

(1943) 01 MAD CK 0007
In the Madras High Court

Vysaraju Appala Narasimha Raju

APPELLANT

Vs

Brundavanasahu (died) and Others

RESPONDENT

Date of Decision : 08-01-1943

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 19

Citation : AIR 1943 Mad 617 : (1943) 2 MLJ 31

Hon'ble Judges : Abdur Rahman, J

Bench : Division Bench

Judgement

Abdur Rahman, J.—The question that we have been. invited to decide in these revisions is one of jurisdiction. These revisions came up for

decision once before and Pandrang Row, J., and one of us then took the view following another case decided by the same Bench (for which see

Jami Venkatappadu and Others Vs. Kannepalli Ramamurthi and Others, that the Subordinate Judge's Court at Berhampore would continue to

have, even after the Government of India (Constitution of Orissa) Order, 1936, had come into force, jurisdiction to entertain and dispose of the

applications made by the judgment-debtor under the Madras Agriculturists' Relief Act (IV of 1938). This conclusion was arrived at as the

proceedings on these applications were then regarded, on account of the words "" or enter satisfaction "" contained in Section 19 of that Act, to

relate to "" discharge or satisfaction of the decree"" used in Section 47, Civil Procedure Code. In that view the revision petitions were accepted on

the 12th August, 1940 and the petitions were remanded to the Subordinate Judge of Berhampore for disposal according to law.

2. It was discovered by the petitioners shortly after, that one of the decree-holders (respondent) had died a few days before the heading of the

revisions in this Court and the judgment delivered on the 12th August, 1940, would not be effective at least against his legal representatives. Two

applications (C.M. Ps. Nos. 980 and 983 of 1941) were therefore made to this Court to bring them on the record and to rehear the revisions.

These applications were granted by us on the 19th August, 1942. Since in view of a Full Bench decision to which we would refer subsequently, we

were not quite sure as to what the fate of these revisions would now be, we ordered, in spite of an objection on behalf of the petitioner, that they

should be heard de novo and not confined to the legal representatives of the deceased respondent alone. This was done with the object of avoiding

a conflict in case we ultimately arrived at a conclusion different from what had been arrived at in August, 1940.

3. The facts which gave rise to these revisions may be now stated. A preliminary decree on the basis of a mortgage deed dated the 17th February,

1916, was passed in O.S. No. 32 of 1924 by the Subordinate Judge of Berhampore on the nth February, 1925. This was made final on the 7th

April, 1926. An execution application for the sale of the property was filed in 1929. It was pending when the Government of India (Constitution of

Orissa) Order, 1936, was passed by His Majesty in Council. Under this Order, Orissa which was formerly a part of the Province of Bihar and

Orissa was formed into a separate Province and was placed within the jurisdiction of the High Court of Judicature at Patna. A portion of the

Ganjam District which was formerly in Madras Presidency was transferred to and became a part of Orissa. The Subordinate Judge's Court at

Berhampore was in the area so transferred. The remaining portion of Ganjam District which remained in the Madras Presidency was made a part

of the Vizagapatam District. It may be borne in mind that all the properties covered by the final decree passed on the 7th April, 1926, were

situated within the area that was retained in the Madras Presidency and fell within the jurisdiction of the Subordinate Judge's Court at Chicacole

which was a part of the Vizagapatam District. The Order in Council came into operation on the 1st April, 1936, and this has been referred to in it

as "" the appointed day "" when the various changes in jurisdiction had come into effect.

4. The Madras Agriculturists' Relief Act. came into force in March, 1938. A petition (E.A. No. 24 of 1938) was filed by the fifth defendant, a

legal representative of the deceased (who had acquired rights in the property covered by the decree passed? in O.S. No. 32 of 1924 in or about

1931 and had been impleaded for that reason as a party to the execution proceedings on the 8th December, 1931), to the Subordinate Judge of

Berhampore u/s 20 of Act IV of 1938 for the purpose of getting the execution of the decree passed on the 7th April, 1926, stayed. Another

petition (O.P. No. 16 of 1938) u/s 19 of the same Act for the purpose of scaling down the decree was filed by the same person in the same Court

on the 13th April, 1938. Another application (E.A. No. 167 of, 1938) had been apparently by way of caution made by him under the same

section a day earlier for the purpose of scaling down the decree in the Court of the Subordinate Judge of Chica-cole. Under the provisions of

Section 19 of that Act, an application for the amendment of a decree has to be made to the Court which passed it. It was obviously in view of that

provision in the section that the application was made to the Subordinate Judge of Berhampore. One of the points to decide in these revisions

would relate to the meaning to be attached to that expression in the section.

