

(1917) 11 MAD CK 0032
In the Madras High Court

Sree Raja Manyam Mahalakshamma Garu	APPELLANT
Vs	
Muchika Appalaraju	RESPONDENT

Date of Decision : 18-11-1917

Acts Referred:

Citation : 47 Ind. Cas. 713 : (1918) 34 MLJ 473

Hon'ble Judges : Sadasiva Aiyar, J;Bakewell, J

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—This is a petition to the Government under Rule XVI of the Godavery Agency Rules, which has been preferred to the

High Court for disposal. The petition prays to set aside the order of the: Agency Munsif of Polavara a dated 4-10-1916 passed in Execution

Petition No. 93 of 1910 on his file.

2. The appellant was the decree-holder on O.S. No. 1 of 1897 on the file of the Government Agent's Court, the decree of the High Court in

Appeal in that suit being dated January 1902.

3. As regards execution of decrees of the Agency Courts, the relevant rules are as follows :--Rule 10(1) "" With the exception of the Court of the

Government Agent, who shall be at liberty, in the execution of decrees, to employ an Assistant or Munsif; all decrees of other Courts within his

jurisdiction shall be carried into effect by the Court by which the suit may have been decided. "" ""If the person against whom, or the property

against which, it is sought to execute any decree resides, or is situated within the jurisdiction of a Court of the same Agency other than the Court

issuing the decree, such decree shall be executed in the manner provided in Rule 14, Clause (2), R "" (that is, by forwarding the process in

execution to the Court of the Divisional Assistant within whose jurisdiction the person or property resides or lies who shall ordinarily cause the

same to be executed). Clause (2) : "" decrees shall be executed by an order addressed to the proper officer of the Court; ***." In the present

case, the Government Agent seems to have employed the Polavaram Agency Munsif to execute the Agency Court's decree of 1902. That decree

awarded to the plaintiff possession of the forest lands of Singanapalli. To give such possession in execution, the boundary lines between the

Singanapalli forest and Chengondapalli forest had to be demarcated. On the 18th July, 1904 the Agency Munsif determined by description on

paper the boundary lines as follows: (a) East by a line drawn from Maredukoyya Dimma to the summit of Racha Kodutula Konda and (b) thence

midway between the plateau on the top of the said hill and of Darakonda to the centre of Yerrakonda (c) summit shall rest in Singanapatti. Then in

1910, the plaintiff applied by E.P. 93 of 1910 for the cutting of the boundary line as above fixed in the order of July 1904. The Munsif appointed a

Commissioner to cut the boundary line and he cut the boundary line according to the best of his ability and according to the three directions (a), (b)

and (c) above given in the Munsif's order. While the Commissioner was thus cutting the boundary line, the defendant presented C.M.P. No. 6 of

1915 against the Commissioner's proceedings to the Agency Munsif, his principal objections to the Commissioner's doings being that Yerrakonda

and Darakonda referred to in direction (b) in the Order of 1904 were not the hills which the Commissioner thought to be of those respective

names but that they were two other hills and that the Commissioner should be directed to draw the boundary line between the tops of the two

correct hills and not of the wrong hills. The Munsif practically accepted the defendant's (judgment-debtor's) contention and passed an order

accordingly. It is against that order, that the present appeal in the usual form of a petition to the Government under Rule 16 has been filed.

4. It is clear that if this order of the Agency Munsif in execution of the Government Agent's decree is the judicial order of the Agency Munsif's

Court itself in execution, no appeal is provided against it under the Godavery Agency Rules. Those Rules are published in the Madras Code, Vol.

