

Ayisa Beevi Ammal and ors. Vs. Nagaratna Mudaliar and ors.

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Court : Chennai

Decided On : Mar-27-1934

Reported in : AIR1934Mad573; 152Ind.Cas.891

Appellant : Ayisa Beevi Ammal and ors.

Respondent : Nagaratna Mudaliar and ors.

Judgement :

Jackson, J.

1. I have had the advantage of reading my learned brother's judgment and agree that on the question of waiver these appeals must fail. I also think that the learned Judge's order can be supported on the authority of Rajagopala Pandarathiar v. Thrupathi Pillai 1926 Mad. 421. The Sub-Judge of Mayavaram forwarded the execution petition and transferred the decree to the District Court of East Tanjore and that Court transferred the petition to the Sub-Court of Negapatam which had territorial jurisdiction over lot 5 but not over lots 3 and 4 which were within the Tiruvarur jurisdiction. In these circumstances was the Sub-Court of Negapatam a Court of 'competent jurisdiction' to sell lots 3 and 4 as contemplated in Order 21, Rule 8? Competent jurisdiction is not usually referable to territorial jurisdiction, and there seems to be no reason for making an exception in the matter of executions under Order 21. This point was threshed out in Rajagopala Pandarathiar v. Thrupathi Pillai 1926 Mad. 421 when Mr. Varadachari, urged that if competent jurisdiction did not mean territorial jurisdiction the phrase would be otiose. But Venkatasubba Rao, J., meets that argument on p. 758, and I agree with his conclusion.

2. I do not think it necessary to invoke Section 24, Civil P.C. Even if Section 21 is strictly confined to suits and to proceedings of the nature of suits, still there is the power to transfer decrees for execution under Order 21, Rule 8. Under that rule the District Court may itself execute and there seems to be no reason in law why it should not ask any Court sub-ordinate to it and competent to execute to proceed with the execution. For example, suppose the property for sale had been claimed as temple property and a riot was apprehended at Tiruvarur so that it was thought advisable to sell the property at headquarters at Negapatam. The District Judge would be competent to sell, and is it to be argued that he could not delegate the duty by way of transfer to the Sub-Judge at Negapatam? Yet that Subordinate Judge, would have no territorial jurisdiction. I should hold that 'competent jurisdiction' means 'competent to sell in execution,' and should affirm the dictum to that effect in Rajagopala Pandarathiar v. Thrupathi Pillai 1926 Mad. 421. The appeals therefore must fail and be dismissed with costs.

Butler, J.

3. These three appeals arise out of a sale in execution of a mortgage-decree for sale passed by the Mayavaram Sub-Court in O.S. No. 52 of 1921 on 21st March 1922. The sale was conducted on 30th April 1926 of items 3 and 5 of the scheduled property, these items being sold first by consent. At the time of the final decree all the hypothecated' property lay within the territorial jurisdiction of the Mayavaram Sub-Court, but subsequent changes in territorial jurisdiction resulted in item 5 falling within the territorial jurisdiction of the Negapatam Sub-Court and items 3 and 4' within that of the Sub-Court, Tiruvarur. All three items were sold by the Negapatam Sub-Court. After the sale attempts were made to set it aside on numerous grounds, with only one of which are w& concerned here. This is that the Court had no jurisdiction to sell items 3 and 4, which did not lie within its territorial jurisdiction. C.M.A. No. 450 of 1927 m brought by defendants 2 to 4 in respect of items 3 and 4, the decree-holders and auction-purchasers being the respondents. C.M.A. No. 489 of 1927 is by defendant 12 (subsequent mortgagee) against the same respondents in respect of items 3 and 5. C.M.A. No. 520 of 1927 is by defendant 7 in respect of items 4 and 5, only the decree-holders and the auction-purchaser of these lots being made respondents. It has to be noted that the decree-holders obtained a transfer of the decree from the Mayavaram Sub-Court to the District Court, East Tanjore, for execution, and that the latter transferred the execution petition to the Sub-Court, Negapatam. This Court sold the properties without any objection to its territorial jurisdiction and it has not been alleged in argument before us that this has resulted in any loss to the judgment-debtors.

4. The respondents meet the plea of want of jurisdiction with the plea of waiver. Objections to jurisdiction must, it is contended, be taken at the earliest opportunity, and if not so taken cannot subsequently be raised. With regard to suits this is expressly laid down in Section 21, Civil P.C., and though the section may not be in terms applicable to execution proceedings, the principle underlying it has been applied. In *Zamindar of Elliapuram v. Chidambaram Chetty* 1920 Mad. 10193, a Full Bench held that objections to the territorial jurisdiction of the Court that passed the decree could not be taken in the executing Court. This was followed in *Manavikaraman v. Anantanarayana Ayyar* 1924 Mad. 157, where in a suit for the redemption of a kanom the Court that decreed redemption lost territorial jurisdiction over the suit property. Nevertheless it disposed of execution applications to revalue and order delivery of the property. Though objection was taken to the valuation, none was taken to the jurisdiction of the Court, and it was held that applying the principle of Section 21, Civil P.C., and the objection being one of form rather than of substance, objection on a point of territorial jurisdiction could not be taken in appeal. In *Rajagopala Pandarathiar v. Thrupathi Pillai* 1926 Mad. 421, in a mortgage suit the Court that passed the final decree for sale ceased to have territorial jurisdiction over the mortgage property; an execution petition was however received by it, and orders passed on objections raised by the judgment-debtor. Subsequently the execution petition was withdrawn to the District Court, which had territorial jurisdiction, and it transferred the execution petition back to the Court that passed the decree, and the property was sold.

5. After sale an application to set aside the sale on grounds that the Court had lost territorial jurisdiction was over-ruled on the ground that the objection had been waived. The facts are closely similar to those of the present appeals, and I am unable to distinguish between them. *Venkatasubba Rao, J.*, there held that though Section 21, Civil P.C, did not in terms apply, its principle was one of general application, and that there was no reason to limit the scope of its application to cases where objection

might have been taken before the decree. He followed the decision in *Zamindar of Elliapuram v. Chidambaram Chetty* 1920 Mad. 10193 and accepted the distinction there made with regard to the decision of the Judicial Committee in *Ramabhadra Raju Bahadur v. Maharaja of Jeypore*, 1919 P.C. 150. The latter case related to execution sale of property within a scheduled district, by a Court outside. The Civil Procedure Code is not in force in such districts, and therefore neither Section 21 nor any underlying principle could be applied. This clearly is different from a case arising in Courts governed by the Civil Procedure Code. Madhavan Nair, J., took the same view.

6. There is nothing in *Sivaskanda Raju v. Rajah of Jeypora* 1927 Mad. 627 that runs counter to this. The decision in *Rajagopala Pandarathiar v. Thrupathi Pillai* 1926 Mad. 421 is binding upon us, and there is no reason to suggest that it was not rightly decided. Applying it to the facts of the present case we must hold that objection to the jurisdiction of the Court, not having been taken before sale, could not be raised at a later stage. The appeals therefore fail and are dismissed with costs.

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