5. The original petition (O.P. No. 16 of 1938) was dismissed by the Subordinate Judge of Berhampore on the 23rd December, 1938, for what he

regarded to be non-prosecution by the petitioner. Against this dismissal, C.R.P. No. 2024 of 1939 was filed in this Court. The Subordinate Judge

of Berhampore took up the stay petition (E.A. No. 24 of 1938) made in the Court on the 26th March, 1938, and instead of dismissing it as a

necessary consequence of the dismissal of the application u/s 19, he was asked to go and did go into the question on the merits and dismissed the

application on the 23rd January, 1939. As against this dismissal, G.R.P. No. 1008 of 1939 was filed in this Court. It is with these revisions that we

are now concerned.

6. The question whether the order on an application u/s 19 of Act IV of 1938 was appealable was considered by a Full Bench of this Court in

A.S. Nagappa Chettiar and Another Vs. Annapoorani Achi alias Karuppayi Achi and Another, . In coming to the decision that it was not, the

learned Chief Justice who delivered the judgment of the Court did not fall in with the view expressed in Jami Venkatappadu and Others Vs.

Kannepalli Ramamurthi and Others, that such petitions raised questions relating

to execution, discharge or satisfaction of a decree within. the meaning of Section 47, CPC and agreeing with the decision in Pakkiri Muhammad Tharaganar Vs. U.T. Syed Sahib, , which was to the effect that the pendency of execution proceedings did not make an application u/s 19 of Act IV of 1938 a matter relating to the execution of the decree in any sense," held that Section 47, Civil Procedure Code, could have no application. The question therefore whether the orders passed on applications u/s 19 were appealable u/s 47 was authoritatively determined by the Full Bench. Nor having regard to what fell from the learned Chief Justice in the Full Bench decision is it necessary to canvass the correctness of the decision in Pakkiri Muhammad Tharaganar Vs. U.T. Syed Sahib, or to distinguish it on the ground that statutory satisfaction of a portion of the debt as contemplated by Section 19 of Act IV of 1938 is different from the satisfaction by the debtor by way of an adjustment or otherwise within the meaning of Section 47, Civil Procedure Code. But the question remains whether the proceedings started on an application are independent proceedings as contended for by learned Counsel for the respondent or merely ancillary to the execution application (even if not appealable or as decided by the Full Bench not in regard to a matter relating to the execution of a decree as found in Pakkiri Muhammad Tharaganar Vs. U.T. Syed Sahib,) as contended for by learned Counsel for the petitioner. And this question is, in view of the law as we now find it, of considerable importance and would have to be answered before the fate of these revisions can be determined.

7. The only objection raised by learned Counsel for the respondent before us was that this Court had no jurisdiction to hear these revisions against the orders of the Subordinate Judge of Berhampore who was, on. the date on which he passed the orders whose correctness is now being attacked, subordinate to the High Court of Judicature at Patna and not to this Court. The question whether applications under Sections 19 and 20 of Act IV of 1938 could be filed by the petitioner in the Court of the Subordinate Judge of Berhampore after it had ceased to be a part of this Presidency could not be, in spite of an attempt on the part of the learned Counsel for the respondent to leave it undiscussed, left alone and had to be examined. When pressed by us on this point, he adopted the same position as

was taken by earned Counsel for the petitioner. Both of them agreed that the applications under Sections 19 and 20 of the Madras Agriculturists' Relief Act should have been filed before the Subordinate Judge of Berhampore although according to the former the revisions against the orders passed on them could only be filed in the High Court at Patna while according to the latter in this Court. This unanimity does not, however, relieve us of examining the position for ourselves and coming to, a decision independently of the position taken up by the parties as to the Court that was competent to entertain those applications. If we arrive at the conclusion that the Court at Berhampore was seized of the jurisdiction, the further question as to the Court to which revisions would lie from the orders passed on them would have to be examined and answered. If, on the other hand, we are of opinion that these applications could not have been filed in the Court of the Subordinate Judge at Berhampore, but in that of the Subordinate Judge Of Chicacole, it is obvious that any appeal or revision from any order passed by that Court could be entertained by this Court, although as a result of that finding, these revisions will have to be rejected. It might be mentioned here that earned Counsel for the respondent contended that if we came to the decision that the Subordinate Judge of Berhampore possessed the jurisdiction to dispose of the applications made by the petitioner, revisions from the orders passed by him could only lie to the High Court at Patna and even if the rule made by the Governor-General in Council under the Government of India (Constitution of Orissa) Order, 1936, is so construed as to confer jurisdiction on this Court for the purpose of hearing revisions from those orders, it would be beyond the powers conferred on the Governor-General in Council by the aforesaid Order in Council and would therefore be ultra vires of him.

