

---

**(1965) 08 MAD CK 0007**

**Madras High Court**

**Case No:** Appeal Against Appellate Order No. 56 of 1962

K. Kunchithapatham Mudaliar

APPELLANT

Vs

P. Krishnaswami Mudaliar

RESPONDENT

---

**Date of Decision:** Aug. 16, 1965

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 1, 1(3), 38, 39, 40
- Constitution of India, 1950 - Article 142, 32
- Foreign Jurisdiction Act, 1947 - Section 4, 4(1), 4(2)

**Citation:** (1966) ILR (Mad) 522

**Hon'ble Judges:** Kailasam, J

**Bench:** Single Bench

**Advocate:** K.S. Naidu and R. Vijayan, for the Appellant; R.G. Rajan, for the Respondent

**Final Decision:** Dismissed

---

**Judgement**

@JUDGMENTTAG-ORDER

Kailasam, J.

This is an appeal by the decree-holder in the Court of the First Instance, Karaikkal, against the order of the District Judge of

East Thanjavur at Nagapattinam, holding that the decree in Original Suit No. 338 of 1957 of the Karaikkal Court is not executable in the Court of

the Subordinate Judge, Nagapattinam. The facts of the case may be briefly set out.

2. The decree-holder claimed a sum of Rs. 601-4-0 for marriage expenses and a further sum of Rs. 1,000 for damages for the reparation of the

prejudice he was subjected to on account of the Respondent agreeing to give his daughter, in marriage to his son and later refusing to do so. The

Respondent was ex parte and on going through the records in the case the Court of the First Instance Karaikkal, passed a decree for a total sum of Rs. 1,000. The decree-holder obtained a certificate of non-satisfaction of the decree from the Karaikkal Court and filed the execution petition before the Subordinate Judge, Nagapattinam.

3. The Subordinate Judge held that the execution petition was maintainable and, therefore, directed the attachment of the properties. On appeal, the District Judge held that the Court of the First Instance, Karaikkal, is not a Court continued under the authority of the Government of India u/s 43, CPC and that even if it is taken that the Court of the First Instance is a Court continued by the authority of the Government of India, the execution petition is not in accordance with the provisions of Section 43, of the Code of Civil Procedure.

4. There was a Treaty between the President of the French Republic and the President of the Indian Union on 1st November 1954. There was a second Treaty on 28th May 1956. The relevant articles are 1 and 10 in the Treaty of 1st November 1954 and Article 14 in the Treaty, dated 28th May 1956. Article 14 of the Treaty, dated 28th May 1956 may be extracted:

Legal proceedings instituted prior to the 1st of November 1954 shall be judged in conformity with the basic legislation and procedure in force at that time in the Establishments.

To this end, and up to final settlement of such proceedings, the existing Courts in the Establishments shall continue to function. Officers of the Court shall be law graduates, habitually domiciled in the Establishments, honourably known and selected in accordance with the French regulations governing the designation of temporary judicial officers.

The interested parties shall be entitled, if they so decide by common agreement, to transfer to the competent Indian Courts, the said proceedings as well as proceedings which, though already open, are not yet entered with the Registrars of the French Courts, and also proceedings which constituted an ordinary or extraordinary appeal.

Judgments, decrees and orders passed by the French Courts, prior to the 1st of November 1954 which are final or may become so by expiration

of the delays of appeal, shall be executed by the competent Indian authorities. Judgments, decrees and orders passed after the 1st November

1954 in conformity with the first paragraph of the present article shall be executed by the competent Indian authorities, irrespective of the Court

which exercise the jurisdiction.

Acts or deeds constitutive of rights established prior to the 1st of November 1954 in conformity with French Law, shall retain the value and validity

conferred at that time by the same law.

The records of the French Courts shall be preserved in accordance with the rules applicable to them on the date of cession and communication of

their contents shall be given to the duly accredited representatives of the French Government whenever they apply for such communication.

