
(2011) 09 KL CK 0024
In the High Court Of Kerala
Case No : C.R.P. No. 398 of 2011

Srimad Raghavendra Thirtha Swamy

APPELLANT

Vs

Srimad Sudhindra Thirtha Swamiji

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 7, Order 21 Rule 8, 141, 15, 151
Kerala Civil Courts Act, 1957 — Section 11, 3, 4

Citation : (2011) 4 KLJ 421 : (2011) 4 KLT 265

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : T. Krishnan Unni, S.A. Saju, K.C. Kiran and P.A. Sheeja, for the Appellant; R.D. Shenoy and Lakshmi Narayan, for the Respondent

Final Decision : Dismissed

Judgement

Thomas P. Joseph, J.—A question relating to the jurisdiction of the District Court, Ernakulam to execute a decree for prohibitory/mandatory injunction on a counter claim made in the Court of learned Additional District Judge, Thirupathi in a suit brought by the petitioner/plaintiff arises for a decision in this proceeding. Short facts necessary for a decision of the question are:

Petitioner filed a suit in the Court of learned Additional District Judge, Thirupathi praying inter alia for a declaration that he is the Matadhipathi of Kashi Matt Samsthan. A part from resisting the suit contending that respondent/decreed holder/defendant is the real Matadhipathi, he also laid a counterclaim for prohibitory/mandatory injunction, inter alia asking for a direction to the petitioner to return the deities, valuable ornaments etc., in his custody to the respondent Learned Additional District Judge, Thirupathi after trial, dismissed the suit and decreed the counter claim. Petitioner challenged the judgment and decree in the suit and counter claim before the High Court of Andhra Pradesh and applied for a stay of execution of the decree (on the counter claim). The High Court refused to grant stay. That order was challenged in the Supreme Court.

The Supreme Court refused to interfere with the order of the High Court. The appeal preferred by the petitioner against judgment and decree in the suit and counter claim are pending consideration in the High Court of Andhra Pradesh. In the meantime, respondent filed E.P. No. 18 of 2009 in the Court of learned Additional District Judge, Thirupathi for execution of the decree on the counter claim. Whatever be the reason thereof, notice of that execution petition could not be served on petitioner. Respondent filed application under S. 151 of the CPC (for short, "the Code") in the appeal pending in the High Court of Andhra Pradesh requesting for a direction to the petitioner to return the deity/ornaments to the respondent. The High Court declined to pass any order on that application but directed in its order that since petitioner, having been served with notice on the application under S. 151 of the Code has got knowledge about pendency of the execution petition could appear before learned Additional District Judge, Thirupathi (where E.P. No. 18 of 2009 was pending) on the date mentioned in the order and prefer objection if any and that in case there is no such appearance it will be taken that petitioner has waived his objection to the execution petition. Petitioner, I am told appeared through his representative in the executing court (Court of learned Additional District Judge, Thirupathi) and raised a preliminary objection that since the last 2-3 years he is camping at Elamakara, in Ernakulam District, learned Additional District Judge, Thirupathi could not execute the decree. Pursuant to that objection, respondent withdrew E.P. No. 18 of 2009 and filed application before learned Additional District Judge, Thirupathi to transmit the decree certificate to the Court of learned District Judge, Ernakulam for execution against petitioner. Accordingly the decree certificate was transmitted to the District Court, Ernakulam where respondent filed E.P. No. 167 of 2011. That execution petition was made over to the Court of learned Additional District Judge, Ernakulam. Petitioner appeared in the said Court and preferred objection contending that the Additional District Court, Ernakulam has no jurisdiction to execute the decree and that at any rate, since he is camping at Thirupathi only the Court at Thirupathi could execute the decree. Those objections were overruled by the learned Additional District Judge as per order dated August 19, 2011 which is under challenge in this proceeding.

2. Learned Senior Advocate appearing for petitioner has contended that in view of the amendment to S. 39 of the Code in the year 1976, the decree could be transmitted for execution only to a Court of competent jurisdiction and that competency of jurisdiction is to entertain the suit in which the decree was passed either on the date of its institution or on the date the application for execution was preferred. According to the learned Senior Advocate, in view of S. 15 of the Code, the suit could be instituted only in the Court of the lowest grade competent to try it and that provision being mandatory, the District Court had no jurisdiction to execute the decree. It is also contended by learned Senior Advocate that as per S. 24(3) of the Code the Additional District Court could be treated as a Court subordinate to the District Court only for the purpose of the District Court exercising its general power for transfer of cases. It is contended

that in the circumstances, R.8 of O.XXI of the Code has no application and the learned District Judge was bound to transfer the case to the Court which was competent to entertain the counter claim based on the pecuniary jurisdiction. It is contended that so far as jurisdiction for institution of the suit and execution of the decree are concerned, valuation of the suit and the counter claim are to be treated separately and that valuation on the counter claim on which the decree was passed is such that the suit could have been instituted only in the Court of learned Munsiff. It is therefore argued that only the Court of learned Munsiff could execute the decree. Learned Senior Advocate has placed reliance on the decision in *K. Aswathanarayana Setty Vs. Hindustan Finance Corporation*, , *M.P. Abdul Khader Vs. Catholic Syrian Bank*, , *Manganese Ore (India) Ltd., Nagpur Vs. M/s. Mangilal Rungta, Calcutta*, and *Nathu Prasad Vs. Singhai Kapurchand*, . Learned Senior Advocate contended that in the above circumstances, S. 141 of the Code must apply to the proceeding in execution as well. On the facts of the case, it is contended that petitioner is not residing within the local limits of jurisdiction of the learned Additional District Judge, Ernakulam and hence also that Court could not execute the decree.

