

Subbiah Vs. Muthuswamy

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Court : Chennai

Decided On : Apr-06-1984

Reported in : AIR1984Mad206; (1984)1MLJ354

Judge : V. Ratnam, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 150 - Order 47, Rule 1

Appeal No. : Civil Revn. Petn. No. 5207 of 1983

Appellant : Subbiah

Respondent : Muthuswamy

Advocate for Def. : R. Siniha Mathar, Adv.

Advocate for Pet/Ap. : K. Balasubramanian, Adv.

Judgement :

ORDER

1. In this Civil Revision Petition at the instance of the first defendant in O. S. No. 27 of 1983, District Munsiff's Court, Tirunelveli, the question that aitses for consideration is, whether the Court below was right in the view it took that it had no jurisdiction to entertain an application for review filed before it by the petitioner. Originally, the first respondent in. situated. S. No. 217 of 1978 before the Sub Court, Tuticorin, against the Petitioner and the second respondent herein for the

recovery of amounts due under a mortgage dated 29-5-1972. Subsequently, owing to the enlargement of the pecuniary jurisdiction of the District Munsiff's Court, the suit instituted by the first respondent herein before the Sub Court, Tuticorin, stood transferred to the file of the District Munsiff's Court, Tuticorin. Before that Court, the first respondent herein prayed in 1. A. No. 1293 of 1982 for an amendment of the plaint. Some objections were raised by the petitioner and after overruling those objections, on 15-10-1982, the learned District Munsiff allowed the application for an amendment of the plaint. On 20-12-1982, the suit which was pending before the District Munsiff's Court, Tuticorin, was transferred to the file of the District Munsiff, Tirunelveli. Before that Court, the petitioner filed an application for a review of the order passed in 1. A. No. 1293 of 1982 by the District Munsiff, Tuticorin, and also prayed for the condonation of the delay in filing the Review application. While dealing with that application, the learned District Munsiff, Tirunelveli, took the view that as the order, a review of which was prayed for, was passed by the learned District Munsiff, Tuticorin, only that Court can exercise powers of review and that as the transferee Court, he had no jurisdiction to entertain the application. On this conclusion, the application was dismissed. Challenging the correctness of this order, the petitioner has preferred this Civil Revision Petition.

2. The learned counsel for the petitioner contended that having regard to the r4W of O. 47, R. 2, Civil P. C., by Act 66 of 1956, it was not even necessary that the same Judge should bear the review application and that in the present case, the suit itself had been transferred from the District Munsiff's Court at Tuticorin -to that at Tirunelveli and, therefore, under. Sec. 150, Civil P. C., the transferee Court, namely~ the District Munsiff's Court at Tirunelveli had all the powers and was also obliged to perform all the duties of the District Munsiff's Court at Tuticorin, from which the suit was transferred inclusive of reviewing its earlier orders. Strong reliance in this connection was placed by the learned counsel for the petitioner upon the decisions in *Narasimha Raju v. Brundavanasabu* AIR 1943 Mad 617; *Mehar Singh v. Kesturt Ram* AIR 1968 P&H; 3; *Achuthan Y. Karthiyayani Amma* AIR 1952 Xec 105. *Kahan Chand v. Faqir Chalid and Howrah Insurance -Co. v. S. M. Das Gupta* . : [1976]1SCR356 . On the other hand, the learned counsel for the first respondent would contend that under the provisions of Order, 47. Rule 1, Civil

P. C., any person confident himself aliened by an order may for a review of that order to the Court which passed the decree are made the order and in view of this specific provision, Section, 450, Civil P. C.. enabling the transferee Court to exercise jurisdiction in all matters in which the transferee Court should have so exercised jurisdiction, would not apply. Reliance in this connection was placed upon the use of the expression, 'Save as otherwise provided' - occurring in S. 150, Civil P. C. The learned counsel further submitted that there was considerable delay. which was also unexplained, in the filing of the. application for review and the petitioner would. therefore, be not entitled to seek a review of the order passed in 1. A. No. 1293 of 1982

3. Before embarking upon a consideration of these rival submissions, it is necessary briefly to refer to O. 47, R. 1, Civil P. C. That provides for filing of an application for review by any person considering himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred. by a decree or order from which no appeal is allowed. or by a decision on a reference from a Court of Small Causes, and who. from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at 'the time when the decree was passed or order made. or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. The aggrieved person desirous of obtaining a review of a decree or order passed against him has to apply to the Court which passed the decree or made the order. Order 47, R. 1 (2), Civil P. C. is not relevant for the present case. Order 47, R. 2. Civil P. C. as it then stood. provided that an application for review on a ground other than the discovery of new and important matter or evidence, as is referred to in R. 1. or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only' to the Judge who passed the decree or made the order, a review of which was sought for. but that such an application may be dealt with and disposed of by the successor. if the Judge who passed the decree or made the order has ordered notice to issue under O. 47. R. 4 (2), Civil P. C. The other provisions of O. 47, Civil P. C., are not necessary for purposes of this case. By Act 66 of 1956, O. 47. R. - 2, Civil P. C., was repealed and thereafter the position is that review applications' would be governed by O. 47, R. 1, Civil P.