5. By virtue of the powers conferred u/s 4 of the Foreign Jurisdiction Act, 1947, the Government of India passed the French Establishment

(Administration) Order, 1954. Reference is made in the Order to the agreement between Government of India and the Government of France. The

Government found that it was expedient that provision should be made by it for the administration of the French Establishments and, therefore,

passed the Order referred to above. Sections 4(1) and (2) are relevant and they are extracted below:

Section 4(1) : Subject to the direction and control of the Central Government the Chief Commissioner may, from time to time, appoint such judges,

magistrates and other authorities as may be necessary for the administration of the French Establishments and may, by general or special order,

determine their jurisdiction, powers, duties and functions.

Section 4(2): Without prejudice to the provisions of sub-paragraph (1), but subject to any law for the time being in force in the French

Establishments all judges, magistrates and other authorities of the French Establishments who, immediately before the commencement of this Order

were exercising lawful functions in the said Establishments or any part thereof, shall, until other provision is made by the Chief Commissioner,

continue to exercise their respective powers and jurisdiction and perform their respective duties and functions, in the same manner and to the same

extent as they were doing before the commencement of this Order.

6. The French Establishments Order, 1954, was in force while the decree which was sought to be executed was passed by the Karaikal Court on

13th September, 1957. Within three years from the date of the decree on 7th September 1960 the decree-holder filed the execution petition in the

Court of the Subordinate Judge, Nagapattinam, with a certificate of non-satisfaction from the Karaikal Court.

7. It is submitted by Mr. K.S. Naidu, learned Counsel for the Appellant, that the Court of the First Instance, Karaikal, is a Court continued by the

authority of the Central Government outside India and that a decree passed by that Court is executable in Courts in India. He further submitted that

it is unnecessary for the decree-holder to have the decree transferred u/s 39, CPC for execution to Indian Courts.

8. There cannot be much difficulty in holding that the Court of the First Instance, Karaikal, is a Court continued by the authority of the Central

Government outside India. Article 10 in the agreement, dated 1st November 1954, and Article 14 in the agreement, dated 28th May 1956, would

make it clear that the Karaikal Court is a Court continued by the Central Government. Article 14 of the agreement, dated 28th May 1956,

provides that legal proceedings instituted prior to the 1st November 1954 shall be judged in conformity with the basic legislation and procedure in

force at that time in the establishments. It further provides as follows:

To this end, and upto final settlement of such proceedings, the existing Courts in the Establishments shall continue to function.

9. Mr. R.G. Rajan, learned Counsel for the Respondent, submitted that Article 14 only provided for proceedings instituted prior to 1st November

1954 and only for that end the existing Courts were allowed to continue to function. This construction cannot be accepted. The first paragraph of

Article 14 of the Treaty provides that the legal proceedings shall be judged in conformity with the basic legislation and procedure in force at that

time in the Establishments. It is true that this clause is confined only to proceedings instituted before 1st November 1954. But the second

paragraph provides that the existing Courts in the Establishment shall continue to function.

10. The contention of the learned Counsel is that this continued functioning of the Courts in the Establishments is only for the purpose of terminating legal proceedings instituted before 1st November 1954. But a more reasonable construction would be to construe the words to this end as referring to pending legal proceedings.

in conformity with the basic legislation and procedure in force at that time in the Establishments.

11. In other words, the article contemplates the administration of law in conformity with the basic legislation and procedure in force. The words

final settlement of such proceedings cannot be understood to be confined to the proceedings instituted before 1st November 1954. In paragraph 4

of Article 14 there are two clauses which refer to judgments, decrees and orders passed prior to 1st November 1954 in conformity with the first

paragraph of Article 14. Here again, Mr. Rajan, learned Counsel for the Respondent, submitted that paragraph 4 is intended to comprise only of

judgments, decrees and orders passed before 1st November 1954 and judgments, decrees and orders passed after 1st November 1954 regarding

proceedings that were instituted prior to 1st November 1954. He laid particular emphasis on the words in conformity with the first paragraph of

Article 14. It is no doubt true that there is no specific reference to judgments, decrees and orders passed relating to proceedings instituted after 1st

November 1954. But here again, the more reasonable construction would be to include all proceedings that were started even after 1st November

1954. The words in conformity with the first paragraph would, in my opinion, refer to conformity with the basic legislation and procedure in force

at that time.

