

65 Ind. Cas. 727

Madras High Court

Case No: None

J.V. Srinivasa Rao by
Father and Next Friend
J.V. Ranganatha Row

APPELLANT

Vs

Hanumantha Rao and
Others

RESPONDENT

Date of Decision: Jan. 11, 1922

Citation: 65 Ind. Cas. 727

Hon'ble Judges: Spencer, J; Krishnan, J

Bench: Division Bench

Judgement

Spencer, J.

Section 150, which appeared for the first time in the CPC of 1908, provides for a Court to which the business of any other

Court is transferred having the same powers as the Court from which the business is so transferred. But this useful provision is qualified by the

words ""save as otherwise provided,"" and the question in the case before us is whether the wording of Order IX, Rule 13 of the CPC is such as to

take away the power of a Court that has territorial jurisdiction over the subject-matter of a suit to set aside an ex parte decree passed by another

Court that originally tried the suit.

2. That rule declares that applications to set aside ex parte decrees may be made to the Court by which the decree was passed. It goes on to state

that on making an order setting aside the ex parte decree the Court shall appoint a day for proceeding with the suit.

3. Our attention has been drawn to reported decisions which relate to the powers of Courts other than the Court which granted an injunction to

deal with a breach thereof: Bellary Press Co., Ltd. [Mathura Das] v. Venkata Rao 8 Ind. Cas. 7 , Jaharuddin v. Hari Charan Poddar 22 Ind. Cas.

439 and Ottapurakkal Thazath Kuppi v. Alabi Mashur Koyanna Koya Kunhi Koya 34 Ind. Cas. 58 , also to decisions touching similar powers of

Courts to execute the decrees of other Courts: Panduranga Mudaliar v. Vythilinga Reddi 30 M. 537, ubbiah Naicker v. Ramanathan Chettiar 22

Ind. Cas. 899 , Seeni Nadan v. Muthuswamy Pillai 53 Ind. Cas. 213 and to review the order and decrees of other Judge: Sarangapani v.

Narayanasami 3 Ind. Dec. 389. There is also an authority Paramananda Das v. Mahabeer Dossji 7 M.L.J. 89 for holding that only the Court that

passed a decree can sanction agreements to give time to a judgment debtor u/s 557A of the Code of 1882. The above are merely analogous

cases, and no direct authority on the point before us has been cited.

4. In matters of execution, the law must now be regarded as settled by, the definition of the expression ""Court which passed a decree"" in Section

37 of the Code of 1908, and by the Full Bench judgment in Seeni Nadan v. Muthuswamy Pillai 53 Ind. Cas. 213 . Applications to get a review of

judgment have been peculiarly restricted by Order XLVII, Rule 2 permitting them to be made only to the Judge who personally passed the decree

or made the order when they are based upon other grounds than the discovery of new and important matter or the existence of a clerical or

arithmetical error, The use of the words ""the Court"" granting injunction"" was not considered by Srinivasa Iyengar, J., in Ottapurakkal Thazath

Kuppi v. Alabi Mashur Koyanna Koyi Kunhi Koya 34 Ind. Cas. 58 : 19 M.L.T. 314 or by Krishnaswamy Iyer and Munro, JJ., in Bellary Press

Co., Ltd. [Mathura Das] v. Venkata Rao 8 Ind. Cas. 7 to be an obstacle to a Court, to which the general business of another Court is

transferred, dealing with applications to enforce injunctions through the powers given them under Sections 150 and 36, the objection in the last

named decision being only to the transfer of an application from the Court which had express power to deal with it.

5. The case thus being one of first impression we must put a reasonable construction on the words of the Code. It is one thing to say that an

application made to the Court that passed the decree or order should not be transferred to another Court which has by transfer acquired

jurisdiction to deal with further proceedings in the connected suit; it is another thing to argue that where the whole business of one Court has been

transferred to another Court, the expression ""the Court by which the decree was passed"" is so definite and precise as to create an exception to the

general rule introduced by Section 150.

6. To adopt the latter argument is in effect to leave a defendant against whom an ex parte decree has been passed by a Court, which is afterwards

abolished, without any remedy beyond a general right of appeal against the final decree [vide *Karuppan v. Ayyathorai* 3 Ind. Dec. 705 and *Sadhu*

Krishna Ayyar v. Kuppan Ayyangar 1 M.L.T. 268], and Section 96 of the Code of Civil Procedure.

7. The direction at the end of this rule that upon setting aside an ex parte decree the Court shall appoint a day for proceeding with the suit would

be, as my learned brother pointed out, meaningless if such application were to be disposed of by Courts which had ceased to have jurisdiction

over the suit itself.

8. I would, therefore, place a liberal construction on the wording of Section 150 and of Order IX, Rule 13 and hold that the District Munsif of

Anantapur had jurisdiction to deal with this petition.

9. As to the merits, the service of notice of suit purported to be by affixture to the outer door of the respondents' residence, the information given

by his sister being that he had gone to a village in Mysore. The statement in his affidavit that he did not know till he attended the Taluk office on

27th March 1920 that an ex parte decree had been passed against him stands uncontradicted in detail. There appears, thus, to have been good

reason for ordering the ex parte decree to be set aside. The civil revision petition is dismissed with costs

Krishnan, J.

10. The main question for our decision in the revision petition is one of jurisdiction regarding the setting aside of an ex parte decree.