C., and in literal provision. Merely, an indication that a review application should be made before and dealt with by the Court which passed the order. It would, therefore, appear that even in its particular Court, a successor can review the order passed by his predecessor-in-office. Though such a successor to a Presiding Officer, who passed the order, can review the order so passed, the question still would arise whether such a successor should be an officer in the very same Court which passed the decree or made the order. A literal interpretation of O. 47, R. 1, Civil P. C. that the power of review conferred thereunder is available to be exercised only by the successor in the very same Court, which passed the decree or made the order, is beset with difficulties. It may be that the Court at its given place has transferred its entire business to some other Court. In such a case, there is no question of its successor Presiding Officer exercising powers of review presiding over the same Court which passed the decree or made the order. That will lead to the result that in such cases, there is no right of review at all available to be exercised by an aggrieved person, though such a right has been conferred under O. 47, R. 1, Civil P. C. Take a case of even transfer of a suit, as in the present case. To say that in spite of the order of transfer of the suit, the transferor Court alone should exercise the power of review appears to be a little startling. In such a situation, there will be two Courts dealing with the same matter, one for purposes of exercising powers of review and the other for dealing with the suit and for other procedural matters. That will lead to confusion and complications. Such a situation could not have been in the contemplation at all of the provisions under the Civil P. C. to be put upon the words occurring in O. 47, R. 1, Civil P. C., viz., 'to the Court which passed the decree or made the order' would be to include within its scope also the Court to which the proceedings stand transferred. Such an interpretation would make available the remedy conferred under O. 47, R. 1, Civil P. C., to an aggrieved person and the transferee Court will also be free to deal with such an application, when made before it. A contrary interpretation would not only prevent the remedy being availed of by an aggrieved person, but would also, in some cases, as noticed earlier, result in utter confusion and may render nugatory, the remedy itself.

4. That such an interpretation is now possible, is established by some decided cases to which reference can now be made. Cases have arisen where

disobedience of an order of injunction had to be remedy. Under O. 19, R. 2 (3), Civil P. C., the expression used prior to Act 104 of 1976 was that 'the Court granting an injunction may order the attachment of the property of the person guilty of disobedience and also order detention in the civil prison'. Even in such a case, in *Guruswami Naicker v. Mahommedbu Rowther*, ILR (1923) Mad 83 : AIR 1923 Mad 92, this Court held that the Court to which the business of the first Court is transferred can well exercise the powers conferred under O. 39, R. 2(3), Civil P. C. In so holding, reference to Section 150, Civil P. C., was made and it was pointed out that O. 39, R. 2 (3), Civil P. C., does not say that it is: only the Court granting the injunction that should make the order under O. 39, R. 2 (3), Civil P. C., and That there is nothing in that rule which includes the applicability of S. 150, Civil P. C.. by bringing it within the words 'Save as otherwise provided' occurring therein. Order 39, Rule 2 (3), and, S. 150, Civil P.C., were held to enable the transferee Court to exercise its power under O. 39, R. 2 (3), Civil P. C. Now the position is made clear by the introduction of O. 39, R. 2-A, Civil P, C., by Act 104 of 1976 and that without doubt enables the Court granting the injunction or any Court to which the 'suit or proceeding is transferred. to take appropriate action for disobedience or breach 'Of -in order of injunction. Cases have also arisen under O. 9, R. 13, Civil P. C.. which also provides for an application to set aside the ex parte decree to the Court by which the decree was passed. Though the actual expression used is 'to the Court by which the decree was passed', that expression has been interpreted to include even a Court to which the proceedings stood transferred. In *Ranganatha Rao v. Hanumantha Rao* AIR 1922 Mad 10 : ILR 46 Mad 1, a Bench of this Court held that the expression 'the Court by which the decree was passed' cannot be taken to be limited to the original Court and O. 9, R. 13, Civil P. C. being enabling provision prescribes what is to be done in the ordinary course, to get in ex parte decree set aside. It Was pointed out that the, requirements of O. 9, - R. 13, Civil P. C. is not that the Court which passed the decree (sic) is nothing to restrict, the wording and confine ~ it Only I to that. Court and accordingly it was held that the Court to which the whole business of the Court which passed the decree was transferred would be allowed to set aside. the exparte decree passed by-the transferor Court. Even with reference to transfer of business to another, Court as a result of territorial reorganization or readjustment

