APPELLATE CIVIL—FULL BENCH.

Before Sir John Wallis, Chief Justice, Mr. Justice Ayling and Mr. Justice Coutts Trotter.

1920, March 29 and 30 and April 12.

RAJA JAYA VEERA RAMA VENKATESWARA ETTAPPA NAYAKAR AVARGAL, ZAMINDAR OF ETTIYAPURAM (SIXTEENTH DEFENDANT), APPELLANT,

v.

CHIDAMBARAM CHETTY AND OTHERS (PLAINTIFFS AND DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (V of 1908), sec. 21—Want of territorial jurisdiction—Objection whether allowable by appellate or revisional Court—Objection whether allowable in execution proceedings—Powers of executing Court to which decree transferred.

The provisions of section 21, Civil Procedure Code, apply to objections regarding want of territorial jurisdiction. Such an objection, not taken as provided by the section, must be considered cured for all purposes, and cannot be allowed in execution proceedings.

A party who does not raise an objection to jurisdiction when a preliminary mortgage decree is made absolute, is not entitled to plead in execution that the order was passed without jurisdiction.

APPEAL against the Order of Mr. C. KRISHNASWAMI RAO, District Judge of Rāmnād at Madura, in E. P. No. 7 of 1918 (in O.S. No. 58 of 1899), Rāmnād Sub-Court.

The facts are set out in the order of Reference as well as in the Opinion.

This appeal was first heard by OLDFIELD AND SESHAGIRI AYYAR, JJ., who made the following

ORDER OF REFERENCE TO A FULL BENCH.

OLDFIELD, J.—The first question for our decision is whether the decree under execution was passed by a Court having jurisdiction; and it is only necessary to state the facts to show that it was not. The suit, Original Suit No. 58 of 1899, was filed on a hypothecation in the Madura East Subordinate Court and a preliminary decree was passed there, on 10th May 1900. Subsequently the Rāmnād district was constituted by notification No. 304 at page 592, *Fort St. George Gazette*, Part I, dated 24th May 1910,

* Appeal against Order No. 263 of 1918 (F.B.).

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and by another notification No. 311 on page 593, the Madura East Court was abolished and the Subordinate Judge's Court of Rāmnād was established with jurisdiction over the whole of the Rāmnād district except the District Munsifi of Manamadura. The suit property lies in that Munsifi and it, not being assigned to any other jurisdiction, fell to that of the District Court, which was established on the same date by notification No. 305. In 1916 application was made for final decree to the Subordinate Court of Rāmnād and the decree now under execution was passed there in 1917.

It is clear that the Subordinate Court of Rāmnād has never had jurisdiction over the suit property, and could never have entertained the suit, in which the decree relating to it has been passed. It is argued that as Notification No 311 refers to the Rāmnād Subordinate Court as established, instead of the Madura East Subordinate Court, the former must be taken to have succeeded to the pending business of the latter. But, even if it were shown that Government have power by notification to regulate the distribution of judicial business in this manner, it would still be impossible to deduce an intention to do so from the words used. The lower Court contented itself with opining that the transfer of jurisdiction from the Rāmnād Subordinate Court to the Rāmnād District Court over the area in question did not take away the jurisdiction of the former over pending business; but the argument is vitiated by the misconception which runs through the judgment that the Rāmnād Subordinate Court passed the preliminary decree and we have in any case been shown no authority for the proposition of law, which is involved. The proceedings after the preliminary decree were proceedings in execution: *Hussain* v. *Karim*(1). They were therefore governed by sections 37 and 38, Civil Procedure Code, and, as there is no question of the decree having been sent for execution to the Rāmnād Subordinate Court, it could not execute it, because it did not pass it and because at the time of the application for final decree, it could not have had jurisdiction to try the suit in which the preliminary decree had been passed. There is no doubt that the final decree, in respect of which the present application is made, was passed without jurisdiction.

(1) (1916) I.L.R., 39 Mad., 544

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We have next to deal with the more difficult contention advanced by the respondent, that appellant cannot take objection to the decreeing Court's jurisdiction, because he did not do so at the earliest opportunity. Appellant was joined as sixteenth defendant by the Rāmnād Subordinate Court, when the final decree was passed, as a purchaser of part of the suit property. But he did not appear or state his objections; nor did he attack the jurisdiction of the Court or rely on any plea except limitation, when in I.A. Nos. 293, 294 of 1917 he applied for a review of the order, which had been passed. The objection to the Court's jurisdiction was, in fact, taken for the first time in the present proceedings and the argument for respondents is that with reference to *Gomatham Alamelu* v. *Komandur Krishnamacharlu*(1) and section 21, Civil Procedure Code, it cannot now be put forward.