11. The petitioner before us, who was the plaintiff in Original Suit No. 1230 of 1919 on the file of the District Munsif's Court of Panukonda,

obtained a decree against the respondent and others, the decree against him being an ex parte decree. Subsequently, there was a re-adjustment of

territorial jurisdiction between that Court and the District Munsif's Court of Anantapur as the result of which, all the properties included in the

decree were transferred to the jurisdiction of the latter Court. Consequently, the respondent applied to that Court to get aside the ex parte decree

against him and that Court has granted his prayer. The revision is against that order and it has been contended before us, that the Penukonda

Court, as the Court which passed the decree, was the only Court competent to act under Order IX, Rule 13 of the CPC to set aside the decree

and that the Anantapur Court had no jurisdiction to do so. That rule, it is true, authorises an application to the Court that passed the decree but the

respondent relies upon Section 150 of the CPC as extending the power to act under that rule to the Anantapur Court in the present case, as the

whole business of the former Court within the local area in which the suit properties are situate, has been transferred to the latter Court and be

contends Section 150 applies.

12. The petitioner's Vakil has put forward two contentions to exclude the applicability of Section 150 and I shall consider them separately. He first

argued that the section applied only when the whole of the business of the Court with reference to the whole of its jurisdiction is transferred to

another Court; or, in other words, when the Court is abolished and another is substituted for it, and not to a case of partial adjustment of

jurisdiction and transfer of its business with reference to that part alone to another Court. There is nothing in the language of the section which

compels us to put this restricted meaning on it: to do so would greatly reduce its scope and usefulness. No authority has been cited in favour of the

restricted construction, nor is any general reason shown in support of it. On the other hand, there is as much reason to apply the section to cases of

transfer of defined local areas as to cases of transfer of the whole, jurisdiction. What little authority there is on the point, is in favour of the view I

am taking, for in the Full Bench case in *Seeni Nadan v. Muthuswamy Pillai* 53 Ind. Cas. 213 there is an observation of Ayling, J., on page 835

Page of 42 M.[ED.] which supports it, where the learned Judge says ""this Section ("section 150 of the Code of Civil Procedure) certainly seems to

me to cover the case of transfer of all the litigations arising out of a tract of country from one part to another."" The first objection must, therefore,

be overruled.

13. The next point taken in, that the words ""save as otherwise provided"" in the section prevent its applicability to the present case, as it is argued

that Order IX, Rule 18, requires that the application should be made to the Court that passed the decree and to no other Court. It does not say

anything about other Courts and I am unable to read it as excluding the application of Section 150. The rule is an enabling one which prescribes

what is to be done in the ordinary course, to get an ex parte decree set aside. It does not say that the Court that passed the decree is the only

Court that can set it aside. Nor is there anything restrictive in the wording,

14. No authorities have been cited on the precise point before us, by either side but the petitioner's Vakil has tried to argue by way of analogy

with reference to certain rulings under Order XXXIX, Rule 2, Clause (3) of the Code of Civil Procedure, that when a forum is mentioned in a rule

as having authority to do a certain thing it must be held that the jurisdiction of every other forum in the matter is excluded and he cited the cases in

Jaharuddin v. Hari Churan Poddar 22 Ind. Cas. 439 and Bellary Press Co. Ltd. Mathura Das] v. Venkata Rao 8 Ind. Cas. 7 : 21 M.L.J. 829. It

is sufficient to say that in these cases, the effect of Section 150 of the CPC did not arise for decision and they are thus of little value in the present

case. On the other hand, with reference to this very point, Srinivasa Iyengar, J., in his judgment in the Full Bench case in Ottapurakkal Thazath

Kuppi v. Alabi Mashur Koyanna Koya Kunhi Koya 34 Ind. Cas. 58 expresses a clear opinion when he says that ""where the business of one

Court is transferred to another, the Court to which the business is so transferred may, I think, u/s 150, entertain an original application for

attachment or arrest under Clause (3), Rule 2 of Order XXXIX."" That Full Bench overruled the rather extraordinary contention that, because the

clause- said that the Court granting the injunction may attach the properties of or imprison in civil jail the person guilty of disobedience, even the

Appellate Court had no power to take action under it. If it is kept in mind that these are enabling rules in which there are no restrictive words as

there is, for example, in Order XL VII, Rule 2 under which except in certain circumstances an application for review can be made ""only to the

Judge who passed the decree or order"" there is no difficulty in holding that the Court, given the same powers as the Court mentioned in the rules,

as, for example, an Appellate Court or a Court to which the former Court's business has been transferred u/s 150 of the CPC can itself exercise

those powers. To hold otherwise will be, in my opinion, entirely erroneous and will defeat the very object of the Legislature in extending such

powers.

15. I have not referred to Section 37 of the Code or to cases under it, for they all refer to proceedings in execution.

16. I agree with my learned brother that the contention that the Anantapur Court had no jurisdiction, must be overruled.

17. The objections taken to the order of the lower Court on the merits are equally untenable. It is clear from the record that the defendant was not

duly served and that his application is within time as he has sworn in his affidavit that he was not aware of the suit or of the affixture of the summons

at his residence or of the existence of the ex parte decree till the 27th March, some 12 day before his application. The matter was tried on affidavit,

no application being made to take evidence or to cross-examine the defendant, The plaintiff filed no affidavit himself but he left it to his Vakil to file

an argumentative) statement merely alleging that the defendants' affidavit could not be true. In these circumstances the District Munsif cannot be

said to have acted irregularly or even wrongly in setting aside the ex parte decree.

18. I agree that the civil revision petition fails and must be dismissed with costs.