

Sankaran Nair Vs. Atchuthan and anr.

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SooperKanoon Citation : sooperkanoon.com/346708

Court : Mumbai

Decided On : Mar-06-1923

Reported in : (1923)ILR46Bom734

Judge : Oldfield and ;Devadoss, JJ.

Appellant : Sankaran Nair

Respondent : Atchuthan and anr.

Judgement :

1. The question referred to us is whether a District Munsif, receiving by transfer a decree of a village Court under Section 66 of the Madras Act I of 1889 or withdrawing execution of a decree to his own file under Section 67, has or has not jurisdiction to transfer it for execution to another District Munsif's Court under Section 39, Civil Procedure Code.

2. The learned District Munsif in referring this question has pointed out the great practical inconvenience of a negative answer to it; and we fully appreciate the considerations he has referred to. It is, however, our duty to deal with the matter with reference to the law as it stands. Under Section 48.

the decree shall be executed by the Village Court, which passed it, or by a Village Court or District Munsif, to whom it is sent for execution under the provisions hereinafter contained.

3. Under Section 66.

any decree passed by a Village Court may, on the application of the decree-holder, be transmitted for execution to the District Munsif

4. who is denned earlier in the Act as the District Munsif within whose jurisdiction the Court is situate.

Who may execute the same, as if it were a decree passed by himself or may transmit it for execution to the Court of any other village, in which the defendant is represented to have moveable property;

5. and Section 67 authorizes the District Munsif to take on his own motion the action authorized by Section 66. The result of these sections is not, in our opinion, to authorize the District Munsif to send a decree, which has been withdrawn to his own file, for execution to another District Munsif for that purpose. There is first no explicit reference to such transmission. There is next the explicit reference to a particular kind of transmission as open to the District Munsif, a transmission to the Court of any other village in which the defendant is represented to have moveable property. In accordance with the ordinary canons of construction reference to this on o kind of transmission is against an intention to authorize any other kind of transmission. The Act, as we understand it, is intended to supply a complete Code of procedure for Village Courts; and there is, therefore, no reason for importing into that procedure the provisions of another statute, the Civil procedure Code, the less so as the reference to transmission in Section 66 is in our opinion against such importation.

6. We may add with reference to the applicability of the provisions of the Civil Procedure Code that in the Amending Act II of 1920, when it was desired to make one of those provisions, Section 60, applicable to the execution of Village Court's decree, it was so made applicable by a special provision, Section 23.

7. We must answer the reference in the negative. No one has appeared on either side on this reference. Therefore no order as to costs is necessary.

