

**Gowrammal Vs. Lingappa Gowder**

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**Court :** Chennai

**Decided On :** Sep-16-1966

**Reported in :** AIR1968Mad99

**Judge :** Srinivasan and ;Sadasivam, JJ.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 37, 38, 39, 41 and 42 - Order 21, Rule 21

**Appeal No. :** A.A.A.O. No. 162 of 1963

**Appellant :** Gowrammal

**Respondent :** Lingappa Gowder

**Judgement :**

(1) This civil miscellaneous second appeal comes before us at the instance of our brother, Venkatadri J.

(2) The respondent-decree-holder obtained a money decree on 22-6-1953 against the appellant in O.S. No. 208 of 1952 on the file of the District Munsif's Court, Krishnagiri. It is common ground that in 1959, a certain area was carved out of the territorial jurisdiction of the Krishnagiri Munsif's Court and a separate Court of District Munsif with jurisdiction over that area was established at Hosur. The decree-holder sought to proceed in execution of the decree by attachment of an amount lying to the credit of the judgment-debtor in the Estates Abolition Tribunal Court, Salem. This petition was rejected on the ground that the Court which

passed the decree. District Munsif's Court, Krishnagiri, had not transmitted the decree to the Court of the District Munsif of Hosur, wherein it was sought to be executed. The decree-holder appealed.

The learned Additional District Judge, relying upon the decision of the Supreme Court in *Ramanna v. Nallappa Raju*, 69 Mad LW 875 = (AIR 1958 SC 87), thought that the District Munsif's Court, Hosur, should be considered to be the Court which passed the decree, and in that view, set aside the order of the lower Court and held the execution petition filed by the decree-holder in the District Munsif's Court, Hosur, to be maintainable and directed its disposal on merits. It may be mentioned here that on behalf of the decree-holder, it was also urged before the lower appellate Court that on a prior occasion, an execution petition had been filed in the District Munsif's Court, Hosur, to the maintainability of which no objection was taken by the judgment-debtor, and that the judgment-debtor should be deemed to have waived the objection to jurisdiction. But this point was not specifically dealt with by the lower Court.

(3) This second appeal by the judgment-debtor challenges the correctness of the view taken by the lower appellate Court.

(4) When the matter was heard by Venkatadri J., a decision of the Full Bench of this Court in *Ramier v. Muthukrishna*, AIR 1932 Mad 418, was brought to his notice and it was urged that was weighty authority for the view that the execution petition was not maintainable in the District Munsif's Court of Hosur without there being an order of the decreeing Court, the District Munsif's Court, Krishnagiri, transmitting the decree to the former Court for execution. As against this, the decision of the Supreme Court already referred to relied upon, wherein the correctness of the Full Bench view of this Court was not subjected to examination. But it was pointed out there that where a Court which has jurisdiction over the subject-matter, when the execution application is presented entertains it without an order of transfer from the decreeing Court, it would at the worst be only an irregular assumption of jurisdiction and not a total absence of jurisdiction and that if objection was not taken at the earliest stage, it should be deemed to have been waived. After considering these and a few other cases, Venkatadri J, thought that there was a

conflict of decisions which required the matter to be heard by a Bench.

(5) The short question is whether in the circumstance of the case, the execution petition would be directly filed in the Court of the District Munsif of Hosur without an order transmitting the decree by the executing Court, that is, the District Munsif's Court of Krishnagiri.

(6) We may at this stage refer to the provisions of the Code relating to execution: S. 38, C.P.C., provides that the decree may be executed by one of two Courts, the Court which passed the decree or the Court to which it is sent for execution. Obviously, a Court which does not possess either character cannot execute the decree. Section 39 provides that the Court which passed the decree may send it to another Court for execution in certain cases. The normal venue for the execution of the decree is the Court which passed the decree and this expression "the Court which passed the decree" has been given an extended definition in certain circumstances. One is that indicated in S. 37(b). In a case where the Court of first instance which passed the decree has ceased to exist or to have jurisdiction to execute it, the expression 'the Court which passed the decree in relation to execution will include the Court which would have jurisdiction to try the suit, if the suit wherein the decree was passed was instituted at the time of making the application for execution in that Court.

This section accordingly provides for two contingencies. One is the Court which passed the decree has ceased to exist and the other that it had ceased to have jurisdiction to execute it. It is only in either of these two contingencies that another Court is deemed to be the Court which passed the decree and such a Court shall be that one which would have the jurisdiction to try that suit if the suit wherein the decree was passed was instituted in that Court as on the date of making the application to execute the decree. Under S. 42, the Court executing the decree sent to it is conferred with the same powers in executing such decree as if it had been passed by itself. S. 41 requires that the Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or when it fails to execute it, the circumstances attending such failure. This provision seems to us to be important in that it indicates that the Court which passed the

decree has full control over the further stages of the execution of the decree. Order XXI of the First Schedule of the C. P. Code provides for the procedure in execution of decrees.