8. In order to appreciate the respective contentions of the parties, the provisions under the Government of India (Constitution of Orissa) Order, 1936, and the rules framed by the Governor-General in Council thereunder must be examined. Section 20 of the Government of India (Constitution of Orissa) Order, 1936, reads as follows:

Subject to the provisions of the last preceding paragraph, the Governor-General in Council may, after consulting the local Governments, and High

Courts concerned, give such directions as he thinks proper as to the disposal of any cases pending on, or shortly before, the appointed day in any

Court acting for an area, any part of which is transferred by this order to Orissa, and as to the Courts in which proceedings by way of appeal or

revision are to lie in cases decided by any such Courts before the appointed day.

9. The directions referred to in this section were given by the Governor-General in Council and published on the 1st April, 1936, in the Home

Department No. F. 210/36, Judicial. They are as follows:

1. Every proceeding pending on the appointed day before any Court other than a High Court, in or in respect of, any area transferred by the "aid

Order to Orissa shall be continued, as if the said order had not been made.

2. Any appeal or application for revision in respect of any proceeding so pending or of any decision made before the appointed day in any such

Court in or in respect of any such area shall lie in the Court which has appellate or revisional jurisdiction as the case may be over the Court which

would have jurisdiction to try such proceeding if the proceeding were instituted after the appointed day:

Provided that, where the proceeding relates to any property situate partly within and partly without any area so transferred by the said order to

Orissa any appeal or application for revision shall lie as if the said order had not been made.

10. u/s 20 of the Government of India (Constitution of Orissa) Order, the Governor-General in Council could give directions both as to the

disposal of cases that were pending on or shortly before the appointed day (i.e., the 1st April, 1936) in a Court like that of Berhampore (which

was acting for an area a part of which was transferred by this order to Orissa) as well as in regard to the Courts where proceedings by way of

appeal or revision were to lie in cases decided by such Courts before that date. In construing this rule, learned Counsel for the respondent

contended that it was competent to the Governor-General to frame rules as to the disposal of cases that were pending in the Court of Berhampore

on the 1st April, 1956, or had been decided before that date but that he could not make any rules under this section in respect of cases which

were decided by the Court in Berhampore subsequent to that date. The appeals, according to him, would in such cases (that is, subsequently

decided ones) lie in the ordinary course to the High Court at Patna. It was on this construction that he characterised Rule 2 if read as applicable to

cases that might be decided after the 1st April, 1936, as ultra vires the Governor-General in Council.

11. According to Rule 1 the proceedings pending on the 1st April, 1936, before any Court located either in an area transferred by the said order

(which the Court at Berhampore was) or in respect of any area transferred by the said Order (in which the property in suit was not--the area in

which it was situated having continued to remain in the Madras Presidency after the date of the Order in Council) were to continue in the Court at

Berhampore and the Order in Council was to have no effect on such proceedings. The result of this rule is that the execution proceedings pending

in the Court of Berhampore would continue to remain in that Court and an appeal in respect of that proceeding would lie to this Court as if the

Government of India (Constitution of Orissa) Order, 1936, had not been made. It is clear therefore that if the applications under Sections 19 and

20 of Act IV of 1938 formed a part of the execution proceedings pending on the 1st April, 1936, in the Court of the Subordinate Judge of

Berhampore, they (that is, the applications) would have to be filed in that Court. That is why earned Counsel for the respondent contended that the

applications made by the petitioner under Sections 19 and 20 of Act IV of 1938 were independent proceedings and cannot be held to form part of

execution proceedingsl which were pending on the appointed day in that Court;and that is why earned Counsel for the petitioner urged that the

petitions must be, in view of the effect that they would have on the execution proceedings, regarded to be ancillary.