It was decided generally in *Haji Musa Haji Ahmed* v. *Purmanand Nursey*(2) that the executing Court is entitled to inquire into the jurisdiction of the Court, which passed the decree; and some argument was addressed to us, regarding the policy of the law and the necessity for a strict interpretation of sections 18 and 21 and the corresponding section 16-A in the former Code. The main objection, however to their application to the facts before us was that, although they might deprive the party interested to object to the jurisdiction of his right to do so up to the termination of the proceedings or of any connected appeal, they do not deprive him absolutely of his right or bar its exercise at any later stage, such as that, which the present proceedings have reached. It is true that no such distinction was recognized or apparently suggested in *Gomatham Alamelu* v. *Komandur Krishnamacharlu*(1), and that decision was followed in *Subbiah Naicker* v. *Ramanathan Chettiar*(3), *Velayutha Muppan* v. *Subramaniam Chetti*(4), and *Venkatarama Vathiar* v. *Sambasiva Aiyar*(5) although, in the last mentioned the question was of fraud at the trial and there was no question of execution. But the sections in question statedly relate only to suits and it is settled law that section 141 cannot be invoked as authorizing

(1) (1904) I.L.R., 27 Mad., 118.
(2) (1891) I.L.R., 15 Bom., 216.
(3) (1914) I.L.R., 37 Mad., 462 at 470.
(4) (1913) 24 M.L.J., 70.
(5) (1919) 37 M.L.J., 349.

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the extension of the procedure in regard to suits to execution. The point is of importance, and we doubt whether *Gomatham Alamelu* v. *Komandur Krishnamacharlu*(1) was rightly decided. We therefore refer for the opinion of a Full Bench the questions set out in my learned brother's judgment.

SESHAGIRI AYYAR, J.—The decree under execution is a very old one. In Original Suit No. 58 of 1899, what is alleged by the respondent to be the preliminary decree was passed on the 10th May 1900 by the Madura Sub-Court, East, which then had jurisdiction over the mortgaged property. Subsequently there was a bifurcation of the district. In the division, all the taluks over which the Madura Sub-Court, East, had original jurisdiction, except the District Munsifi of Manamadura, were transferred to the Rāmnād Sub-Court. About the same time, to the District Court of Rāmnād was assigned the two revenue subdivisions of Devakottah and Rāmnād. Devakottah included the Manamadura District Munsifi. The notification of the Government of Madras was in May 1900. On 20th November 1910, an application was made to the Sub-Court of Rāmnād for the final decree and the order was passed on 29th March 1917.

The appellant before us obtained a money decree against the mortgagors in 1909. The equity of redemption was put up to auction and purchased by him.

Another transaction should be mentioned. On 1st August 1900, a usufructuary mortgage was executed by the mortgagors to the decree-holders in Original Suit No. 58 of 1899 and to other decree-holders against the same judgment debtors, with the object of enabling them to discharge all the encumbrances on the properties of the mortgagors. A suit was instituted on this mortgage. In Second Appeal No. 178 of 1912, the mortgage was held to be invalid. While the Second Appeal was pending, the purchaser of the equity of redemption obtained possession. This was in 1916. The present application is for sale of the mortgaged property in pursuance of the decree absolute in the suit of 1899.

Some important questions of law have been raised in the case. I must say that their consideration by the lower Court has by no means been adequate or satisfactory.

(1) (1904) I.L.R., 27 Mad., 118.

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The first point relates to the jurisdiction of the Ramnad Sub-Court to pass the order absolute on 19th March 1917. On this question I feel no doubt. The District Judge is wrong in saying that the original decree was passed by the Rāmnād Sub-Court. That decree was undoubtedly passed by the Madura Sub-Court, East. The question is whether the Rāmnād Sub-Court which clearly had no territorial jurisdiction over the property was competent to pass the final decree.

Mr. Anantakrishna Ayyar chiefly relied upon the notification of the Government, which is in these terms:—

"The Governor in Council, having resolved to abolish the Court of the Subordinate Judge of Madura, East, in the District of Madura and to establish *instead* a Subordinate Judge's Court in the District of Rāmnād hereby directs, etc."

The learned vakil contended that the expression '*instead*' must be regarded as expressing the intention of the Government that all the decrees passed by the Madura Sub-Court, East, were to be considered as if they were passed by the newly constituted Sub-Court of Rāmnād. Apart from the question whether it is competent to the Executive Government to confer jurisdiction in this way, I am unable to construe the word 'instead' as suggested. All that the notification meant was that the congestion of work which would result from the abolition of the Madura Sub-Court, East, would be relieved by the constitution of the new Court.

