

(1938) 08 MAD CK 0008
In the Madras High Court

Tile Beharani and Another

APPELLANT

Vs

Kevute Raghubevara

RESPONDENT

Date of Decision : 16-08-1938

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (1939) 49 LW 338 : (1939) 1 MLJ 340

Judgement

1. On 1st April, 1936, the province of Orissa was constituted, and the Court of the Subordinate Judge of Berhampore has on and from that date,

been a Court within the jurisdiction of that province. After that date the respondent who had obtained a decree against the predecessor-in title of

the appellants in the Court of the Subordinate Judge of Berhampore at a time when the Court was within the Presidency of Madras and whose

decree had been confirmed by the High Court of Madras filed an application to execute the decree, and filed it not in Berhampore but in the Court

of the Subordinate Judge of Chicacole. The appellants contended that he ought to have filed his application in Berhampore, and as the learned

Subordinate Judge has overruled their contention they have now appealed to this Court.

2. The law which has to be applied to these facts is found in Section 37 of the Civil Procedure Code. It is clear to us from a study of that section

that

(i) only one of the two Courts (Berhampore or Chicacole) is the proper Court to which application to execute must be made.

(ii) that application must be made to Berhampore, the Court of first instance.

3. Unless the Court of the Subordinate Judge of Berhampore has either (a)

ceased to exist or (b) ceased to have jurisdiction to execute the decree.

The learned Subordinate Judge of Chicacole has held that the Berhampore Court has both ceased to exist and ceased to have such jurisdiction.

4. To decide whether this finding is right or wrong it will be necessary to consider the various notifications which were issued at the time of the

constitution of the Orissa Province. Those notifications are the following:

(i) By Section 20 of the Order in Council constituting the province (see Fort St. George Gazette for 31st March, 1936, at p. 389) the Governor-

General-in-Council was given power to give such directions as he thinks proper as to the disposal of pending cases in all Courts other than the

High Court and as to the Courts which should hear certain appeals and proceedings in revision;

(ii) the Governor-General-in-Council in the exercise of this power notified (see pages 464 and 465 of the same issue of the Gazette) that every

proceeding pending in a Court, other than a High Court, in any area transferred by the said order to Orissa should be continued as if the said order

had not been made; and

(iii) Regulation No. 1 of 1936 was published by the Government of India to declare the law in force in the Province of Orissa (see p. 460 of the

same issue of the Gazette).

5. By Section 4(2) of the Regulation all Courts constituted...under the Madras Civil Courts Act, 1873...shall be deemed to have been

constituted...under the Bengal, Agra and Assam Civil Courts Act, 1887. By applying these notifications to the Berhampore Court we arrive at the

following conclusion - that all pending proceedings in that Court were to be continued - and that that Court was to be deemed, as far as may be, to

have been constituted under the Bengal Civil Courts Act.

6. Now the first question which arises is ""Has the Berhampore Court ceased to exist?"" To us it seems impossible to hold that it has ever ceased to

exist. It remains the same Court in the same buildings in the same town. Its functioning was never suspended for a single minute. It continued to

deal with all pending proceedings, and any legal difficulties as to the source of its further jurisdiction from 1st April, 1936, onwards were met by

the provision that it was to be deemed to have been constituted under the Bengal Act. The object of the notifications seems to us to have been to

prevent the Berhampore Court from ceasing to exist and to ensure its continuity. We are unable therefore to agree with the learned Subordinate

Judge that the Berhampore Court ceased to exist.

7. Has then the Berhampore Court lost its jurisdiction to execute such of its own decrees as were passed when it was a Court within the

Presidency of Madras? We think a true reading of the notifications will show that it has - unless an execution application happened to be pending

at the beginning of April, 1936.

8. Section 19(1)(b) of the Order in Council shows that the jurisdiction of the High Court of Madras with respect let us say, to Berhampore Town

shall cease, subject only to what is enacted in Section 19(2). Then comes Section 20. What is the purpose of that section if it is not to provide for

a similar ceasing of jurisdiction on the part of all subordinate Courts in the transferred areas? Further, when it is enacted that a Court actually

constituted under a Madras Act shall be deemed as far as may be, to have been constituted under a Bengal Act, that seems to us to carry with it

the obvious implication that as and from 1st April, 1936, a Court in the position of the Berhampore Court ceases to have jurisdiction for any

purpose over any matter arising within the Presidency of Madras except in so far as any other notification may give it such, jurisdiction - and it is

not seriously contended here that the present application can come within the meaning of the words pending proceeding.

9. Appellants' learned Advocate relied very strongly however upon *Ramier Vs. Muthukrishna Aiyar and Others*, , as authority for the position that

the mere loss of territorial jurisdiction does not take away from the Court which has once passed a decree its power to execute it; and it is a

plausible argument to extend that proposition to cover the facts of the present case. An examination of that case, however, will show that one of

the main reasons for the decision was that a notification of the Government altering the territorial jurisdiction of Courts will not affect pending cases

unless special reference is made to them and cannot therefore amount to action u/s 150 of the Civil Procedure Code. In the present case special

reference is made to pending cases, and a special notification published to preserve the jurisdiction of the Court to continue them. We accordingly

do not think that *Ramier Vs. Muthukrishna Aiyar and Others*, , stands in our way

and we hold that the existence of the specific notification is itself

the strongest indication that but for it all jurisdiction in Berhampore would be gone in respect of such of those cases as arise from the area still retained in Madras.

10. Appellants' learned Advocate argues finally that a Court which passed a decree can never lose its jurisdiction to execute it unless some

specific act of transfer deprives it of that jurisdiction. That argument is refuted by *Zamindar of Vallur and Gudur v. Adinarayudu* I.L.R.(1896) 19

Mad. 445 where it was held that the Court of a District Munsiff which passed a decree when invested with special powers to try small cause suits

up to a certain value had no jurisdiction to execute it after those powers had been withdrawn.

11. For these reasons we are of opinion that the order of the learned Subordinate Judge of Chicacole is right and we dismiss this appeal with

costs.