

Kamatchi and Another Vs. Muthammal and Others

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Court : Chennai

Decided On : Oct-19-2012

Reported in : 2012(6)CTC833; 2012(5)LW958; 2013(1)MWN(Civil)4

Judge : R.S. Ramanathan

Appeal No. : C.R.P.(NPD) No.4150 of 2009 & M.P. No. 1 of 2009

Appellant : Kamatchi and Another

Respondent : Muthammal and Others

Advocate for Pet/Ap. : For the Petitioners: N. Umapathi, Advocate. For the Respondents: R. Thirugnanam, Advocate.

Judgement :

(Prayer: Civil Revision Petition against to call for the records pending on the file of the District Munsif, Rasipuram in R.E.P.No.5 of 2008 in O.S.No.110 of 1981 which was transferred from Sub Court, Namakkal dated 18.8.2009.)

1. The legal representatives of the deceased defendants in O.S.No.110 of 1981 on the file of the Sub Court, Namakkal are the revision petitioners.

2. The suit in O.S.No.110 of 1981 on the file of the Sub Court, Namakkal was filed by one Muthukaruppan against Arumuga Chettiar and Chellammal who are the predecessors-in-title of the revision petitioners for specific performance of an

agreement of sale and that suit was decreed on 25.9.1984 and the appeal filed against the decree in A.S.No.467 of 1988 was also dismissed as abated, as the appellants viz., defendants in the suit died long back. Thereafter, the pecuniary jurisdiction of the District Munsif was enhanced to Rs.1,00,000/= by Act 1 of 2004 and therefore, the legal representatives of the decree holder filed R.E.P.No.5 of 2008 on the file of the District Munsif, Rasipuram to execute the decree in O.S.No.110 of 1981 passed by the Sub Court, Namakkal and the revision petitioners were impleaded as respondents in that application and by order dated 18.8.2009, the District Munsif, Rasipuram decided to execute the sale deed as prayed for by the respondents herein and aggrieved by the same, this revision is filed by the revision petitioners.

3. Mr.Umapathi, learned counsel for the revision petitioners submitted that though the revision petitioners raised various grounds in the memorandum of grounds of revision, the revision is restricted only to the power of the District Munsif Court, Rasipuram to execute the decree passed by the Sub Court, Namakkal in O.S.No.110 of 1981 and having regard to the provisions of section 37 of the Code of Civil Procedure, in the absence of any transmission of decree by the Sub Court, Namakkal, the District Munsif, Rasipuram cannot entertain any proceeding and therefore, the order passed by the District Munsif, Rasipuram is without jurisdiction and is liable to be set aside. He relied upon the judgments in VANNACHI, E. ALIAS CHELLAMMAL v. CHELLIAH KONE (1996 (II) CTC 224), SRI KRITHIKA FINANCE v. R.ELANGO VAN (2009(5) CTC 153) and GOWRAMMAL v. LINGAPPA GOWDER (AIR 1968 MADRAS 99) in support of his contention. He further submitted that admittedly, the decree was not transmitted by the Sub Court, Namakkal to the District Munsif, Rasipuram and therefore, in the absence of any transmission of the decree, the District Munsif, Rasipuram has no jurisdiction to entertain the Execution Petition.

4. On the other hand, Mr.R.Thirugnanam, learned counsel for the respondents submitted that after the amendment Act 104 of 1976, an explanation has been added to section 37 of the Code of Civil Procedure and that explanation made it clear that the Transferee Court has also got jurisdiction to entertain the execution petition and therefore, there is no need for transmission by the court which passed

the decree. He also relied upon the judgment in FAIZ MOHIDEEN v. M/S.M.S.SREERAMULU CHETTY & CO. (1997 (I) CTC 513, SMT.LAXMI NAGAPPA HEGDE v. THE KARNATAKA BANK LTD., SIRSI AND OTHERS (AIR 1988 KARNATAKA 44) and HAMIR SINGH v. BHAWANI SHANKAR (AIR 1980 RAJASTHAN 134) in support of his contention. He further submitted that after the passing of the decree, by reason of the enhancement of pecuniary jurisdiction of the District Munsif upto Rs.1,00,000/= and that of the Sub Court from Rs.1,01,000/= to Rs.5,00,000/=, the suit which was originally filed on the file of the Sub Court, Namakkal ceased to have jurisdiction as the value of the suit is only Rs.39,500/= and therefore, the execution petition was filed before the District Munsif, Rasipuram which has got jurisdiction to entertain the suit. He further submitted that the subject matter of the property comes within the territorial jurisdiction of the District Munsif, Namakkal and at the time of filing the suit in the year 1981, the District Munsif Court can try suits upto Rs.5000/= and above Rs.5001/=, the jurisdiction was vested only with Sub Court and therefore, the Sub Court, Namakkal which was the jurisdiction court for the subject matter, tried the suit and after passing of the Act, 104 of 1976 enhancing the pecuniary jurisdiction of the District Munsif to Rs.1,00,000/=, the District Munsif, Rasipuram has got jurisdiction to entertain the execution application and therefore, there is no need for any transfer and the District Munsif, Rasipuram has got every jurisdiction to try the execution petition.

