

(1984) 09 KAR CK 0022

In the Karnataka High Court

Case No : Civil Revision Petition No. 3043 of 1980

Syndicate Bank, Bangalore

APPELLANT

Vs

Mahadevappa Basappa Kuppalur and Another

RESPONDENT

Date of Decision : 13-09-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 37, 38

Citation : AIR 1985 Kar 85 : (1985) 1 KarLJ 48

Hon'ble Judges : P.A. Kulkarni, J

Bench : Single Bench

Advocate : K. Chaya Rao, for the Appellant; K.M. Hadimani, for the Respondent

Judgement

1. This is a revision by the decreeholder against the order dt. 16-6-1980 passed by the Principal Munsiff, Ranebennur, in Execution No. 8 of 1980 dismissing the same with liberty to the decree-holder to file the execution case in the Court of the Munsiff at Hirekerur.

2. The brief facts are as below : -

The decree-holder-Syndicate Bank filed a suit - O. S. No. 225 of 1976 on the file of the Principal Munsiff, Ranebennur, against the, judgment-debtors for recovering Rs. 3,529-85 together with future interest. The suit was decreed on 20th Dec. 1977. It was ordered that the defendants should pay to the decree holder-Bank the said amount in three instalments of Rs. 1,000/- each. None of the instalments was paid by the defendants. Hence on 19-1-1980 the decree-holder levied the execution in Execution No. 8 of 1980 in the Court of the Munsiff, Ranebennur, for recovering Rs. 6,579-60 as calculated up to 11-1-1980. The prayer was for attachment of the salary of the judgment-debtors.

3. The Munsiff, Ranebennur, dismissed the execution case on 16-6-1980 opining that judgment-debtors- 1 and 2 resided outside the jurisdiction of the Court of the Munsiff, Ranebennur and that the execution had to be filed in the Court in whose jurisdiction the judgment-debtors resided.

4. It is undisputed that Ranebennur Court while it passed the decree in question, had jurisdiction over Hirekerur taluk also. While having jurisdiction over Hirekerur taluk, the Court of the Munsiff at Ranebennur passed the decree in question on 20th Dec. 1977. Later on, a separate Court was established at Hirekerur in or about 1979. From that day the Court of the Munsiff at Ranebennur ceased to have jurisdiction over Hirekerur taluk.

5. It may be that the judgment-debtors now are not residing within the jurisdiction of the Court of the Munsiff, Ranebennur. It may be that they are residing now within the jurisdiction of the Court of the Munsiff at Hirekerur. But the question that arises now is whether the Court of the Munsiff at Ranebennur which passed the decree, would cease to have jurisdiction to entertain the execution only on the ground that a new Court of Munsiff has been established at Hirekerur.

6. Section 37 of the C.P.C. reads as :-

"The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, 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

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, 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 suit."

"Explanation:- The Court of first instance does not cease to have jurisdiction to execute a decree merely on "the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit."

Therefore in view of this explanation, it becomes abundantly clear that it is not only the Court of the Munsiff at Ranebennur that passed the decree that would have the jurisdiction but also it is the newly constituted Court of the Munsiff at Hirekerur that would have the jurisdiction. This explanation has been added by S. 17 of the Amending Act No. 104 of 1976.

Section 38 C.P.C. makes the matter still clearer and it reads as :-

"A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution."

Section 39 C.P.C. speaks about the transfer of the decrees.

7. In *Merla Ramanna Vs. Nallaparaju and Others*, , it is stated in para 12 as : -

"The next question for consideration is whether the present suit was filed in a Court which had jurisdiction to execute the decree in O.S. No. 25 of 1927. That was a decree passed by the Subordinate Judge of Kakinada, whereas the present suit was filed in the District Court, East Godavari to which the Court of the Subordinate Judge of Kakinada is subordinate. Section 38, Civil P.C. provides that a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution."

"The District Court of East Godavari is neither the Court which passed the decree in O. S. No. 25 of 1927 nor the Court to which it had been sent for execution. But it is common ground that when the present suit was instituted in the District Court, East Godavari, it had jurisdiction over the properties, which are the subject-matter of this suit. It is true that by itself this is not sufficient to make the District Court of East Godavari the Court which passed the decree for purpose of S. 38, because under S. 37, it is only when the Court which passed the decree has ceased to have jurisdiction to execute it that the Court which has jurisdiction over the subject matter when the execution application is presented can be considered as the Court which passed the decree."

