

(1943) 04 PAT CK 0012
In the Patna High Court

Sivala Ramamurty

APPELLANT

Vs

Bulusu Gavaramma and Another

RESPONDENT

Date of Decision : 08-04-1943

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 37(b)
Government of India Act, 1935 — Section 289

Citation : AIR 1943 Patna 423

Hon'ble Judges : Manohar Lall, J;Brough, J

Bench : Full Bench

Judgement

Brough, J.—This is an appeal in an execution suit. The respondent-decree-holders on 5th December 1933, obtained a decree in original suit No. 18 of 1933 in the District Munsif's Court at Berhampur then in the Presidency of Madras. Execution proceedings were taken out, and the application was closed on 23rd July 1934. On 1st April 1936, consequent on the coming into force of Section 289, Government of India Act, 1935, the District of Ganjam within which Berhampur is situate was transferred from the Presidency of Madras to the Province of Orissa; but the area to which the suit related remained however within the Presidency of Madras, and apparently the Presidency Court which now exercises jurisdiction over that area is the District Munsif's Court at Sompeta. These proceedings (Execution Application No. 37 of 1939) were commenced in the Court of the Subordinate Judge of Berhampur in Execution Application No. 37 of 1939. It is clear that unless there were some intermediate proceedings which would stay limitation these proceedings would be barred by the Limitation Act. It is said that there were intermediate proceedings before the Subordinate Judge of Berhampur started in 1937 which barred the limitation. There is considerable doubt as to what occurred in these intermediate proceeding. I do not propose to discuss this point, which was the principal point discussed by the Subordinate Judge and on appeal by the District Judge, because, in my judgment, the objection taken by Mr. P.C. Chatterji for the judgment-debtor in his petition of appeal to this Court and before the lower appellate Court that the Subordinate

Judge of Berhampur had no jurisdiction to entertain the proceedings, is well founded.

2. Upon the transfer of the District of Ganjam from the Presidency of Madras to the Province of Orissa, the Munsif's Court at Berhampur as constituted under the Madras Acts ceased to exist but the Court was deemed to have continued as constituted under the Bengal Civil Courts Act. The precise point now being agitated came before a Bench of the Madras High Court in Tilo Beherani v. Raghubehara AIR 1939 Mad. 463 and the learned Judges there decided that the Berhampur Court had lost its jurisdiction to execute such of its own decrees as were passed when it was a Court within the Presidency of Madras except where an execution application happened to be pending on 1st April 1936. In a matter such as this affecting the rights of persons as between the two provinces (the Presidency of Madras and the Province of Orissa) it is, in my opinion, incumbent upon us to follow a decision of the Bench of the Madras High Court as it could not fail to produce extreme inconvenience and injustice if there were conflicting decisions of the two High Courts.

3. But even if this were not so, I should independently have arrived at the same conclusion as that reached by the Madras High Court. Mr. P.V.B. Rao for the execution-creditor-respondent referred us to numerous decisions of this Court and the Madras High Court tending to show that on a transfer of an area from the jurisdiction of one Court to another the original Court retained jurisdiction in execution proceedings; and, secondly, that an application to a Court which had jurisdiction but no power to do more than direct the transfer of an application for execution was sufficient to bar limitation.

4. I do not question the correctness of the second point, but it has no application to the case before us. Having regard to the conclusion that I have reached that the Courts of this province have no jurisdiction, we cannot and should not express any view as to the effect of the applications which have been made or generally on the question of limitation which can only be determined in an application before the proper Court in the Presidency of Madras. With regard to the first point, all the decisions referred to are on transfers of an area from one district to another within the same province and the considerations that apply to those transfers are quite different from those that apply to a transfer of a district under the provisions of the Government of India Act from one province to another and accordingly are of no assistance in determining the effect of a transfer under the Government of India Act.

5. As I have said, the decision in Tilo Beherani v. Raghubehara AIR 1939 Mad. 463 is perfectly clear on the point, and, if I may say so with respect, perfectly correct and we are bound and would wish to follow it. I would add that the decree-holder has not been left in a position of any difficulty as Section 37(b), Civil P.C., expressly deals with this sort of case and provides that where the Court of first instance, which passed a decree, has ceased to have jurisdiction to execute it, the Court which passed a decree, shall in relation to execution, be

deemed to include the court, which, if the suit, wherein the decree was passed was instituted at the time of making the application for execution, would have jurisdiction to try the suit.

6. Accordingly, in my judgment, this appeal must be allowed and the execution application dismissed. The execution-creditor must pay to the judgment-debtor his costs of this appeal and of the proceedings before the District Judge and the Subordinate Judge of Berhampur.

Manohar Lall, J.

I agree.