5. The learned counsel for the revision petitioners relied upon the judgment reported in 2009 (5) CTC 153 wherein the learned Judge considered the scope of the explanation introduced to section 37 of the Code of Civil Procedure by the amendment Act 104 of 1976 and submitted that by reason of the introduction of explanation to section 37, the old law has not been changed and therefore, in the absence of any transmission made by the original court which passed the decree, the Transferee Court cannot entertain the execution petition. He also relied upon the judgment reported in 1996 (II) CTC 224 wherein also the same view was taken.

6. I am unable to accept the contention of the learned counsel for the revision petitioners. Prior to the introduction of explanation to section 37 of the Code of

Civil Procedure, there was a conflict of opinion whether a decree can be executed by a Transferee Court in the absence of any transmission made by the court which passed the decree. There was also a doubt whether the court which passed the decree loses its jurisdiction to execute it by reason of certain matters being transferred to any other court. This doubt was clarified by the introduction of explanation to section 37 and in the amendment Act 104 of 1976, in the statement of objects and reasons for introducing the explanation to section 37, it is stated as follows:-

"There is a conflict of decisions on the point as to whether in cases where jurisdiction over the subject-matter of a decree is transferred to another Court that Court is also competent to entertain an application for execution of the decree. The Calcutta High Court has held that both the Courts would be competent to entertain an application for execution of the decree but the Madras High Court has held that in the absence of an order by the Court which passed the decree that Court can alone entertain an application for execution and not the Court to whose jurisdiction the subject-matter has been transferred. The Supreme Court has left the point open. Proposed Explanation to Section 37 seeks to give effect to the Calcutta view."

7. Therefore, it is made clear by the objects and reasons that the explanation was introduced only to clarify and clear the doubt that the Transferee Court also gets jurisdiction to entertain the application for execution of the decree. Unfortunately, the statement of objects and reasons stated in the amendment Act 104/1976 while introducing the explanation to section 37 was not brought to the notice of the learned Judge while deciding the revision reported in 2009 (5) CTC 153. Had it been brought to the notice of the learned Judge, the learned Judge would not have remanded the matter and would have dismissed the revision.

8. Further, in the judgment relied upon by the learned Judge in the above judgment, the Honourable Supreme Court also clearly laid down the law with respect to the interpretation of explanation to section. In the judgment in SUNDARAM PILLAI v. V.R.PATTABIRAMAN (1985 (1) SCC 591 = AIR 1985 SC 582), which was relied upon by the learned Judge, the Supreme Court has laid

down the following interpretation:-

"53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is--

(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment..."

9. Therefore, the explanation is to expand the meaning and intendment of the Act and where there is any obscurity or weakness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve. As stated in the statement and objects in Act 104 of 1976, the explanation was introduced only to settle the controversy with respect to the power of the executing court in the absence of transmission of decree by the original court which passed the decree and therefore, even as per the judgment of the Honourable Supreme Court, after the introduction of the explanation, the controversy has been settled and the Transferee Court also has got jurisdiction to entertain the execution application even in the absence of transmission by the court which originally passed the decree.

10. As a matter of fact, in the judgment reported in RAMANNA v NALLAPARAJU (AIR 1956 SC 87), this has been made clear. In the said judgment, the Honourable Supreme Court, after referring to the judgment of this court and Calcutta High Court, held as follows:-

"12. The next question for consideration is whether the present suit was filed in a court which had jurisdiction to execute the decree in O. S. No. 25 of 1927. That was a decree passed by the Subordinate Judge of Kakinada, whereas the present suit was filed in the District Court, East Godavari to which the court of the Subordinate Judge of Kakinada is subordinate. Section 38, Civil 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 of 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 of East Godavari the court which passed the decree for purpose of section 38, because under section 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. Vide 'Seeni Nadan v. Muthuswamy Pillai', AIR 1920 MADRAS 427(FB)(P), - 'Masrab Khan v. Debnath Mali', AIR 1942 CALCUTTA 321 (Q) and 'Jagannath v. Ichharam', AIR 1925 BOMBAY 414 (R). 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 court of the Subordinate Judge, Kakinada?