such a Principle has been held to apply. In *Narasimba Rain v. Brundavanasahu* : AIR1943 Mad617 , a preliminary mortgage decree was passed in 1925 by the Sub Court at Berhampore, which became final in 1926 and during the pendency of an application for execution filed in 1929 for the sale of the property, Government of India '(Constitution of Orissa) Order, 1936 was passed under which a separate province of Orissa was created and I was placed under the jurisdiction of the High Court of Judicature at Patna. A portion of the Ganjam District which was formerly in Madras presidency was transferred to and became, a part of Orissa and the Sub Court at Bream pore was in the area so transferred. While the remaining portion of the. Ganjam District. which remained in the Madras Presidency, was made a part of Vizagapatnam District. The properties covered by the final decree application were situated within the area that was filed by one of the defendants in the Court of Subordinate Judge of Beilhampore under Section 20 of Act IV Of 1938 for the purpose of getting the execution of the mortgage decree stayed and an other application was filed in the same CAW under S. 19 for the purpose of scaling and the decree. Yet another petition under Section 19 was filed by the same Person in the Court of the Subordinate Judge 1 Of Chicacole. Both the applications were 'dismissed and while disposing of the Civil provision Petitions challenging the correctness of the orders of. dismissal; it was pointed by this Court as under:

If therefore the Court of the Subordinate Judge of Chicacole can be regarded to be a Court to which (in view of the fact that the mortgaged property came to be within its jurisdiction after the order in Council) the business of the Court of the Subordinate Judge. of Berhampore is transferred. the former Court will then have the same powers and will. be liable to perform the same duties as the latter had before the transfer of such business. In short, in, respect of, the business, thus transferred the transferee Court will be in the same position as the Court which passed the decree. The question then is whether the, business of the Court of the Subordinate Judge of Berhanpore can be found to have been transferred to the Court of the Subordinate Judge at Chicacole in the circumstances existing in the present case. Whatever might have been said in regard to execution applications to which S. 37, Civil P. C., in terms applied, the question as to fresh and independent applications, as the application under Section 19 of Act IV of 1938 has now been found to be, is a very different one. In dealing with an application for

setting aside an ex parte decree made to a Court to which part of the territorial jurisdiction of another Court that had passed the decree had been transferred, along with the locality in which the properties were situated a Division Bench of this Court in *Srinivasa Rao v. Hanumantha Rao*, 42 MLJ 34 : ILR 46 Mad 1 : AIR 1922 Mad 10 held that the words used in Order 9, Rule 13, Civil P. C., providing that it should be made to 'the Court by which the decree was passed' were not so definite and precise as to exclude the possibility of the application being entertained by the Court which had subsequently come to be seized of the jurisdiction.'

Again, this decision also makes it clear that the expression 'Court by which the decree was passed' should not be too rigidly constructed but should be read in a manner as to include within itself the Court to which the proceedings stood transferred. In *P. N. Kalathi v. Ellammal*, : AIR1964 Mad463 , a decree for dissolution of a marriage was passed by the Sub Court, Chittoor, while the parties were residents of Sholinghur which originally formed part of the Chittoor Judicial District. Thereafter, Sholinghur came within the jurisdiction of North Arcot District and within the jurisdiction of Sub Court at Vellore. An application was filed before the Sub Court, Vellore, for setting aside the ex parte decree of dissolution of marriage and an objection was raised that the application was not maintainable. The Sub Court, Vellore, upheld that objection, but on appeal, the District Judge held that the application to set aside the ex parte decree was maintainable and in affirming the conclusion of the District Judge, Venkatadril J., pointed out that having regard to the transfer of the business of Chittoor Sub Court to Vellore Sub Court, the application to set aside the ex parte decree was maintainable.

5. From the aforesaid decision, it is clear that it is not the Court which passed the decree or made the order alone that can entertain either the application for disobedience of the order of injunction or an application to set aside the ex parte decree. A literal construction cannot, therefore, be put upon the expression, 'to the Court which passed the decree or made the order' even with reference to Order 47, Rule 1, Civil P. C.

6. It is Dot in dispute that the suit stood transferred from the District Munsif's Court, Tuticarin, to the Court of the Principal District Munsif, Tir-unelveli. In view of this transfer, under Section 150, Civil P. C., the transferee Court had all the powers that could be exercised by the ticansferor Court. Having regard to the aforesaid interpretation of the expression, 'to the Court which passed the decree or made the order' occurring in Order 47, Rule 1, Civil P. C., the, expression, 'Save as otherwise provided' occurring in the opening part of Section 150, Civil P. C., cannot be so construed as to take away the jurisdiction of the transferee Court to deal with an application for review in a proceeding received by it by way of transfer. T40 expression, 'Save as otherwise provided' would mean that in the absence of a contrary provision and having regard to , the above interpretation of the expression, 'the Court which passed the decree or made the order' occurring in Order 47, Rule 1, Civil P. C., it cannot be accepted that it is only the Court which passed the decree or made the order that can review it as even a transferee Court can do so and that cannot be construed as a contrary provision made so as to exclude the applicability of Section 150, civil P. C.

