

**(1972) 07 AHC CK 0017**

**Allahabad High Court**

**Case No:** Second Appeal No. 274 of 1965

Raja Ram

APPELLANT

Vs

Bhagwan Das and Others

RESPONDENT

**Date of Decision:** July 24, 1972

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 47
- Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1958 - Section 87(1)
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 182B

**Citation:** AIR 1973 All 82 : (1972) 42 AWR 856

**Hon'ble Judges:** T.S. Misra, J

**Bench:** Single Bench

**Advocate:** S.K. Tewari, for the Appellant;

**Final Decision:** Allowed

### **Judgement**

T.S. Misra, J.

This appeal is directed against the decision of the First Additional Civil Judge, Varanasi. The material facts are these:--

2. One Jhooroo filed a suit for partition of agricultural holding on 30-5-1957 in the court of Munsif Hawaii, Varanasi. An ex parte preliminary decree was passed in the case on 6-2-1958. On 20-3-1958, the plaintiff died and his daughter was brought on record as his legal representative. She sold the properties in dispute to Bhagwan Das, whereupon his name was substituted in the suit. The final decree was passed on 7-2-1963. The decree-holder then sought execution of the decree. The decree was executed and the Amin filed "dakhaldihani" dated 4-6-1963. Whereupon the execution was struck off in full satisfaction. Thereafter the present appellant filed an objection purporting to be u/s 47 of the CPC challenging the entire execution proceedings and contending that the final decree having been passed by a court

which had no jurisdiction was a nullity. The decree-holder contested the aforesaid application u/s 47, CPC on the ground that once the execution has been struck off in full satisfaction the court became functus officio and as such the application u/s 47, CPC was not maintainable. He also contended that the civil court had jurisdiction to pass a final decree. The impugned decree was, therefore, not a nullity and was executable. The contention of the decree-holder found favour with the learned Munsif, Hawaii, who accordingly rejected the application u/s 47, Civil Procedure Code. The judgment-debtor filed an appeal from the said order but his contentions were not accepted by the appellate court below and his appeal was dismissed. The judgment-debtor has now come to this Court in second appeal.

3. The learned counsel for the appellant argued that both the courts below erred in holding that the civil court on the relevant date had the requisite jurisdiction to pass a final decree in the suit for partition of agricultural holding which had been filed u/s 176 of the U. P. Z. A. and L. R. Act. He submitted that on 30-5-1957 when the suit for partition was filed by Jhoo-roo the civil court had jurisdiction to entertain and try the same but it had no jurisdiction to pass a final decree in the suit on 7-2-1963 in view of the amending Act No. 37 of 1958 which had come in operation on 7-11-1958. Consequently the final decree passed by the learned Munsif was nullity, hence inexecutable. I find great force in this submission. Section 176 was amended by the Amending Act No. 37 of 1958. The word "partition" appearing in that section was substituted by the word "division". Section 182-A was deleted and Section 182-B reads as follows:--

"Section 182-B: Subject to the provisions of Sections 178 and 182 the division of a holding or the separation of the share therein of a bhumidhar or sirdar shall be made by the Court in accordance with the principles that may be prescribed."

Section 87 of the Amendment Act of 1958 provided as follows:

"Section 87 (1): Except as provided in Sections 85 and 86, any amendment made by this Act shall not affect the validity, effect or consequence or anything already done or suffered or any right, title, obligation or liability already acquired, accrued or incurred or any jurisdiction already exercised, and any proceeding instituted or commenced before any court or authority prior to the commencement of this Act shall, notwithstanding any amendment herein made, continue to be heard and decided by such court or authority."

In view of these amendments in the relevant provisions of the U. P. Z. A. and L. R. Act, it was contended on behalf of the appellant that the civil court had no jurisdiction to pass a final decree and that only the revenue court had the jurisdiction to pass the final decree.

4. The position of law obtaining before and after Amendment Act of 1958 in respect of a suit for the partition of agricultural holdings was examined by a Division Bench of this Court in the case of Nathu Singh v. Dular Singh 1970 All WR (HC) 524. It was

held in that case that the position in respect of a suit for partition of Bhu-midhari holding was substantially altered by the Amendment Act of 1958. After the amendment such a suit could be filed only in the revenue court which declares the rights of the parties and finally partitions the holdings or separates the share therein. The question as to whether amendment introduced by the Amendment Act of 1958 had any effect upon a suit already pending was also answered by the Division Bench. It was laid down that Section 87 (1) of the Amendment Act provided that the court or authority before whom a proceeding had been instituted or commenced prior to the commencement of the Amendment Act (which is 7th November, 1958) continues to have jurisdiction to hear and decide that proceeding. Accordingly the civil court which entertained the present suit continued to have all the jurisdiction in respect of it which it possessed originally. It has no less and no more. There was nothing in the law to empower the civil court to partition the holding. That was a matter falling entirely within the scope of the Collector's jurisdiction. Therefore whether the unamended Section 182-A or the amended Section 182-B applied it was clear that it would not be civil court which would have jurisdiction in the case of partition of holdings.

5. In the instant case the suit was filed on 30th May, 1957, i.e., prior to the commencement of the Amendment Act. The civil court which entertained the suit continued to have all the jurisdiction in respect of it which it possessed originally. It passed a preliminary decree on 6-2-1958. With that its jurisdiction in the suit was exhausted. Thereafter it had no jurisdiction to partition the holdings. That was a matter falling entirely within the jurisdiction of the revenue courts. The civil court, therefore, lacked in inherent jurisdiction in passing the final decree on 7-2-1962. As such the decree was a nullity and was consequently inexecutable.

6. It is well settled that the validity of the decree can be challenged in execution proceeding on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have session of the case because the subject-matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the parties to it. As pointed out above the civil court was not competent to pass the final decree on 7-2-1963 in view of the Amending Act of 1958. The judgment-debtor in the instant case could, therefore, challenge the validity of the decree u/s 47, Civil Procedure Code. In the case of Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others, the Supreme Court laid down that when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record. The objection in the instant case does appear on the face of the record. The civil court obviously lacked in inherent jurisdiction to pass the final decree on 7-2-1963.

7. It was submitted before the learned Munsif that as the execution had been struck off in full satisfaction, the court had become functus officio and an application u/s 47 of the CPC was not maintainable. This contention was accepted by the learned Munsif. The contention was, however, unsubstantial because the question whether the decree was completely satisfied and, therefore, the court became functus officio is a matter relating to execution, satisfaction and discharge of the decree (See [B.V. Patankar and Others Vs. C.G. Sastry](#), In the case of [Merla Ramanna Vs. Nallaparaju and Others](#), S, it was held by the Supreme Court that:--

"When a sale in execution of a decree is impugned on the ground that it is not warranted by the terms thereof, that question could be agitated, when it arises between parties to the decree, only by an application u/s 47 and not in a separate suit."

8. In this view of the law the application u/s 47 filed by the judgment-debtor was maintainable. The entire proceedings of the trial court beyond the stage of passing a preliminary decree were without jurisdiction and the civil court had no jurisdiction to pass the final decree in the case. The application u/s 47, CPC was therefore wrongly rejected. However, in order to do justice to the parties, it would be quite fair and reasonable to quash the proceedings after the passing of the preliminary decree and direct the trial court to send the case to the competent revenue court for further proceedings in accordance with law.

9. In the result the appeal is allowed. The orders of the courts below are set aside and the proceedings subsequent to the passing of the preliminary decree dated 6-2-1958 are quashed. The trial court is directed to send the record of the case for partition to the competent revenue court No order as to costs.