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Asiruddin Mondol and Others Vs Ram Sakhi Debya and Others

None

Court: Calcutta High Court

Date of Decision: Aug. 20, 1924

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Section 38

Citation: 86 Ind. Cas. 775

Hon'ble Judges: N.R. Chatterjea, J; Chotzner, J

Bench: Division Bench

Judgement

1. This appeal (Miscellaneous Appeal No. 158 of 1923) and the connected Rule (Rule No. 167 of 1923) arise out of proceedings in execution of

a decree under the following circumstances.

2. The decree-holders obtained a decree for money against the judgment-debtor in the Court of the Munsif, Second Court, Bogra on the 11th

May 1910. After several applications for execution, the decree-holders finally made an application for execution of the decree in the Court of the

Second Munsif on the 11th May 1922, praying for attachment and sale of certain Immovable property situate within the jurisdiction of the Munsif,

Third Court, as assigned by the District Judge u/s 13, Clause (2) of the Civil Courts Act. On the same day the Munsif, Second Court held that he

had no jurisdiction to entertain the application and directed it to be returned to the decree-holder for presentation to the proper Court within seven

days. It is stated that this order was passed in Chambers and was shown to the decree-holder"s Pleader on the 13th May who thereupon took the

application back and filed it on the same day in the Third Court. That Court directed the decree-holder to file a ""certificate"", presumably a

certificate of transfer u/s 39, C.P.C. Thereupon the decree-holder applied to the Second Court for a certificate and the latter sent the necessary

certificate to the Third Court on the 18th May 1922. Proceedings in execution thereafter were taken in the Third Court. Subsequently upon the

judgment-debtor''s objection the Third Court, held that the application was barred by limitation. On appeal the Subordinate Judge held that the

application was not barred. The judgment-debtors preferred an appeal to this Court, and the case was remanded for certain findings. After the

arrival of the findings the appeal was heard, and at the hearing of the appeal a rule was issued calling upon the judgment-debtors to show cause

why the order of the Second Court holding that it had no jurisdiction to entertain the application and returning the application for presentation to the

proper Court should not be set aside.

3. The question for consideration is whether the Second Court had jurisdiction to entertain the application for execution. The Second Court passed

the decree, and u/s 38 of the C.P.C. a decree may be executed either by the Court which passed it or by the Court to which it is sent for

execution. Section 57 provides that the expression -""Court which passed a decree"" shall in relation to the execution of decrees unless there is

anything repugnant in the (subject or context be deemed to include, (omitting Clause (a) which has no bearing upon the present question) (5) 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.

4. In the present case the Second Court passed the decree and it had not ceased to exist. Prima facie, therefore it had jurisdiction to execute the

decree. It is true that the property-which the decree-holders sought to attach and sell was situated within the jurisdiction of the Third Court as

assigned by the District Judge u/s 13(2) of the Civil Courts Act. The territorial jurisdiction conferred upon the Munsif, Second Court by the Local

Government u/s 13(1) extended over the whole of the Munsif Chouki including the place where the property sought to be attached lay. Our

attention has been drawn to the wording of Section 13(2) of Act XII. of 1887, viz., may assign to each of them such civil business which is

different from the wording of Section 18 of Act VI of 1871 under which the District Judge could assign to each the local limits of his particular

jurisdiction. It is necessary, however, to consider the precise meaning of the words ''civil business'' for the purposes of the present case, as we do

not think that the District Judge could by any order u/s 13(2) take away the jurisdiction of the Second Court to execute the decree passed by it,

when (the execution case not having been transferred by it to any other Court) it was the only Court which could execute it under the provisions of

Section 38 read with Section 37 of the Code. In the case of Kali Pado Mukerjee v. Dino Nath Mukerjee 25 Cal. 315 : 13 Ind. Dec. (N.S.) 211,

A obtained a decree against B in the Court of First Munsif of Howrah. After the decree, the local area, within which the cause of action arose and

the judgment-debtor resided, was transferred from the first to the Second Munsif. On an application by A for the execution of his decree in the

Court, of the Second Munsif which allowed execution, it was held that the Second Munsif had no jurisdiction to entertain the application and allow

execution and that the application ought to have been made to the Court of the First Munsif which passed the decree. In Bachu Koer v. Golab

Chand 27 Cal. 272 : 14 Ind. Dec. (N.S.) 180 it was held that when Subordinate Judges are appointed by the Local Government with jurisdiction

over the whole of a District the District Judge is not competent u/s 13, (2) of the Civil Courts Act to assign them different areas so as to limit or

define their respective jurisdiction. See also Mahamad Kazem Ali v. Naimuddin Ahmed (3) and Jagannath Prasad Singh v. Sheonandan Sahay 62

Ind. Cas. 487 : 6 P.L.J. 304 : 2 P.L.T. 374 : (1921) Pat 186.

5. In the cases reported as Bachu Koer v. Gulab Chand 27 Cal. 272 : 14 Ind. Dec. (N.S.) 180 and Jaganath Prasad Singh v. Sheonandan Sahay

62 Ind. Cas. 487 : 6 P.L.J. 304 : 2 P.L.T. 374 : (1921) Pat 186, the decree sought to be executed was a mortgage-decree. We have referred to

those cases to show what view was taken of the provisions of Section 13(2) of the Civil Courts Act. On behalf of the respondents we are referred

to Prem Chand Dey v. Makhoda Debi 17 Cal. 699 : 8 Ind. Dec. (N.S.) 1008, where it was held that territorial jurisdiction is a condition

precedent to a Court executing a decree. But the question is, did the Second Court in the present case cease to have territorial jurisdiction, and we

have held that it did not.

6. It is contended on behalf of the opposite party that the order of the Second Court dated the 11th May 1922 was appealable, and this Court

therefore cannot interfere under its revisional powers. Reference is made to the cases, Bachu Koer v. Golab Chand 27 Cal. 272 : 14 Ind. Dec.

(N.S.) 180, Mahamad Kazem Ali v. Naimuddin Ahmed 70 Ind. Cas. 210 : 26 C.W.N. 216 : AIR(1922) (C) 41, and other cases to show that an

appeal was preferred in those cases. But in those cases the Court, holding that it had jurisdiction, proceeded to execute the decree. The order

was, therefore, one relating to execution of the decree.

7. In the present case the Court declined to entertain the application for execution at all on the ground that it had no jurisdiction. It is contended

that it comes under the definition of a ""decree"" but assuming that an order in execution of a decree other than those falling u/s 47 and not expressly

mentioned in Section 2 comes under ""decree"" there was no adjudication conclusively determining the rights of the parties with regard to all or any

of the matters in controversy in the suit. The Court simply declined to entertain the application and did not go into any question between the parties.

We think, therefore, that we can interfere under our revisional powers.

8. In the view we take the appeal must be decreed, with costs in all Courts (the hearing fee in this Court being assessed at two gold mohurs). But

the Rule will be made absolute. The order of the Munsif, Second Court, Bogra, dated the 11th May 1922 is set aside, and the case sent back to

that Court in order that it may deal with the application for execution according to law. We make no order as to costs in the Rule.