreed held that it was not competent to a court in execution even of a decree for money to attach a debt payable to the judgment-debtor by a

non-resident debtor. The matter is elaborately discussed on principle at pages

233 to 236 citing English and American authorities also, the conclusion being that where the situs of a bond debt is outside the jurisdiction, the court has no power to deal with it. A fortiori it seems to me that where the situs of an Immovable property is outside the jurisdiction the court has no power to deal with it unless the statute law gives it such power. Because there was some conflict whether the statute law enacted in Sections 223 and 649 of the old CPC really intended to give such jurisdiction that the legislature seems to have indicated in the new Section 150 that the Calcutta view in Prem Chand Dey v. Mahhada Debi ILR (1890) Cal. 669 should be followed and not the view enunciated in Panduranga Mudaliar v. Vythilinga Reddi ILR (1907) Mad. 537. As to the argument based on the language of Section 37 (old Section 649) when an expression is said in a statute to include something it no doubt means ordinarily that it should mean that thing in addition to the thing which the expression naturally means. But it is clear from the context of Section 37, namely Clauses (a) and (b) that the word "include" in Section 37 signifies "mean and include and comprise" and that is a permissible meaning where the context requires it. See Stroud's Judicial Dictionary pages 945 and 946. If the natural meaning is not to be excluded under any circumstances and in any case so as to substitute for it the new meaning in that case, Section 37 ought to be interpreted as follows. The expression "the court which passed a decree" shall in relation to the execution of decrees be deemed to mean (a) where the decree to be executed has been passed in the exercise of appellate jurisdiction (1) the court of first instance and (2) also the appellate court which passed or the second appellate court which passed the decree, (b) where the court of first instance has ceased to exist or to have jurisdiction to execute it (1) 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 suits and (2) also the Court of first instance which has ceased to exist or to have jurisdiction to execute it. These natural meanings which I have italicised as (a) (2) and (b) (2) which would have to be taken in addition to the new meanings if the ordinary meaning of "include" was to be given to the word are inadmissible from the context. Therefore, the real meaning of the section is that the expression "the court which passed the

decree"" shall mean, of course, the court which passed the decree ordinarily but shall exclude that court and ""include and mean"" (a) where the

decree to be executed (b) where the court of first instance has ceased to exist &c.

11. In the result, both on principle and on the interpretation of Sections 37, 38, 39 and 150 of the CPC and on the principle of stare decisis, I am

inclined to answer the question against the jurisdiction of the court which passed the decree but which has lost jurisdiction over the Immovable

property sought to be pursued in execution.

12. After I had written the above, I had the advantage of perusing the opinions of my Lord and Sir William Ayling, J., in this case. I was at first

inclined to think that the hardship pointed out by my Lord as caused to a litigant who has obtained a decree and who may not know when he

applies for execution to the court which passed the decree in his favour that its territorial limits had been altered is a matter for the legislature to

consider. I would venture to suggest that Article 182 of the Limitation Act, Clause 5, should be amended by adding after the words "" to the proper

court"" the words ""or to a court which the decree-holder in good faith believed to have jurisdiction to entertain the application"". This suggestion I

would make to the legislature notwithstanding that I have come to the conclusion that I should not differ from my learned colleagues on the narrow

question referred to us. I have been much pressed by the fact referred to in the judgment of my Lord that notwithstanding *Prem Chand Dey v.*

Makhada Debi ILR (1890) C. 669, it was held in *Girindro Chunder Roy v. Jarawa Kumari* ILR (1891) Cal. 105, that an application might be

made to a court which passed the decree to send the decree for execution to the court which had jurisdiction to sell the property in execution. On

principle I am unable to see any distinction between jurisdiction to entertain an application for sale of property outside the jurisdiction and

jurisdiction to execute the decree by sale of such property. I am still inclined to think that Section 150 was enacted so as to take away both rights

from the court which ceased to have territorial jurisdiction.

13. No doubt, I quoted the American Cyclopaedia in support of my view in *Subbiah Naicker v. Ramanathan Chettiar* ILR (1914) Mad. 462. I am

myself not very familiar with American or English decisions and I felt glad when their Lordships of the Privy Council made the following

pronouncement in *Imambandi v. Matsaddi* (1917) L.R. 45 I.A. 73. "Their Lordships cannot help deprecating the practice which seems to be

growing in some of the Indian courts referring largely to foreign decisions. However useful in the scientific study of comparative jurisprudence,

reference to judgments of foreign courts to which Indian practitioners cannot be expected to have access based on considerations and conditions

totally differing from those applicable to or prevailing in India is only likely to confuse the administration of justice.