(7) In the Full Bench decision AIR 1932 Mad. 418, the position was that after the passing of a mortgage decree by a Munsif's Court, at a place M, there was a re-alignment of jurisdiction by reason of which the properties in suit came to be located within the jurisdiction of the District Munsif's Court at N. An application to execute the decree was made to the latter Court without obtaining an order for transfer of the decree from the former Court which still continued to exist. In this Full Bench case, the conflict between certain earlier authorities was considered, and it was pointed out that view taken in *Subbiah Naicker v. Ramanathan Chettiar*, ILR 37 Mad 462 = (AIR 1914 Mad 162) had been overruled in *Seeni Nadan v. Muthuswami Pillai*, ILR 42 Mad 821 = (AIR 1920 Mad 427 (FB)). The principle of this Full Bench decision is clearly that where the Court which passed the decree continued to exist an order transferring the decree should be obtained from that Court before it could be put into execution in a Court which might subsequently come to have jurisdiction over the properties in suit, it is to say, the subject-matter. So, much is very clear from this decision.

(8) The question was considered to . In, that case, a decree had been passed by the Subordinate Judge, Kakinada. Objection to execution was taken by some of the ex parts defendants on the ground that the ex parte decree against them was obtained fraudulently. It failed, and these defendants filed the suit challenging the decree in the District Court. East Godavari to which the Court of the Subordinate Judge, Kakinada is subordinate. The question arose whether the suit was filed in a Court which had jurisdiction to execute the decree under challenge. Their Lordships observed thus :

"Sec. 38, C.P.C. provides that a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. The District Court, East Godavari, is neither the Court which passed the decree in O.S. No. 25 of 1927 nor the Court to which it had been sent for execution. But it is common ground that when the present suit was instituted in the District Court, East

Godavari, it had jurisdiction over the properties which are the subject-matter of this suit. It is true that by itself this is not sufficient to make the District Court, East Godavari, the Court which passed the decree for the purpose of S. 38 because under S. 37 it is only when the Court which passed the decree has ceased to have jurisdiction to execute it that the Court which has jurisdiction over the subject-matter when the execution application is presented can be considered as the Court which passed the decree, and it is settled law that the Court which actually passed the decree does not lose its jurisdiction to execute it by reason of the subject-matter thereof being transferred subsequently to the jurisdiction of another Court. But does it follow from this that the District Court, East Godavari, has no jurisdiction to entertain the execution application in respect of the decree in O.S. No. 25 of 1927 passed by the Subordinate Judge, Kakinada?"

(9) After referring to a long course of decisions in the High Court of Calcutta that the Court to which the jurisdiction over the subject-matter of a decree has been transferred is also competent to entertain an application for execution of the decree reference is made to the Full Bench decision of the Madras High Court in AIR 1932 Mad 418, which view also finds support in another decision of the Calcutta High Court in *Mesrab Khan v. Debnath Mali*, ILR (1942) 1 Cal 289 = (AIR 1942 Cal 321). But their Lordships of the Supreme Court found it unnecessary to decide which of these two views is correct, but proceeded to deal with the matter on the basis of a different principle. They refer to *Balakrishnayya v. Linga Rao*, ILR (1943) Mad 804 = (AIR 1943 Mad 449), where it was held that the Court to whose jurisdiction the subject-matter of the decree is transferred acquires inherent jurisdiction over the same by reason of such transfer and that if it entertains an execution application with reference thereto, it would only be a case of an irregular assumption of jurisdiction and not a total lack of it. They further say that if jurisdiction at the earliest opportunity, it must be deemed to have been waived, and that was the position in the case before their Lordships. One point that emerges from this decision is the reiteration of the general principle of law that a Court acquires inherent jurisdiction over the subject-matter when that subject-matter is transferred to it in the sense of a transfer of territorial jurisdiction.

(10) It would certainly appear from a consideration of this decision that if the subject-matter comes to the within the jurisdiction of the District Munsif's Court, Hosur, though the decree might have been passed by the District Munsif of Krishnagiri, the District Munsif of Housr could acquire inherent jurisdiction to execute it. The question, however, is whether despite that fact, so long as the Court which passed the decree, that is, the District Munsif's Court, Krishnagiri, continues to exist, the law does not require a transfer of that decree by the decreeing Court to the executing Court before the latter can proceed by way of execution. In a decision of a single Judge of the Punjab High Court in *Kasturi Ram v. Mehr Singh*, , it was held that, where the territorial jurisdiction of a Court is transferred to another Court, the transferee Court is competent to entertain directly an application for the execution of the decree passed by the first Court.