7. It now remains to consider the other decisions to which a reference was made by the learned counsel for the petitioner. Mehar Singh v. Kasturi Ram, (FB) dealt with a case of transfer of territory from one Court to the jurisdiction of a different Court after passing of a decree far possession and mesne profit and it was held that the transferee Court can entertain an application for execution without an order for transfer by the Court which passed the decree. That decision really is of not much assistance, in this case where the suit itself had been transferred and Section 150, Civil P. C., would stand attracted. Achuthan v. Karthiyayani Amma, : AIR1962 Ker105 considered the jurisdiction of a transferee Court and the question arose whether the transferee Court can call upon the Receiver, appointed by the transferor Court to deposit a sum, which, as Recobff-, should have been deposited by him in that Court. Overruling the objection raised by the Receiver, that it is only the transferor Court which can call 'upon him to order the payment the Kerala High Court held that the transfer of the case from the District Court of Ernakulam to the newly established Court of Subordinate Judge of Cochin would amount to transfer of business of the Court within the meaning of Section 150, Civil P. C., and therefore, the transferee Court got all the powers to enforce the obligations of the

Receiver appointed in the case and the objection as to jurisdiction of the Subordinate Judge to pass the impugned order had, therefore, no merits, *Kahan Chand v. Faqir Chand*, AIR 18 P& H 374 dealt with a case of disobedience of the order of injunction under Order 39, Rule 2 (3), Civil P. C., prior to the change effected by Act 104 of 1976. In that case also, there was a transfer of the suit to another Court after a perpetual injunction had been granted and an application complaining of a breach thereof had also been filed before the transferor Court. The transferee Court rejected the application holding that the transferor Court alone had jurisdiction and that order was also upheld on appeal. In revision, reliance was placed upon Section 150, Civil P. C., and it was contended that the transferee Court had jurisdiction to entertain the application complaining of a disobedience of an order of injunction and also for passing appropriate orders. This contention was accepted and it was pointed out that the view that the disobedience of the order of a Court passed under O. 39, R. 1, Civil P. C., cannot be punished by the transferee Court will necessarily lead to bifurcation of the proceedings arising out of Order 39, Rule 1, Civil P. C., as in the event of a transfer under Section 24, Civil P. C., the transferor Court retained the proceedings arising out of Order 39, Rule 1 and Rule 2 (3), Civil P. C., and the remaining proceeding in the suit had to be conducted by the transferee Court and that such a situation was not conceivable, as it will add considerably to the confusion. Ultimately, it was held that the application laid before the transferee Court was properly laid and it had jurisdiction to proceed further in the matter. In *Howrah Insurance Co. V. S. M. Das Gupta*, : [1976]1SCR356 , the Supreme Court had occasion to consider the question of the enforceability of a surety bond given in favour of the District Judge of Agartala by the Subordinate Judge of Agartala, to whose file the proceedings stood transferred. Overruling the objection raised against the enforceability of the security bond, the Supreme Court pointed out after referring to Section 150, Civil P. C., that the surety bond was part of the proceedings pending before the District Judge and on the transfer of the suit, the entire proceedings, including the bond, stood validly transferred to the Court of the Subordinate Judge and thus by virtue of Section 150, Civil P. C., the Subordinate Judge was entitled to exercise the same Powers in the matter of the enforcement of the bond as the District Judge himself. All the decisions referred to earlier

clearly point out that the transferee Court which has seession over the proceedings either owing to transfer of territory or the proceedings to its file, by virtue of operation of Section 150, Civil P. C. is clothed with all the powers and is obliged to perform all the duties of the transferor Court. An application for review of the kind made in this case would also be proceedings in the suit which stood transferred to the file of the Principal District Munsiff Tirunelveli. In the absence of anything to indicate either in O. 47, R. I or Section 150, Civil P. C., that the proceedings in review must be taken only before, the transferor Court, it follows that the transferee Court will have jurisdiction to entertain the review proceedings and indeed would be bound to do so. The view taken by the Court below that only the District Munsiff's Court at Tuticorin, can entertain the review application cannot, therefore, be supported at all. Under those circumstances, the rejection of the application for review is set aside and the matter is remitted to the Court, namely to the file of the Principal District Munsiff, Tirunelveli, for consideration and disposal on the merits, if the application is otherwise in time. In other words, the question of delay in filing the review application has to be first considered and only thereafter the Court below will proceed to deal with the review application as such. Subject to these directions, the Civil Revision Petition is allowed. There will be no order as to costs

8. Petition allowed.

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