II, 1915, pages 1258 to 1263 and it is only against the decrees in original suits (see Rule 4) that appeals lie from the Munsif to the Assistant Agent,

a second appeal from the Assistant Agent to the Agent and a third appeal from the Agent by petition to the Government (which means practically

to the High Court) under Rule 16. The CPC not applying, orders passed in execution are not decrees. (See Sri Sri Sri Vihrama Deo Maharajulum

Garu v. Sri Nela Devi Pattamaha Devi Garu ILR (1902) Mad. 266. Hence no appeal lay even to the Assistant Agent from the order in dispute and

much less of course a third appeal to this court. (See C.M.P. No, 513 of 1911 decided by Sundara Aiyar, J. and myself.)

5. Mr. T.R. Ramachandra Iyer who appeared for the petitioner-decree-holder, (who might be called the appellant) was therefore obliged to argue

that though the order purports to be one passed by the Agency Munsif, it is, in the eye of the law an order of the Government Agent himself and

hence Rule 16 which allows a petition against all proceedings of the Government Agent (including proceedings in execution) to the Government

applies in this case. The sole question therefore is whether the order of the Agency Munsif under appeal is in the eye of the law a proceeding of the

Government Agent himself. Mr. Ramachandra Iyer's arguments, if I followed him aright, were formulated in two ways (1) an Agency Munsif

employed by the Government Agent under Rule 10 to execute the decree of the Government Agent's Court becomes himself the Government

Agent or the Government Agent's Deputy by delegated authority and his order became a proceeding of the Government Agent himself; (2) Even if

the Munsif's Court did not become the Government Agent's Court, the Munsif became an officer of the Government Agent's Court and his

proceedings as an officer of the Government Agent's Court became the proceedings of the Government Agent himself. On the first branch of the

argument, he cited Broom's Legal Maxims, page 655 : "" It may, likewise, be well to observe, that delegated jurisdiction, as distinguished from

proper jurisdiction, is that which is communicated by a judge to some other person, who acts in his name, and is called a deputy; and this

jurisdiction is, in law, held to be that of the judge who appoints the deputy, and not of the deputy; and in this case the maxim holds, delegatus non

potest delegare."" ""Nor can an individual clothed with judicial functions delegate the discharge of those functions to another, unless as in the case of

a County Court Judge, he be expressly empowered to do so. 51 and 52 Vict. Ch. 43 Section 18 to 21."" 51 and 52 Vict Ch. 43, Section 18 to 21

allow a County Court Judge to appoint a Barrister of not less than 7 years" standing to act for him as his deputy when he is temporarily

incapacitated through illness etc. It is clear that such a deputy is the only judge of the County Court during the period of his deputation and his

employment does not create another judicial office. Now the employment of the Agency Munsif by the Government Agent to execute a decree of

the latter's court under Rule 10 cannot make the Agency Munsif the incumbent of the Judicial office of the Government Agent himself. The

Government Agent continues to preside in his own court and the Agency Munsif is only an employee under the Government Agent in the matter of

the execution of that particular decree. I at first thought when considering these obscure and unsatisfactory Agency Rules that Rule 10 probably

meant that the Government Agent might transfer the execution from his own court to that of the Agency Munsif. But seeing that Rule 10 clause 1

does not provide even for the transfer of a decree for execution from one court under the Government Agent to another court even under the same

Agent but only for execution of processes sent by one such court to another and that the word " transfer " seems to have been scrupulously

avoided, I think, after the best consideration that I have been able to give to the subject that the Munsif or the Assistant Agent employed by the

Government Agent to execute the latter's decree does not thereby acquire independent judicial powers over the execution proceedings and that he

does not become the Government Agent's Court by and in being so employed, and is only in the same position as a Commissioner or an Amin or

a Ministerial Officer employed by an ordinary court to assist it in particular judicial proceedings. The analogy of a delegation by a County Court

Judge to a Barrister who is the sole County Court Judge for the time being cannot therefore be invoked so as to make the proceedings of the

Agency Munsif the proceedings of the Government Agent himself.