12. Under the relevant words of Rule 2 framed by the Governor-General in Council any application for revision in respect of any proceeding

pending on the 1st April, 1936, in the Court in Berhampore (situated as it is in the area transferred) would lie to the Court that has revisional

jurisdiction over the Court which would have jurisdiction to try such proceedings if they were instituted after the 1st April, 1936. This would

depend on the question as to which Court has jurisdiction to try the proceedings started on the applications under Sections 19 and 20 of Act IV of

1938. If the Court of the Subordinate Judge of Berhampore is found to have that jurisdiction, the revisions under this rule would, according to

earned Counsel for the respondent, lie to the High Court at Patna and this Court has no jurisdiction to hear them. But if, on the other hand, the

Subordinate Judge's Court at Chicacole is found to have jurisdiction to try the proceedings started by these applications, the revisions, according

to this rule, would, it is admitted on behalf of the respondent, lie to this Court. But in the event of the latter contingency, it is contended by him that

in so far as the rule would be purporting to confer jurisdiction on this Court in respect of a case instituted before and decided after 1st April, 1936,

it would be ultra vires the Governor-General in Council for Section 20 of the Government of India (Constitution of Orissa) Order, 1936, only

confers the power to frame rules in respect of cases decided before the 1st April, 1936. "

13. In view of the importance of the constitutional question involved in this case, we decided to issue a notice to the learned Advocate-General to

appear ""before us and discuss the question as to the ultra vires nature of Rule 2 made by the Governor-General in Council. He did so and we are

indebted to him for the valuable assistance rendered to us. Turning our attention to this question first, there seems to be no doubt that if Section 20

of the Order in Council is read as referring to pending cases only, if reconciliation were found to be impossible between the section and the rules

made thereunder and the latter is found to be in excess of the statutory power authorising them, the subordinate provision, as the rules framed by

the Governor-General in Council happen to be, must give way and the portion of the second rule in excess of the statutory power found to be

invalid as being ultra vires of the Governor-General in Council. But before we go to that length we will have to struggle against such a construction

and will have to make an effort within the bounds of reason to bring them within the ambit of Section 20 if that can be possibly so done. This is

because when a competent authority like the Governor-General in Council entrusted with the task of making rules; exercises that power, the rules

made by him should be as far as possible supported even by a ""benevolent"" interpretation particularly when the result of holding otherwise would

be to give rise to a conflict of jurisdiction (as for instance in this very case) and would necessarily compel us to hold that the law-making authority--

as the King in Council is in the present case--did not contemplate and therefore legislate for obvious cases pending on the appointed day and

decided thereafter. If in spite of this attempt, -however, the rule or any portion thereof is found to be manifestly beyond the power of the

Governor-General in Council, there would be no other alternative but to declare it to be invalid.

14. u/s 20 of the Order in Council, the Governor-General in Council is authorised to give directions as to the disposal of any cases either pending

on or shortly before the appointed day, that is the 1st April, 1936, in the Court at Berham-pore (a part of whose area has been transferred by the

Order in Council to Orissa) or as to the Courts in which proceedings by way of appeal or revision are to lie in cases decided by the Court at

Berhampore before that date. Earned Counsel for the respondent contended, as stated before, that under this section the Governor-General in

Council can only have power to give directions for the disposal of cases (original, appellate or execution) which were pending on the appointed

date in the Court of Berhampore, but he could not give any directions in regard to cases that were decided by the Court of Berhampore after the

1st April, 1936. He would have us hold that the word "" disposal"" in this section only applied to the actual decision by the Court of Berhampore in

which the execution application was actually pending at the time when the Order in Council came to be passed by His Majesty in Council. If we

construed the word ""disposal"" strictly in the limited sense as applying to the immediate disposal of proceedings pending in a Court (the Court of the

Subordinate Judge of Berhampore in this case) the result which earned Counsel for the respondent contends for would seem to follow. But are we

bound to construe that word so rigidly? If the word ""disposal"" is construed to convey not the immediate settlement of a case by the Court in which

it was pending at the time when the Order in Council came into effect but is deemed to include its final disposal as well as to cover a decision by a

Court of appeal or of revision, the Order in Council will be found to have provided for all the possible contingencies and the directions given by the

Governor-General in Council in Rule 2 will have to be held intra vires. Having regard to the general principles of construction to which we have

already referred we see absolutely no reason why the word ""disposal"" used in Section 20 of the Order in Council should be taken to mean

immediate settlement of a case alone and why it should not be read so as to cover the final settlement of the same not necessarily by the Court in

which it was pending on the appointed day (the Court of Berhampore in this case) but also by a Court of appeal or revision from that Court.