3. In response, it is contended by learned Senior Advocate appearing for the respondent that as per S. 11 of the Kerala Civil Courts Act, 1957 (for short, "the Act") the jurisdiction of the District Court, subject to the provisions of the Code extends to all original suits and proceedings of a civil nature. It is contended that what is provided under S. 15 of the Code is only a procedure, not of jurisdiction and that the said provision does not take away the jurisdiction of the District Court to entertain any suit or proceedings of a civil nature conferred on it by S. 11 of the Act. It is also contended that amendment was brought to S. 39 of the Code only to end the cleavage of opinion among the various High Courts as to whether a decree could be sent to a Court having no pecuniary jurisdiction to execute it. It is contended that since the District Court has the power to entertain the suit, it is competent to execute the decree as well. Reliance is placed on the observations in paragraph 7 of the decision in *Manganese Ore (India) Ltd. Nagpur v. M/s. Mangilal Rungta, Calcutta* (supra), *Chandravathi Ainma and Ors. v. Erumullan*, 1966 KLT 600, *Bishop Dr. Mathews Mar Savarios Vs. Thankachan* , *Comunidade of Ponchovadi* by its AIR 1971 (Guj) 36 and *Ratiram Lakshmi Narayan and others Vs. Kantilal Mohonlal and Bros.* .

4. On the facts, it is contended by the learned Senior Advocate for respondent that even the preliminary objection preferred by petitioner before learned Additional District Judge, Thirupathi in E.P. No. 18 of 2009 would show that petitioner is camping at Elamakkara, in Ernakulam District. Hence learned Additional District Judge, Ernakulam has the territorial jurisdiction as well to execute the decree against the respondent. In the circumstance, it is contended that civil revision lacks merit and is liable to be dismissed.

5. So far as the factual situation is concerned, it is revealed from the preliminary objection filed by petitioner before learned Additional District Judge, Thirupathi in

E.P. No. 18 of 2009 that it was contended before the learned Additional District Judge that petitioner is camping at Elamakkara, in Ernakulam District since the last 2-3 years. It is in acceptance of that contention that respondent withdrew E.P. No. 18 of 2009 and requested learned Additional District Judge, Thirupathi to transfer the decree certificate to the District Court, Ernakulam. In that view of the matter the present objection that petitioner is camping at Thirupathi and hence only the Court at Thirupathi has jurisdiction to entertain the execution petition cannot be accepted. The next question is whether the Additional District Court Ernakulam could execute the decree notwithstanding the valuation of the suit or the counter claim or, both taken together, as the case may be.

6. Though, much was argued by both sides as to whether it is the valuation of the counter claim alone or it takes in valuation of the suit also for the purpose of conferring pecuniary jurisdiction on the Court for execution, that contention is irrelevant since what is to be decided in this case is only whether learned Additional District Judge, Ernakulam is competent to execute the decree. Only if the answer is in the negative, the question will arise which other Court - the Sub Court or the Munsiff Court, depending on the valuation for deciding pecuniary jurisdiction has jurisdiction to execute the decree.

7. Section 38 of the Code says that a decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution. S. 39 of the Code as it stands after the amendment of 1976 says that the Court which passed a decree may, on the application of the decree holder sent it for execution to another (Court of competent jurisdiction). The expression "Court of competent jurisdiction" was incorporated by the Amendment of 1976. Sub-s.3 of the said section says that for the purpose of S. 39, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for transfer of the decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.

8. As learned Senior Advocate appearing for respondent has pointed out, there was cleavage of opinion among various High Courts as to whether (before the Amendment of 1976) a decree could be sent for execution to a court having no pecuniary jurisdiction, Various High Courts took the different view on the question. The question was considered by this Court in Chandravati Amma & Ors. v. Erumullan (supra). There, the view taken was that the decree could be sent for execution even to a Court which lacked pecuniary jurisdiction. But, later came the amendment to S. 39 of the Code which stated that transfer of the decree has to be to a court of competent jurisdiction and what is the competency of jurisdiction referred in sub-s. (1) of S. 39 of the Code is clarified by incorporating sub-s. 3 in S. 39. This change was taken note of by this Court in Raman Namboodiri Vs. K. Kunhayamath, where referring to the amendment brought into in S. 39 of the Code it was held that a decree can be transferred only to a Court of competent jurisdiction which includes pecuniary jurisdiction as well.