6. As regards the second branch of the argument, the proceedings of a Subordinate Officer of a court of justice do not become the proceedings of

the court itself unless the statute law makes them so in respect of particular matters or unless those proceedings are submitted to the presiding

officer of the court and adopted or approved of by him. Mr. Ramachandra Iyer referred us to the decision in Maharajah of Jeypore v. Nila Devi

Patta Mahadevi Garu ILR (1902) Mad. 109 as supporting his contention. That case arose out of a petition under Rule 31 of the Vizagapatam

Agency Rules corresponding to Rule 16 of the Godavari Agency Rules and there is some obscurity in the statement of facts in the report of that

case. The order in execution in that case is said in the report (preceding the judgment) to have been passed by the acting senior Assistant Agent

and to have been confirmed by the Agent on appeal against which appellate judgment the petition is said to have been presented under Rule 20

which relates however to appeals against decrees. This report seems to be a mistake because orders in execution are not decrees. In the body of

the judgment, however, Rule 31 is referred to and that is also the rule mentioned in the report of the same case as found in 13 M.L.J. 151. Hence

we must take it that the appeal in that case was against an order in execution passed by the Government Agent himself and not against an order in

appeal from a senior Assistant Agent. This is also confirmed by the following sentence at page 111 of the report : "" It was further urged that the

order was not that of the Agent but of his Assistant, and so Rule 31 was inapplicable, but we find that the order was passed under, the authority of

the Agent as is expressly stated therein."" Thus the order in that case was the order of the Agent himself though signed by the Assistant Agent under

the express authority of the Government Agent. That is, the Government Agent applied his judicial mind to the matter, passed an order and asked

the Assistant Agent to sign the order for him (the Agent). Hence the High Court held in that case that Rule 31 corresponding to Godavari Rule 16

applied and an appeal by way of petition lay. Similarly in C.M. P. No. 532 of 1911, Sir Sankaran Nair and Sir William Ayling, JJ. treated that

petition as an appeal against the order of the Agent directing the Special Assistant Agent to dismiss certain petitions as barred by limitation while

conceding that against an order of the Special Assistant Agent himself, no appeal lay. In the present case, the order of the Agency Munsif was not

passed with the knowledge or signed under the "" authority "" of the Government Agent. The Government Agent did not pass the order himself and

did not give authority to the Agency Munsif to sign the order for him. I do not therefore think that the decision in Maharajah of Jeypore v. Sri Nila

Devi Patta Mahadevi ILR (1902) M. 109 applies to this case.

7. In the result, I would uphold the preliminary objection put forward by Mr. Ramesam that Rule 16 cannot be invoked in this case as there was no order by the Government Agent himself. I think that where the Government Agent employs the Munsif to execute the Government Agent's decree, the Agent retains full control over the proceedings which are being conducted by the Agency Munsif as the Government Agent's employee and that the appellant's proper course was to have made representations to the Agent against the proceedings of the Munsif and if the Agent passes proceedings on such representations against the appellant, to apply afterwards by petition under Rule XVI. I would therefore dismiss the present petition with costs.

8. I wish to state in conclusion that it seems to be high time that these unsatisfactory Agency Rules are revised by a proper draftsman. In *Rajendra Singh v. Maharajah of Jeypore* (1915) 30 I.C. 76 *Seshagiri Iyer and Napier, JJ.* state, "it is somewhat anomalous that the Agent should hear appeals from cases which he alone has power to entertain and which are beyond the pecuniary jurisdiction of the Divisional Assistants. The analogy of the Civil Courts Act in the Presidency is against such a procedure. But we have to interpret the rules as we find them however much we may consider that they should have been different-" I find also that in 1863 itself, the rules relating to criminal justice had been cancelled in the Ganjam and Vizagapatam Agency and the Code of Criminal Procedure seems to be now in force in the Agency tracts. It is to be desired that though all the elaborate rule of the CPC may not be made at once applicable to the Agency tracts, the rules actually framed should follow the language of the corresponding sections of the CPC as far as possible, instead of using the loose expressions found in most of the existing rules.

Bakewell, J.

9. I agree with the order proposed by my learned brother.