Construing the word "disposal" in that manner, we are of opinion that the direction contained in Rule 2 framed by the Governor-General in Council

was not ultra vires and "any appeal or application for revision in respect of any proceeding so pending" in the Court of the Subordinate Judge of

Berhampore could be preferred or filed even after the appointed day (that is, the 1st April, 1936) in this Court which has appellate and revisional

jurisdiction over the Court in Chicacole (where the mortgaged property is located) "which would have jurisdiction, to try such proceeding if the

proceeding was instituted after the appointed day." The latter portion of Section 20 on which reliance was placed on behalf of the respondent was

obviously put in to provide for appeals and revisions in cases decided before "the appointed date." This does not however mean that the word

"disposal" in the former portion does not include disposal in all its stages, appellate or revisional.

15. This decides the question that this Court would have jurisdiction to hear these revisions if the application under Sections 19 and 20 of Act IV

of 1938 were held to have been made in the execution proceeding that was pending on the 1st April, 1936, when the Order in Council came into

force. But the position would be very different if the proceedings started with the application under Sections 19 and 20 are held to be independent

proceedings. In the event of the latter conclusion, this Court would have no jurisdiction to hear these revisions either because this Court is not a

Court of appeal or of revision from the decisions of the Court of Berhampore given in respect of cases started (and decided) after the 1st April,

1936, or because the Court in Berhampore is itself found to have no jurisdiction to entertain the applications under Sections 19 and 20 of Act IV

of 1938.

16. We must therefore consider the question whether proceedings started under Sections 19 and 20 are independent proceedings or merely

ancillary to the execution proceedings pending in the Court of Berhampore on the 1st April, 1936. u/s 20 of Act IV of 1938, the Court executing

the decree (as the Subordinate Judge's Court at Berhampore) was bound to stay the execution proceedings on E.A. No. 20 of 1938 until the

Court which passed the decree "" had passed orders on "" an application made or to be made u/s 19"". The application u/s 20 of Act IV of 1938

could only be made to the Court executing the decree and would have to be regarded in the absence of any authority to the contrary as an

application ancillary to the proceedings in execution--its main object being to stay proceedings in execution and nothing more. In that respect it

would be like an ordinary application for adjournment which though not an application relating to execution, discharge or satisfaction of a decree

must be prima facie held to be ancillary in its purpose and not independent in the sense that it would affect the liability under the decree either

wholly or partially. The only decisions under that section to which our attention was drawn were those in Swaminatha Odayar Vs. Srinivasa Aiyar

and Others, and A.A.O. No. 349 of 1939 and C.R.P. No. 1416 of 1939 (1941) 53 L.W. 82 (Short Notes). It was held in these cases that an

order passed u/s 20 refusing to stay execution was not appealable u/s 47, Civil Procedure Code. These decisions render us no assistance in

coming to the conclusion whether the proceedings u/s 20 are to be regarded as independent or merely ancillary. In the absence of any other

authority, we must hold that proceedings taken u/s 20 of Act IV of 1938 are ancillary and cannot be held to be independent proceedings. This

application must be therefore held to have been properly made in the Court of the Subordinate Judge of Berhampore and as it was made in a

pending proceeding in execution, the revision to this Court would under Rule 2 made by the Governor-General in Council lie to this Court.

The position, however, u/s 19 is not so easy. Under that section the provisions of Act IV of 1938 have, on the applications of the persons

mentioned therein, to be applied and the decree amended or satisfaction entered by the Court which passed the decree. It has been already

decided that an application under this section would not fall within the ambit of Section 47, CPC and was not therefore appealable whether it was

made while the application for execution was pending or not. (Vide In Re: Balusu Subbaraidu and Others, Pakkiri Muhammad Tharaganar Vs.

U.T. Syed Sahib, and Nagappa Chettiar v. Annapoorani Achi (1914) 1 M.L.J. 164 : ILR (1941) Mad. 261 . But these authorities do not bear on

the question under examination. The only decisions which are at all relevant are those of our brother Wadsworth, J., in Gorle Satyanarayana Vs.

Gorle Peddi Naidu and Another, and in C.R.P. No. 2132 of 1939 (1941) 53 L.W. 79 (Shot Notes). He observed in the first case as follows:

An application u/s 19 is not an application to amend a decree so as to bring it in accordance with the judgment; nor is it an application which can

be said to be ancillary to the suit in which the decree was passed. It is in substance an application to enforce a new right created by a statute which

came into force after the decree was passed. It is in no way ancillary to the decree but destructive of the decree; and although it may result in the

amendment of the decree and the recording of satisfaction, it is not, in my opinion, an application in the suit in which the decree was passed.