The decree had been passed by the Subordinate Judge, Singrur, but by the alteration of territorial jurisdiction, the property came to lie within the jurisdiction of the Sub-Court of Sunam. The contention was advanced before the learned Judge that since the Singrur Court had ceased to have jurisdiction to execute the decree, it would necessarily have to transfer the decree to the Sunam Court for execution. The argument to the contrary was that the Sangrur Court as the decreeing Court did not cease to have jurisdiction to execute the decree and that the requisite condition under S. 37, C.P.C., was not fulfilled. The learned Judge observed that the object of S. 37 was to give greater facilities to the decree-holder for executing his decree and thought that while an application for execution could always be entertained by the Court which passed the decree as provided under S. 38, C.P.C., the decree-holder could in addition make his application to another Court if the original Court could not execute the decree within the meaning of S. 37.

A distinction was made by the learned Judge between jurisdiction to entertain an application for execution and the jurisdiction to execute a decree. He further thought that there could not be any case in which the Court of first instance continues to exist, but deprived of jurisdiction to entertain an application for execution. The result of the discussion of the learned Judge was that the Sunam Court, though it was not the decreeing Court and the decree was not transferred to it by the decreeing Court, could entertain and proceed with the execution. This

view was approved by a Full Bench of the Punjab High Court in *Mehar Singh v. Kasturiram*, (FB).

(11) In *Gopalakrishna v. Lakman*, AIR 1964 Mys 34, a situation closely similar to that in the present case arose. The territorial jurisdiction of the Subordinate Judge's Court of Mangalore was cut up and a new Court of Subordinate Judge was created at Udipi, and by a notification, it was directed that the former Court shall cease, with effect from a specified date, to exercise jurisdiction over the local limits defined for latter Court. Prior to that date, a money decree had been passed by the former Court and execution thereof was levied in the Court at Udipi. The learned Judge held that could not be done unless the decree had been transferred for execution by the decreeing Court and that neither S. 38 nor S. 37 of the Code deprived the Court which passed the decree of its jurisdiction to execute it, merely because a new Court was established.

(12) We may observe here that though S. 37 was intended to facilitate the execution of decrees, if the law were to be that both the decreeing Court and the executing Court could execute the decree, the latter without having the decree transferred to it by the decreeing Court, it may lead to certain anomalous situations. Normally, simultaneous execution of the decree is not countenanced by the procedural law and O. XXI, R. 21, C. P. C., specifically declares that the Court may in its discretion refuse execution at the same time against the person and property of the judgment-debtor. If the decree-holder in circumstances analogous to those that obtain in the present case were to be permitted to approach either Court as he chooses, there is nothing to prevent him from filing an execution application in one Court for proceeding against the person of the judgment-debtor and another in the other Court for proceeding against the property of the judgment-debtor, and if the transfer of the decree is not to be insisted upon, neither Court would be aware of this act on the part of the decree holder, and the exercise of the Court's discretion in permitting or refusing such simultaneous execution may well be designedly avoided by the decree-holder. This appears to be an argument in favour of the view that when the executing Court is not the decreeing Court, the decree should be transferred to it by a proper transmission of the decreeing Court.

(13) It will be noticed that in all the cases where the newly constituted Court was held competent to execute the decree, even without transmission of the decree by the Court which passed the decree, the position was that the subject-matter of the decree came to be within the jurisdiction of the new Court. that, it was held, conferred inherent jurisdiction on the court to levy execution against properties situated within the local limits of its jurisdiction. It is difficult to apply this principle in a case relating to the execution of a mere money decree.

(14) We are accordingly of the view that AIR 1932 Mad 418 lays down the rule that should be followed.

(15) We may, however, note that on an earlier occasion the decree-holder applied for execution in the Hosur Court. It is argued that on the ratio of the decision in , it is not open to the judgment-debtor to object tot he present execution application, as he had not raised it previously and should be deemed to have waived it. This ground was not examined by the Court below. Nor are nay facts necessary for an examination of this ground available in the records. We, therefore set aside the order of the Lower Appellate Court and remit the matter to the District Munsif's Court, Hosur, for disposal of the execution petition after giving a finding on the question of waiver of objections to jurisdiction. There will be no order as to costs.

(16) Appeal allowed.

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