14. The case in which their Lordships made this pronouncement was an appeal against the decision of the Calcutta High Court decided in 1911 in

Imambandi v. Matsaddi (1911) 15 Cal. L.J. 621 by a Bench. In that judgment at pages 627 and 630, several English and American cases have

been quoted. Not a single foreign decision however, is referred to in the judgment of their Lordships of the Privy Council on appeal. I take it that,

as in the eye of the law, both English and American Courts except, of course the Privy Council are "Foreign Courts", their Lordships deprecated

quotations from decisions of such courts, That their Lordships of the Privy Council deprecated unnecessary references to English decisions in their

strict sense seems to me to be supported by what Lord Macnaghten said in delivering the judgment of their Lordships in *Bhola Nath Nundi v.*

Midnapore Zemindary Co. ILR (1903) Cal. 506 as follows: "Unfortunately, however, both in the Munsif's Court and in the Court of the

Subordinate Judge, the question was overlaid, and in some measure obscured, by copious references to English authorities, and by the application

of principles or doctrines more or less refined, founded on legal conceptions not altogether in harmony with eastern notions. The result is that,

although the decrees appear to be justified by the main facts, which both the lower courts held to be established, it is impossible to say that the

judgments delivered are entirely satisfactory." It may be that where questions of International Law or Commercial Law or Constitutional Law are

involved, it becomes indispensable (owing to paucity of Indian decisions) to refer to such cases and even then it would be no doubt advisable to

confine ourselves to English decisions. Also where the Statute Law of India "is silent" and rules of justice, equity and good conscience have to be

applied by Indian Courts and such rules have been clearly set out in famous decisions of foreign Courts (such as those collected in Smith's Leading

Cases) references to such authorities cannot conveniently be avoided. (See the very recent Privy Council decision in *Maharaja of Jeypore v.*

Rukmani Devi (1918) 36 M.L.J. 543 on the question of forfeiture of tenancy by denial of title, a thing which is "not ancient Indian Law" and rules

relating to which were adopted by Indian Courts from rules laid down in English cases).

15. Why then did I quote the American Cyclopedia in *Subbiah Naicker v. Ramanathan Chettiar* ILR (1914) Mad. 462? My explanation is that

when I was first appointed to the Bench of this Court (about the beginning of 1912) I found that reference to and quotations from American and

English treatises and decisions were not only permissible but were generally treated by respectable lawyers of greater learning than I could ever

hope to have as indications of a laudable desire to possess an up to date knowledge of legal principles and precedents. I therefore ventured to do

so in that case with great diffidence and I am glad that I am able to give up that practice now. But wholly apart from American treatises and

decisions, there seems to be much in principle in favour of the view taken in *Subbiah Naicker v. Ramanathan Chettiar* ILR (1914) Mad. 462.

16. As my Lord is inclined to the view that notwithstanding the enactment of the new Section 150 the probabilities are that the legislature did not

thereby intend to overrule the then prevalent view of the Calcutta High Court that the court which passed the decree could entertain as "the proper

court" or as "a proper court" within the meaning of Article 182 Clause 5 an application for execution though it might be bound to transfer the

decree for execution to the new court which has obtained territorial jurisdiction over the land to be proceeded against in execution, and as Sir

William Ayling, J., who was a party with me to *Subbiah Naicker v. Ramanathan Chettiar* ILR (1914) Mad 462, is also of that opinion, I do not

feel strong enough to differ from them on that point. I would however suggest that rules should be made under the rule-making power of the High

Court, clearly indicating (a) that though under Order 21 Rule 11 read with Sections 37 and 38, an application for execution might be made to the

court which passed the decree notwithstanding that it had ceased to have jurisdiction to execute it owing to the transfer of territorial jurisdiction, the

court which passed the decree might and should treat it as also an application for transfer of the decree for execution to the new court and pass

orders accordingly and that it should not order the sale of the property which has passed out of its territorial jurisdiction if it could not then entertain

a suit brought for the same reliefs : (b) that where applications are made to both courts an order analogous to the order passed u/s 10 in respect of

suits between the same parties in two different courts having concurrent jurisdiction should be passed : (c) that Order 21 Rule 16 which refers to

the court which passed the decree should be modified by adding an explanation that unless the court which passed the decree has ceased to exist it

is that court to which an application should be made under Order 21 Rule 16 though it ceased to have jurisdiction to execute it by reason of a suit

for the same relief having since passed out of its jurisdiction. The court which passed the decree should, in such a case, pass orders not for

execution in favour of the assignee-decree- holder or the heir of the decree-holder but recognising the assignee-decree-holder's or the heir's rights

to execute and it should then transfer the execution to the new court. If both Courts are given concurrent jurisdiction, the result would be that one

alleged assignee decree-holder might make his application to the Court which passed the decree and another alleged assignee-decree-holder or

the original decree-holder himself might make his application to the new Court (which is included in the definition of the Court which passed the

decree) and there might be conflicting decisions as to who is the real assignee-decree-holder or who is really entitled to execute the decree. It is

because Order 21 Rule 16 raises such difficulties and because very complicated questions might arise under some of the other Orders and

Sections (such as Section 47) if concurrent jurisdiction is recognised and if the expression ""the court which passed the decree"" may mean two

courts at the same time, that I have felt so much difficulty in agreeing with my learned colleagues in the answer to the question referred to us and it

was the consideration that in a matter of procedure, an unanimous decision of a question referred to the Full Bench is desirable that has finally

settled the matter in my mind.