17. In the other case, Wadsworth, J., decided that the proceedings u/s 19i were not proceedings either in a suit or in an execution.

18. After considering the language of Section 19 of the Act very carefully we find ourselves in respectful agreement With the legal position taken in

the above decisions., The execution Court cannot go behind or amend a decree but under this section the decree would be, if the application is

granted, either required to be amended or held to have been entirely satisfied. Moreover, the application u/s 19 of the Act is not to be made, like

the application u/s 20, to the Court executing the decree but to the Court which passed it., Whatever meaning be attached to the expression "" to a

Court which has passed a decree "" it cannot certainly be taken to refer to the Court executing the decree if it happens to be different from the one

which passed it. If this application can only be made to the Court which passed the decree and not merely to the Court executing the same it may,

if granted, result either in the order amending the decree or wiping it off altogether by entering satisfaction. It would thus seem to follow that it

cannot be regarded as an application in the execution proceedings and the argument therefore that this application is made in the execution

proceedings would have to be rejected although it may be ancillary or subservient to the execution proceedings in the sense that they may be

considerably affected by its being accepted. But so would every execution be if the decree is subsequently amended or wiped off. For the above

reasons we must hold that this application is an independent application and as it was made with the object of enforcing a fresh right that had

accrued long after the Order in Council had come into operation and does fall within the ambit of the words "" the disposal of any cases pending

on or shortly before the appointed day "" used in Section 20 of the Order in Council, Rule 2 framed by the Governor-General in Council would

have no application to the same.

19. This does not however decide the revisions as we must necessarily go into the further question whether the Court of the Subordinate Judge of

Berhampore was competent to hear such an application and this in spite of the fact that both the parties agreed at the hearing that it could be

entertained by that Court. If we accepted these statements without examination, the result will be that the revision from the order passed by that

Court u/s 20 of the Act would, as we have already held it to be ancillary to the execution proceedings, lie to this Court and the revision from the

order passed on the application u/s 19 of the Madras Agriculturists' Relief Act to the High Court of Judicature at Patna. This conflict however

cannot be taken into consideration for the purpose of deciding the question whether an application u/s 19 could be filed in the Court of the

Subordinate Judge of Berhampore or in the Court of the Subordinate Judge of Chicacole. It must, however be remembered that the mortgaged

property in respect of which the decree under execution was passed is situated now within the jurisdiction of the Court of the Subordinate Judge of

Chicacole and the jurisdiction of the Subordinate Judge's Court of Berhampore has been taken away by the Order in Council in respect of the

area where these properties are located. The decision on the question as to which of the two Courts would have the jurisdiction to entertain the

same depends on the true meaning of the expression "" the Court which passed the decree"" used in Section 19 of Act IV of 1938 when the Court

which had passed the decree in fact is found to have lost its jurisdiction by operation of law in regard to the property in respect of which it was

passed.

20. The expression "" Court which passed the decree "" has been defined in Section 37, Civil Procedure Code, but only ""in relation to the execution

of decrees."" According to that definition the application for execution could have been made to that Court which would have jurisdiction to try the

suit in which the decree was passed if it were instituted at the time of making the application provided the Court which had actually passed the

decree had either ceased to exist or ceased to have jurisdiction to execute it.