"And it is settled law that the Court which actually passed the decree does not lose its jurisdiction to execute it, by reason of the subject matter thereof being transferred subsequently to the jurisdiction of another Court. vide - *Seeni Nandan v. Muthuswamy Pillai* AIR 1920 Mad 427 (FB) (P), - *Masrab Khan Vs. Debnath Mali alias Abhu Mali and Others*, and "*Jagannath v. Ichharam*" AIR 1925 Bom 414 (R)." (underlining is mine)

In *Gowrammal Vs. Lingappa Gowder*, it was held as : -

"When the subject-matter of a suit is transferred due to a change in the territorial jurisdiction of a Court, the transferee Court acquires an inherent jurisdiction over the subject-matter. The transferee Court can, therefore, entertain execution application relating thereto and execute decree, even though the decree is not transferred to it by the decreeing Court. However, this principle cannot be applied to money decrees. In case of money decrees if the executing Court is not the decreeing Court, the decree must be transferred to it by a proper transmission of the decreeing Court before it can be executed. For, so long as the decreeing Court continues to exist, it has jurisdiction over the decree it has passed and hence a transfer of the decree is necessary before it can be executed by the executing Court."

In the said Madras case, the Supreme Court's decision has been considered. This Court in *Gopalakrishna v. Laxman* AIR 1964 Mys 34 held as :-

"It is plain from the language of S. 38 read with S. 37 that the Court which actually passed the decree, can at all times execute the decree, unless it has ceased to exist or it has ceased to have jurisdiction to execute the same. The

jurisdiction of the Court which actually passed the decree to execute the same is not lost merely because a new Court is established which Court if it had been in existence on the date of the suit would have had jurisdiction to try the same.

Till 1-8-1961, there was only one Subordinate Judge's Court in the District of South Kanara and that Court was located at Mangalore. On 1-8-1961, a new Subordinate Judge's Court was established at Udipi by a Notification. By another Notification the Government directed that the Subordinate Judge's Court at Mangalore shall with effect from 1-8-1961, cease to exercise jurisdiction over the local limits comprising those in the previous Notification. Prior to 1-8-1961, that is before the establishment of the new Court at Udipi, a money decree was passed by the Subordinate Judge at Mangalore. On levying its execution in the Court at Udipi.

Held (i) that the Court at Udipi had no jurisdiction to execute the decree without the same being sent to that Court, for execution under S. 39. Therefore no assistance could be taken from S. 37 in support of the contention that the new Court also had jurisdiction to execute the decree. Nor could Sec. 38 lend any support for that contention.

(ii) that there was no transfer of the proceedings under S. 24 and that Section could -not apply.

(iii) that the Notification did not expressly or by necessary implication transfer any pending "business" from the Mangalore Court to the Udipi Court. Therefore, S. 150 also did not apply.

(iv) that the view that according to the Notifications, the Court at Mangalore would have no jurisdiction over the areas included within the jurisdiction of the Court at Udipi was not correct, because before Udipi Court could have jurisdiction, it must be held that the Court at Mangalore which actually passed the decree had ceased to have jurisdiction to execute the same. Ceasing to have jurisdiction over a territory is not the same thing as ceasing to have jurisdiction to execute the decree. There was nothing in the Notifications to suggest that the Court at Mangalore had ceased to have jurisdiction to execute the decree. Hence the Udipi Court was not competent to execute the decree."

Therefore in view of the said principles, it cannot be said that the Court of Munsiff at Ranebennur which passed the decree has no jurisdiction to execute the decree in question. It continues to have the jurisdiction to execute the decree in question. Merely because the judgment-debtors are residing outside the jurisdiction of the Court of the Munsiff at Ranebennur, the Court of the Munsiff at Ranebennur does not cease to have jurisdiction.

8. Perhaps on account of the conflicting views of the various High Courts the Legislature wanted to put an end the conflicting view of the various High Courts and added an explanation to S. 37 by enacting S. 17 in the Amending Act No. 104 of 1976. The explanation added varies deep the divergence of opinion of the

various High Courts on the point.

9. Thus, in the result, the order passed by the Court below is set aside. The revision is allowed. The matter is sent back to the Court of the Munsiff at Ranebennur for proceeding further with the execution.

10. No costs in this revision.

11. Revision allowed