12. Even if for argument's sake it is taken that there was no specific provision for legal proceedings instituted after 1st November 1954, the

French Establishments (Administration) Order, 1954, makes the position clear. Section 4(1) of the Order empowers the Chief Commissioner to

appoint judges and magistrates for the administration of the French Establishments and to determine their jurisdiction, powers, duties and functions.

Section 4(2) enables the Judges and Magistrates, who immediately before the commencement of the Order were exercising lawful functions in the

establishments, to continue to exercise their respective powers and jurisdiction and perform duties and functions until provision is made by the

Chief Commissioner, in the same manner and to the same extent as they were doing before the commencement of that Order. The effect of this

Sub-clause is that Judges and Magistrates were empowered to continue to exercise their respective powers and jurisdiction before the

commencement of the Order pending the Chief Commissioner making adequate provisions. It cannot be disputed that the powers of Judges and

Magistrates were continued by this Sub-clause. The decree in question was passed on 13th September 1957, when Section 4(2) was in force. It is

admitted that the Chief Commissioner has not yet made provisions u/s 4(1). Beading the two Treaties and the French Establishment

(Administration) Order, 1954, there can be no doubt that the Court in Karaikal is continued by the authority of the Central Government. It is not

disputed that the Karaikal Court is outside India. In *N. Masthan Sahib Vs. Chief Commissioner, Pondicherry*, , the Supreme Court held that

Pondicherry is not within the territory of India and that the Supreme Court had no jurisdiction to entertain appeals under Articles 32 and 142 of the

Constitution of India. It is also clear that the CPC as such is not applicable to the Karaikal Court. Section 1, Clause (3) of the CPC provides that

the Code extends to the whole of India. Thus the CPC is applicable only to the whole of India except the territories excluded u/s 1(3). It is not

made applicable to Courts continued by the authority of the Central Government outside India.

13. The only question that has, therefore, to be considered is whether, though the Karaikal Court is outside India and though the CPC is not made

applicable, a decree passed by that Court can be executed in Indian Courts. Mr. K.S. Naidu, learned Counsel for the Appellant, submitted that in

order to invoke the aid of Section 43, the CPC should be applicable to the Court continued by the authority of the Central Government. In support

of his contention learned Counsel relied on the decision reported in *Prabhu Narain Singh v. Saligram Singh* ILR (1907) Cal. 576, where it was

observed that the necessary and sufficient test of the applicability of the section is whether the provisions of the Code regulate the procedure of the

Court which makes the decree, as also of the Court to which it is transferred for execution. In the case cited, a suit was instituted in the Court of

Subordinate Judge of Kondh, which is established by the authority of the Governor-General-in-Council. Though it was found that the Subordinate

Judge of Kondh is not a Court established in the territory of a foreign Prince or State since the CPC was extended by a notification to the family

domains of the Maharaja of Benares, the Code was held to be applicable to the execution of the decree in the Sub-Court of Kondh precisely in

the same manner as it was applicable to the Court of Subordinate Judge in British India. The learned Judges were considering the excitability of the

decree passed within the jurisdiction of the Maharaja to which the CPC was made applicable. But they were not considering the question of

excitability of a decree of a Court which was outside India and continued by the authority of the Central Government to which the CPC is not

applicable. Section 43 specifically provides that a decree passed by a Civil Court established in any part of India to which the provisions of the

CPC do not extend may be executed in the manner provided in that section. On the face of the express provisions of Section 43, I do not see any

reason for restricting the applicability of Section 43 only to Courts outside India to which the CPC is made applicable. As already pointed out,

Section 1(3) of the CPC provides that the Code is applicable only to the territory of India. Section 43 is not confined to the territory of India, but

applies to execution of decrees passed by Courts outside India and provides that a decree passed by a Court continued by the authority of Central

Government outside India can be executed in the manner provided. As the decision of the Calcutta High Court was not considering the excitability

of a decree passed by a Court continued by the authority of the Central Government outside India it cannot be held applicable to the facts of the

present case.