On the question of law, I feel no difficulty in holding that the Rāmnād Sub-Court had no power to pass the decree absolute. It was held in *Subbiah Naicker* v. *Ramanathan Chettiar*(1) that a Court which has no territorial jurisdiction cannot attach and sell property. In *Veerappa Chetti* v. *Ramasami Chetti*(2) that case and other cases were fully considered and it was pointed out that a Court which has no territorial jurisdiction cannot sell property, although the decree for sale was passed by it when it had jurisdiction.

The Full Bench decision in *Seeni Nadan* v. *Muthusamy Pillai*(3) does not affect this conclusion. On the other hand, the actual decision in *Subbiah Naicker* v. *Ramanathan Chettiar*(1),

(1) (1914) I.L.R., 37 Mad., 462. (2) (1919) M.W.N., 728.
(3) (1919) I.L.R., 42 Mad., 821 (F.B.).

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which was not overruled by the Full Bench, supports the view we are taking.

It was contended for the appellant that an application for an order absolute is not an application in execution, and that therefore it was barred by limitation when it was made to the Rāmnād Sub-Court. In this Presidency, from the Full Bench decision in *Mallikarjunadu Setti* v. *Lingamurti Pantulu*(1), it has always been held that an application for a final decree under the Transfer of Property Act was an application in execution. The latest decision upon that point is *Hussain* v. *Karim*(2), where all the cases are reviewed. Reference may also be made to *Manna Lal Parruck* v. *Sarat Chunder Mukerji*(3). This contention must be overruled.

The main answer of Mr. Anantakrishna Ayyar to the plea of want of jurisdiction was that the appellant was estopped from raising this contention. His argument was that, as there was no demur to the Rāmnād Sub-Court dealing with the application for an order absolute and as there was no appeal against the order, the appellant cannot raise it in execution. He relied upon the language of section 21 of the Civil Procedure Code for this contention. The plain terms of the section lend some support to his contention. He is also supported by *Gomatham Alamelu* v. *Komandur Krishnamacharlu*(4) and *Velayutha Muppan* v. *Subramaniam Chetti*(5).

On the other hand, certain observations in the decision of the Judicial Committee in *Ramabhadra Raju Bahadur* v. *Maharaja of Jeypore*(6), and the scheme of the Code, suggest that the legislature should not be presumed to have enacted that, by not objecting to jurisdiction, the parties are for ever concluded by the order passed. The result of such a view would be that, if both the plaintiff and the defendant agree, a matter relating to property outside the Presidency and the even outside India can be validly decided by our Courts. I think that as a conclusion like this is likely to affect seriously the administration of justice, it demands careful examination.

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(1) (1902) I.L.R., 25 Mad., 244 (F.B.). (2) (1916) I.L.R., 39 Mad., 544.
(3) (1914) 19 C.W.N., 561 (P.C.). (4) (1904) I.L.R., 27 Mad., 118.
(5) (1913) 24 M.L.J., 70. (6) (1919) I.L.R., 42 Mad., 813 (P.C.).

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The arrangement of sections in the Code of Civil Procedure is against interpreting section 21 in the way suggested by the learned vakil for the respondents. Sections 16 and 17 deal with suits relating to immoveable property. Section 18, clause 1, refers to uncertainty as to local jurisdiction and provides for recording a statement and then proceeding with the suit. Clause 2 empowers a party if there is no such record to contest the matter in appeal, if there has been a failure of justice. Section 19 deals with jurisdiction regarding suits for moveables. Section 20 deals with cases of contract, and refers to the accrual of the cause of action in either the place where the offer is made or the acceptance was concluded. Then comes section 21. The contention of the learned vakil for the appellant that this section is confined to cases relating to moveable property and to contracts and should not be extended to suits relating to immoveable property does not appear to me to be farfetched. Whereas section 18 speaks of local limits of jurisdiction, section 21 speaks of the place of suing, and there is some justification from the language of the Judicial Committee for the suggestion that jurisdiction was not intended to be synonymous with the place of suing. The observations in *Haji Musa Haji Ahmed* v. *Purmanand Nursey*(1) also support this view.

I feel considerable doubt whether section 21 of the Act should be read as enacting that in all cases where there is no objection to jurisdiction, the party is not entitled to question it at any subsequent stage of the proceedings.

In this connexion I may refer to the argument that it is only in cases where jurisdiction depends on the ascertainment of facts that the theory of acquiscence should be invoked. The reference to the objection being taken before the settlement of issue supports this contention. The general principle being that want of jurisdiction would make an adjudication by a Court a nullity, section 21 which must be regarded as an exception to this rule should be construed as referring only to cases in which want of jurisdiction has to be pleaded and to be established by evidence. But where everybody must be presumed to be acquainted with a notification like the one now in question, there can be no necessity for allegation or proof.