Now the Court of the Subordinate Judge at Berhampore in which the decree in this mortgage suit was passed still exists--although in the newly constituted province of Orissa. Nor can it be, in view of Section 20 of the Order in Council and Rule 1 of the directions of the Governor-General in Council be held to have lost the jurisdiction to execute the decree which was pending in that Court on the appointed date. The mere fact, therefore, that the Court of the Subordinate Judge of Chicacole would have had jurisdiction to entertain the suit, if it were to be instituted after the 1st April, 1936, would not bring it within the purview of the definition of the words "" the Court which passed the decree"" for want of conditions mentioned in Section 37 without which it could have no jurisdiction to entertain an application for execution. But this definition, as pointed out before, was in relation to the execution of decrees which an application u/s 19 of Act IV of 1938 is found not to be. If that be so, the decision in *Rentala Ganga Raju Vs. Bikkina Bulli Ramayya and Others*, to which our attention was drawn in this connection would have no application. It was held by a Division Bench ""composed of Madhavan Nair and Stodart, JJ., in that case that Sections 19 and 20 of the Madras Agriculturists' Relief Act should be read together and the explanation of the expression ""Court which passed the decree"" used in Section 20 of the Act equally applied to the same expression used in Section 19 of the Act. The only question that the learned Judges were called upon to decide in that case was whether the application for scaling down the debt u/s 19 was to be filed in the Court of the first instance, i.e., in the Court which passed the decree in the first instance or in the Court of appeal after the lower Court's decree had been confirmed or modified. We are not concerned with that question in the present case. The learned Judges assume that proceedings u/s 19 of Act IV of 1938 were proceedings in execution as a pointed reference to Section 37, Civil Procedure Code, would show. And this has been, as already stated, ruled against by the decision of the Full Bench in *A.S. Nagappa Chettiar and Another Vs. Annapoorani Achi alias Karuppayi Achi and Another*, and other decisions to which reference has already been made. Moreover, it has been held by another Full Bench of this Court in *Velagala Sriramareddi and Others Vs. Karri Sriramareddi*, being minor by certificated guardian, Mr. G. Bhima Rao, that if an application for

scaling down the debt were not made in the appellate Court before its judgment was delivered, the decree would have to be drawn up in

accordance with the judgment and no Subordinate Court could have the power to pass an order that would in any way affect the decree. That is

why according to this decision an application u/s 19 of Act IV of 1938 has to be made to the appellate Court alone and that also before the

judgment is delivered. In view of this opinion of the Full Bench, the decision in Velagala Srirama Reddi's case³ must be considered to be obsolete.

21. Section 37, Civil Procedure Code, being found to be inapplicable, let us now see whether Section 150, Civil Procedure Code, helps us in this

connection. Under this section if "" the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall

have the same powers, and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from

which the business was so transferred."" If therefore the Court of the Subordinate Judge of Chicacole can be regarded to be a Court to which (in

view of the fact that the mortgaged property came to be within its jurisdiction after the Order in Council) the business of the Court of the

Subordinate Judge of Berhampore is transferred, the former Court will then have the same powers and will be liable to perform the same duties as

the latter had before the transfer of such business. In short, in respect of the business thus transferred the transferee Court will be in the same

position as the Court which passed the decree. The question then is whether the business of the Court of the Subordinate Judge of Berhampore

can be found to have been transferred to the Court of the Subordinate Judge at Chicacole in the circumstances existing in the present case.

Whatever might have been said in regard to execution applications to which Section 37, Civil Procedure Code, in terms applied, the question as to

fresh and independent applications, as the application u/s 19 of Act IV of 1938 has now been found to be, is a very different one. In dealing with

an application for setting aside an ex parte decree made to a Court to which part of the territorial jurisdiction of another Court that had passed the

decree had been transferred, along with the locality in which the properties were situate a Division Bench of this Court in *Srinivasa Rao v.*

Hanumantha Rao (1939) 2 M.L.J. 344 : ILR Mad. I held that the words used in Order 9 Rule 13, Civil Procedure Code, providing that it should

be made to "the Court by which the decree was passed" were not so definite and precise as to exclude the possibility of the application being

entertained by the Court which had subsequently come to be seized of the jurisdiction.

22. Similarly, another Division Bench of this Court in *Morna Guruswami Naicker v. Shaik Mohamed Rowther* (1941) 53 L.W. 82 (Short Notes)

held that the word "transferred" in Section 150 was not confined to cases where the business of one Court was specifically transferred to another

but would also include cases where a new Court was given part of the territorial jurisdiction of an old Court. The new Court would be, according

to this decision, authorised to try all the business arising within it although no orders might have been passed transferring to it cases pending in the

old Court. In other words, the word "transferred" employed in Section 150 was liberally construed so as not to be confined to cases where there

was a judicial transfer of any particular business to a Court but also to cases where one Court ceased to have jurisdiction over an area and the

business of that Court came within the cognizance of another Court on account of its jurisdiction having been extended over the transferred area.

The same view was taken by Krishnan Pandalai, J., in *In Re: Balusu Subbaraidu and Others*, .

23. Our attention was drawn on behalf of the respondent to the decision of a Division Bench in *Pakkiri Muhammad Tharaganar Vs. U.T. Syed*

Sahib, and to that of a Full Bench in *A.S. Nagappa Chettiar and Another Vs. Annapoorani Achi alias Karuppayi Achi and Another*, , but except

for certain observations of Ramesam, J., in either of them which are in the nature of obiter, these cannot be held to be in conflict with what was

decided in the other cases to which we have referred. Both the above cases related to execution of decrees and have been so distinguished by

Mulla in his Commentary u/s 150, Civil Procedure Code.