13. There is a long course of decisions in the High Court of Calcutta that when jurisdiction over the subject-matter of a decree is transferred to another court, that court is also competent to entertain an application for execution of the decree. Vide Latchman v. Madan Mohun', 6 CALCUTTA 513 (S), 'Jahar v. Kamini Devi', 28 CALCUTTA 238 (T) and Udit Narain v. Mathura Prasad', 35 CALCUTTA 974 (U).

But in 'Ramier v. Muthukrishna Ayya', AIR 1932 MADRAS 418 (FB) (V), a Full Bench of the Madras High Court has taken a different view, and held that in the absence of an order of transfer by the court which passed the decree; that court alone can entertain an application for execution and not the court to whose jurisdiction the subject-matter has been transferred.

This view is supported by the decision in AIR 1942 CALCUTTA 321 (Q). It is not necessary in this case to decide which of these two views is correct, because even assuming that the opinion expressed in 'Ramier v. Muthukrishna Ayyar', AIR 1932 MADRAS 418 (FB) (V) is correct, the present case is governed by the principle laid down in 'Balakrishnayya v. Linga Rao', AIR 1943 MADRAS 449(W).

It was held therein 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 at the worst be an irregular assumption of jurisdiction and not a total absence of it, and if objection to it is not taken at the earliest opportunity, it must be deemed to have been waived, and cannot be raised at any later stage of the proceedings.

That precisely is the position here. We have held that the allegations in the plaint do raise the question of excessive execution, and it was, therefore, open to the appellant to have raised the plea that the suit was barred by S.47, and then, there could have been no question of waiver. We have, it is true, permitted the appellant to raise the contention that the present suit is barred by S.47, and one of the reasons therefore, is that the allegations in the plaint are so vague that the appellant might have missed their true import. But that is not a sufficient ground for relieving him from the consequence which must follow on his failure to raise the objection in his written statement.

We agree with the decision in AIR 1943 MADRAS 449 (W), and hold that the objection to the District Court entertaining an application to execute the decree in O.S.No.25 of 1927 is one that could be waived and not having been taken in the written statement is not now available to the appellant. There is thus no legal bar to our treating the plaint presented by the respondents on 7-8-1939 as an

execution application under S.47, and in the interest of justice, we direct it to be so treated. But this should be on terms."

11. Therefore, even as per the judgment of this court reported in AIR 1943 MADRAS 449, the Transferee Court acquires inherent jurisdiction by reason of transfer and if it entertains an execution application, it would, at the worst, be an irregular assumption of jurisdiction and not a total absence of it and if objection to it is not taken at the earliest opportunity, it must be deemed to have been waived and cannot be raised at any later stage of the proceedings.

12. In this case, in the counter filed by the executing party before the District Munsif, Rasipuram, the revision petitioners have not taken the plea of jurisdiction and in the ground of revision also, they have not taken such plea and only in the course of arguments, that plea was taken. Therefore, even as per the law laid down by the Honourable Supreme Court, even assuming that in the absence of transfer or transmission by the court which passed the decree, the Transferee Court cannot entertain the revision and any cognizance taken by the Transferee Court is only an irregularity which can be waived and in this case, by not raising the plea of jurisdiction in the counter as well as in the grounds of revision, it can be construed that the revision petitioners have waived the plea of jurisdiction.

13. Further, in the judgment in AIR 1968 MADRAS 99, a Division Bench of this court held as follows:-

"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. Therefore, the Division Bench only held that in respect of money decree, in the absence of any transmission of decree, it cannot be executed in a Transferee Court and in this case where the subject matter of the decree comes within the

jurisdiction of the Transferee Court, it has inherent jurisdiction to execute the decree.

15. Therefore, having regard to the statement of objects stated in Act 104/1976, while introducing explanation to section 37 and having regard to the judgment of the Honourable Supreme Court reported in AIR 1956 SC 87, wherein it is held that it is a mere irregularity which can be waived and also having regard to the judgment of this court reported in AIR 1968 MADRAS 99, the objection raised by the learned counsel for the revision petitioners cannot be accepted.

In the result, the revision is dismissed. No costs. The connected miscellaneous petition is also dismissed.

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