(1) (1891) I.L.R., 15 Bom., 216.

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There is one other matter which ought to be noticed, and that is that section 21 is not applicable to execution proceedings. I am not much impressed by the argument. The principle underlying the section, even though the section may not in terms be applicable, should be extended to execution proceedings also. Observations to this effect are to be found in *Veerappa Chetti* v. *Ramasami Chetti*(1). However even this question is not altogether free from doubt

I think therefore that the following questions should be referred for the opinion of the Full Bench :

(1) Whether section 21 of the Code of Civil Procedure governs cases of want of territorial jurisdiction ?

(2) Whether section 21 is applicable to execution proceedings ? and

(3) Whether a party who does not raise objection to jurisdiction when a decree is made absolute is not entitled to plead in execution that the order was passed without jurisdiction ?

ON THIS REFERENCE

A. Krishnaswami Ayyar and *S. Ramaswami Ayyar*, for the appellant.—My contention is that an order for sale cannot be made by a Court within whose jurisdiction the property does not lie. In 1899, plaintiff filed a suit in the Madura East Subordinate Court, and a preliminary decree was passed by that Court. In 1910, by the bifurcation, that Court ceased to exist. I contend that plaintiff ought to have applied to the District Court, Rāmnād, for the final decree and not to the Sub-Court. Section 21 does not apply. It is an application for execution, for proceedings after the preliminary decree are proceedings in execution: *Hussain* v. *Karim*(2), *Mallikarjunadu Setti* v. *Lingamurthi Pantulu*(3). The order absolute is without jurisdiction, as, under sections 37 and 38, Civil Procedure Code, the Rāmnād Sub-Court had no jurisdiction to execute the decree passed by the Sub-Court, Madura East. Hence the order absolute is null and void, and no question as to the applicability of section 21 arises.

(1) (1919) M.W.N., 728. (2) (1916) I.L.R., 33 Mad., 544.
(3) (1902) I.L.R., 25 Mad., 244 (F.B.).

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C. V. Anantakrishna Ayyar, for the respondents.—Sections 37 and 38 do not apply. A final decree was wrongly passed. The decree by the Sub-Court, Madura East, was a final decree passed after an application made under Order XXXIV, rule 5, and the prayer was for a final decree. Rightly or wrongly the Sub-Court, Rāmnād, has treated it as a preliminary decree and passed a final decree under Order XXXIV, rule 5. A Court may conceive that the first decree was not a final decree. In this case the attention of the Court was drawn to the fact that a preliminary decree had been passed. Defendant himself calls it a preliminary decree. It cannot be contended at this stage that the proceedings for order absolute are proceedings in execution: *Ashfaq Husain* v. *Gauri Sahai*(1), referred to.

Mr. A. Krishnaswami was then called upon to deal with the questions in the Order of Reference.—Assuming this to be the final decree, the District Court, Rāmnād, was the proper Court. The final decree had to be passed by the Court which passed the original decree. Section 21, Civil Procedure Code, does not apply to cases of want of territorial jurisdiction. It applies only to cases where the jurisdiction depends upon the ascertainment of certain facts to be given in evidence; *Seeni Nadan* v. *Muthuswamy Pillai*(2) shows that the section cannot apply to such a case as this. See also *Mayor, etc. of London* v. *Cox*(3). Section 21 does not in terms apply to execution proceedings. The observations of SESHAGIRI AYYAR, J., in *Veerappa Chetty* v. *Ramaswami Chetty*(4) are *obiter*.

As regards the third question in the Reference, I contend that the executing Court can question the jurisdiction of the Court which passed the decree. A decree without jurisdiction is a nullity; *Rangaswami Naicken* v. *Thirupati Naicken*(5), *Subrahmania Ayyar* v. *Vaithinatha Aiyar*(6), *Veeraraghava Ayyar* v. *Muga Sait*(7), *Haji Musa Haji Ahmed* v. *Purmanand Nursey*(8), *Lakshmanaswami Naidu* v. *Rangamma*(9) and *Dayaram* v. *Govardhandas*(10). Consent cannot give jurisdiction to a

(1) (1911) I.L.R., 33 All., 264 (P.C.) at 271.
(2) (1919) I.L.R., 42 Mad., 821 (F.B.).
(3) (1866) L.R., 2 H.L., 239 at 288.
(4) (1920) I.L.R., 43 Mad., 135.
(5) (1905) I.L.R., 28 Mad., 26.
(6) (1915) I.L.R., 38 Mad., 682.
(7) (1916) I.L.R., 39 Mad., 24 at 29.
(8) (1891) I.L.R., 15 Bom., 216.
(9) (1903) I.L.R., 26 Mad., 31.
(10) (1904) I.L.R., 28 Bom., 458.