24. Adopting the construction placed on Section 150, Civil Procedure Code, in *Swaminatha Odayar Vs. Srinivasa Aiyar and Others*, and *Mouna*

Guruswami Naicker v. Shaik Mohamed Rowther (1941) 53 L.W. 82 (Short Notes) we are of opinion that the Court of the Subordinate Judge at

Chicacole must be, for the purposes of new and independent applications and which are not those of execution, in view of the transfer of the area

in which the mortgaged properties are situate, regarded to be the Court to which the business of the Court of the Subordinate Judge of

Berhampore was transferred and the application u/s 19 should have been and was rightly made by the petitioner in the Court of the Subordinate

Judge of Chicacole. It would also follow from what we have decided that the Court of the Subordinate Judge of Berhampore was not, after the

area in which the mortgaged properties were situated had been taken out of his jurisdiction, competent to deal with the application made to it u/s

19 of the Act IV of 1938.

25. We have dealt with this last question partly because it fell to be decided in the Revision No. 2024 of 1939 but more particularly in view of the

action that we have suo motu decided to take in connection with the dismissal of the application u/s 19 of Act IV of 1938 by the Subordinate

Judge of Chicacole. The application was dismissed as the decision in C.R.P. No. 2024 of 1939 by this Court was to the effect that the Court of

the Subordinate Judge at Berhampore had jurisdiction to entertain that application. Now that our decision is the other way, it is only just that the

petitioner should not be allowed to suffer in consequence. He had taken the precaution, in view of the difficult legal position, to make the

applications u/s 19 of Act IV of 1938 in both the Courts.

26. On these findings, C.R.P. No. 1008 of 1939 must be accepted and the execution of the decree stayed u/s 20 of Act IV of 1938 until the

disposal of the application made u/s 19 of the Act.

27. But for the reasons given, G.R.P. No. 2024 of 1939 must fail. The application u/s 19 could only be filed in the Court of the Subordinate

Judge of Chicacole and not in that of the Subordinate Judge of Berhampore. We had sent for the records of the application presented on behalf of

the judgment-debtors in the Court at Chicacole in our revisional jurisdiction and had directed notice to be given to all the parties concerned. The

papers have arrived and are numbered as G.R.P. No. 1538 of 1942. The parties have been served and they have appeared before us to-day.

28. In addition to the other contentions that he had advanced before us in the other revisions, learned Counsel for the respondent also contends that

the disposal of the application u/s 19 by the Subordinate Judge of Chicacole does not fall within Section 115, Civil Procedure Code, as his order

was really based on a withdrawal of the petition by the petitioner himself. According to learned counsel, the order of the Subordinate Judge cannot be held to be a case decided within the meaning of that section. It is true that the application had been withdrawn by the petitioner but that was, as we have already stated elsewhere, on account of the decision of this Court in which it was held that the Court at Berhampore had jurisdiction and that the Subordinate Judge of Chicacole had not. The order of the Court dismissing the application although consequent on the withdrawal by the petitioner is nonetheless a decision within the meaning of Section 115. By that order, the application (which was, it is interesting to observe, held to be entertainable by the Subordinate Judge) was disposed of finally. We would; therefore, repel the contention advanced by learned Counsel for the respondent and hold that we are entitled to interfere in revision.

29. As to the merits, we have already said enough in our judgment to show that this is a fit case in which we ought to interfere and set aside the order of dismissal passed by the Subordinate Judge of Chicacole. We will for the above reason revise the order made by the Subordinate Judge of Chicacole on 1st March, 1941, and vacate the same, ordering him to proceed with the application presented on behalf of the petitioners u/s 19 and dispose of it according to law. But having regard to the complicated nature of the proceedings and the uncertainty in regard to the correct legal position, we will leave the parties to bear their own costs both here and in the Court at Berhampore. The costs so far incurred by the petitioner in the Chicacole Court will also not be the costs in the cause. The further costs will be in the discretion of the Court.

30. Since one of the questions considered by us in this judgment involves a substantial question of law as to the interpretation of the paragraph 20 of the Government of India (Constitution of Orissa) Order, 1936, we would grant a certificate u/s 205(1) of the Government of India Act.