14. Having held that the Karaikal Court is a Court continued by the authority of Central Government outside India, it has to be considered whether

the decree can be executed in the Sub-Court, Nagapattinam. According to Section 43, the decree if it cannot be executed within the jurisdiction of

the Court by which it was passed may be executed in the manner therein provided within the jurisdiction of any Court in the territories to which the Code extends. Two conditions are necessary. Firstly the decree could not have been executed within the jurisdiction of the Court by which it was passed. It will have to be established that the decree could not be executed within the jurisdiction of the Court which passed the decree. It is no doubt alleged by the decree-holder that the judgment-debtor has no properties within the jurisdiction of the Karaikal Court and his properties are all situate only within the jurisdiction of the Sub-Court, Nagapattinam. The second requirement is the execution must be in the manner herein provided. It was contended on behalf of the Respondent that the decree before it could be executed in any of the Courts in the territories of India to which the CPC extends should be transferred to that Court u/s 39 of Code of Civil Procedure. It was submitted by the learned Counsel for the Respondent that the words executed in the manner herein provided would include Sections 38 to 45 of the CPC and that before execution could be levied in the transferee Court an application must be made by the decree-holder to the transferor Court for having it sent for execution to the transferee Court. Mr. Rajan, learned Counsel, pointed out that Section 44-A of the CPC dealing with the execution of decrees passed by Courts in reciprocating territory provides for the issue of a certificate by the transferor Court regarding the extent to which the decree has been satisfied or adjusted and that such certificate shall be conclusive proof regarding the extent of satisfaction or adjustment, and that no such provision is found in the case of a Court continued by the authority of the Central Government. The words executed in the manner herein provided in Section 43 of the CPC would mean according to the provisions of the Code. The chapter deals with Courts by which decrees may be executed and provision is made for transfer of decrees. Section 38 provides that a decree may be executed by the Court which passed it, or by the Court to which it is sent for execution and Section 39 enables a decree-holder to have the decree transferred for execution, on application to another Court. Section 40 provides for transfer of the decree from one State to another and Section 41 provides that the transferee Court shall certify to the Court which



passed the decree the fact of execution. Section 42 confers the same powers on the transferee Court as the transferor Court has. Section 43 provides that a decree passed by a civil Court established in any part of India to which the provisions of the Code do not extend, or by any Court established or continued by the authority of the Central Government outside India, may be executed in the manner provided. This will clearly mean that though a decree is passed by a Court to which the provisions of the CPC is not applicable and though the Court is situated outside India, if continued by the authority of the Central Government, the decree is executable. There is nothing in this section to indicate that the procedure laid down in the previous sections is not applicable to a decree passed by a Court outside India for execution in one of the Courts in the territory of India. The manner indicated for execution is in Sections 38, 39, 41 and 42. The contention of the learned Counsel for the Appellant that a decree passed by a Court situated outside India need not be transferred u/s 39 cannot be accepted. Learned Counsel for the Appellant was unable to produce any authority in support of his propositions. The decree, though executable in this case, was not transferred to the executing Court in accordance with the provisions of Section 39, Code of Civil Procedure. The decree-holder ought to have applied to the Karaikal Court for sending the decree for execution to the Sub-Court, Nagapattinam, and the Karaikal Court ought to have sent the decree for execution to the Sub-Court, Nagapattinam. It was submitted by Mr. K.S. Naidu, learned Counsel for the Appellant that CPC is not applicable to Karaikal Court and there is no corresponding provision which would empower that Court to transmit the decree for execution. But in order to attract Section 43, the decree-holder ought to have applied to Karaikal Court for transferring the decree. This not having been done, the execution cannot be effected by the Sub-Court, Nagapattinam.

15. To hold otherwise would mean that any decree-holder in a Court situated outside India and confirmed by Central Government may without approaching the Court that passed the decree be at liberty to execute his decree in any Court in India. He may avoid satisfying the Court that

passed the decree that, that decree cannot be executed within that Court and convincing that Court that it is necessary to transfer the decree for execution.

16. On the ground that the decree was not transferred as required u/s 39, CPC it has to be held that it is not executable in the Sub-Court,

Nagapattinam.

17. The appeal is dismissed on that ground with costs.