9. Then the question arises whether in view of Ss. 15 and 39 of the Code, it was

within the power of the learned District judge, Ernakulam to entertain the execution petition and make it over for execution to the Court of learned Additional District Judge, Ernakulam. Though, for the purpose of S. 24 of the Code the Court of an Additional District Judge is treated as a Court subordinate to the District Court, Ss. 3 and 4 of the Act leaves me in no doubt that the Additional District Court exercises the same power, function and jurisdiction as the District Court and it is only that having regard to the state of business pending before a District Court, the Government in consultation with the High Court appoints more Additional District Judges to the District Court. Therefore there could be no doubt that except for the purpose of S. 24 of the Code, the Court of Additional District Judge is not subordinate to the Court of the District Judge.

10. Now the crucial question is whether the Court of District Judge could execute the decree? Reliance is placed on S. 15 of the Code which states that a suit shall be instituted in the lowest Court of competent jurisdiction. S. 15 of the Code is only a procedural provision regulating the business of the Courts and does not confer or take away jurisdiction of any Court. S. 15 of the Code does not affect the power of the District Court to entertain and dispose of a suit or proceedings of a civil nature by virtue of the power conferred on it under S. 11 of the Act. It has been so held by this Court in *Bishop Dr. Mathews Mar Savarios v. Thankachan* (supra). It was held that in view of S. 11 of the Act, the District Court has the jurisdiction to entertain any suit though, it may opt to transfer the suit to a Court subordinate to it and having jurisdiction to try it.

11. *Manganese Ore (India) Ltd. Nagpur v. M/s. Mangilal Rungta, Calcutta* (supra) relied on by the learned Senior Advocate appearing for petitioner did not concern the power of the District Court to execute the decree. There, much of the discussion as seen in paragraph 5 was relating to the pecuniary jurisdiction of the Court to which the decree is sent for execution. True, reference was made to S. 15 of the Code also and it was observed that the suit "shall" be instituted in the Court of lowest grade competent to try it and that Ss. 16 and 20 deal with the place of suing. But that decision is no authority for the contention and fairly, it is not contended before me also that the District Court could not entertain the suit though, S. 15 of the Code provided that the suit has to be instituted in the Court of lowest grade competent to entertain it. The other decision which learned Senior Advocate appearing for petitioner has referred to me is *Nathu Prasad v. Singhai Kapurchand* (supra). There, the principle laid down is only that S. 141 of the Code will apply to proceeding in execution as well.

12. I must bear in mind that R.8 of O.XXI was in the Code even before amendment was brought to S. 39 of the Code. R.7 of O.XXI states that the Court receiving copies of decrees shall file the same without proof. R.8 says that where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction. I must also bear in mind that

even when amendment was brought to S. 39 of the Code as above mentioned, R.8 of O.XXI remained untouched. Referring to the said provision, in *Ratira, Lakshmi Narayan & Ors. v. Kantilal Mohonlal & Bros*, (supra) it was held even referring to S. 141 of the Code that where the decree certificate is transferred to the District Court for execution, the said Court itself can execute the decree and there is no need to transfer it to a Court subordinate to it. It was held that where the execution petition is filed in the District Court itself, the District Court cannot refuse to execute it. In view of R.8 of O.XXI, the District Court to which the decree is sent for execution may transfer the same to a subordinate Court of competent jurisdiction but, it cannot be said that the District Court itself has no jurisdiction to execute the decree. It was further observed that until the District Court transferred the decree for execution to a Subordinate Court, the decree holder cannot file an application for execution in any Court other than the District Court. In *Comunidade of Ponchovadi by its Procurador v. Silvia Pineiroe Miranda & Ors.* (supra) it is held that in view of R.8 of O.XXI of the Code, S. 15 of the Code has no application to the execution of proceeding.

13. As I have referred to earlier, what S. 15 of the Code prescribes is only the procedure but, that provision does not confer or take away the jurisdiction of any Court. Procedure is one thing and jurisdiction is another. May be, a proceeding instituted before the District Court may also be amenable to the procedure prescribed under S. 15 of the Code but, I am unable to accept the contention that S. 15 of the Code divested the District Court of its jurisdiction to execute the decree particularly when the decree certificate is transferred to it under R.7 of O.XXI of the Code and Rule 8 enables it to execute the decree for itself. In the view I have taken, I hold that the execution petition filed before learned District Judge, Ernakulam was competent and maintainable and it was within the power of learned District Judge to make over that execution petition to the Court of learned Additional District Judge, Ernakulam. It is pointed out by learned Senior Advocate that even as per S. 21 of the Code, it is within the power of petitioner to point out at the earliest point of time the objection regarding place of suing and consequently, the place of execution as well. Reference is also made to sub-s. (2) of S. 21 of the Code which deals with competency of the Court vis-a-vis jurisdiction. But, place of suing referred to therein is in view of Ss. 16 to 20 of the Code. No such question arises in this case, the objection raised by the petitioner has no merit and is liable to be rejected. Learned Additional District Judge was right in rejecting the objection raised by the petitioner. But I make it clear that I have dealt with only the jurisdiction of the learned Additional District Judge to execute the decree as stated above. This Civil Revision is dismissed.