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Court when the property is not within the jurisdiction of that Court. It is better that an executing Court should decide the question of want of jurisdiction rather than that a stranger should file a suit to disturb the decree. In any event section 21, Civil Procedure Code, applies only to a case where objection to jurisdiction exists at the date of the filing of the plaint or at the settlement of issues. Here the objection arose only after the date of the preliminary decree.

[COUTTS TROTTER, J.—Does it not mean that questions as to jurisdiction arising after the preliminary decree cannot be raised at all?]

The section is curative and applies only to questions that can be raised at date of plaint.

C. V. Anantakrishna Ayyar, for the respondent.—Section 21, Civil Procedure Code, applies to cases of want of territorial jurisdiction. Its object is to prevent questions about territorial or other jurisdiction being raised at any late stage and to put an end to those objections. There is no provision in English law similar to section 21, Civil Procedure Code. The latter is similar to section 11 of the Suits Valuation Act, which provides for cases of want of objections to jurisdiction based on over-valuation or undervaluation. *Seeni Nadan* v. *Muthuswamy Pillai*(1), is distinguishable. The order for sale was passed by the Court in respect of properties which were situated within the jurisdiction of a Court to which the Civil Procedure Code was not applicable. The principle of the section applies to execution proceedings. If the objection is not raised in the appellate or revisional Court, it cannot be that the object of the section is to be rendered useless by allowing the objection to be raised in execution proceedings: see *Veerappa Chetty* v. *Ramaswamy Chetty*(2). An executing Court cannot go behind the decree and question the jurisdiction of the Court which passed the decree—vide the change of language in Order XXI, rule 7. See also *Veeraraghava Ayyar* v. *Muga Sait*(3), *Hari Govind* v. *Narasingrao Konherrao*(4) and *Kalipada Sarkar* v. *Hari Mohan Dalal*(5).

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(1) (1919) I.L.R., 42 Mad., 821 (F.B.).
(2) (1920) I.L.R., 43 Mad., 135. (3) (1916) I.L.R., 39 Mad., 24 at 29.
(4) (1914) I.L.R., 38 Bom., 194. (5) (1917) I.L.R., 44 Calc., 627.

OPINION.

WALLIS, C.J.—In May 1900 the plaintiff duly instituted the present suit in the Subordinate Court of Madura West where the mortgaged property was situated and obtained a decree under section 88 of the Transfer of Property Act. In May 1910, this Court was abolished, and by virtue of section 37 of the Code of Civil Procedure this suit was transferred by operation of law to the newly constituted District Court of Rāmnād, as the place where the mortgaged property was situated was within the jurisdiction of that Court and was not within the jurisdiction of the newly constituted Subordinate Court of Rāmnād. In 1916 the plaintiff applied to the Subordinate Court of Rāmnād, which as we have seen, had no jurisdiction over the suit, for a decree for sale under Order XXXIV, rule 5, of the Code of Civil Procedure and obtained the decree in 1917. The mistake appears to have been occasioned by the fact that the new Subordinate Court of Rāmnād was described in the notification constituting it as created 'instead of' the Subordinate Court of Madura West, whereas its territorial jurisdiction was more limited. The sixteenth defendant, who did not appear, applied for a review of the decree but not for want of jurisdiction, and his petition was dismissed as out of time. He did not appeal against the decree, as he might have done, on the ground that it was made without jurisdiction or was erroneous or time-barred. The plaintiff then filed Execution Petition No. 24 of 1914 in the District Court of Rāmnād, which apparently returned it for presentation, or sent it directly, to the Subordinate Court of Rāmnād which had passed the final decree. It was filed in that Court as Execution Petition No. 203 of 1917, and that Court thereupon transferred the decree for execution to the District Court of Rāmnād within whose jurisdiction the mortgaged property is situated. These are the facts which have given rise to the reference.

As regards the first question, I am clearly of opinion that the provisions of section 21 of the Code of Civil Procedure apply to all objections based on the alleged infringement of the provisions of sections 16 to 18 of the Code of Civil Procedure as regards the institution of suits relating to immovable property. The words 'objection as to the place of suing' in their

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ordinary meaning include objections to the institution of the suit on the ground that the Court in which it was instituted had no jurisdiction over the immovable property which was the subject of the suit; and the words 'place of suing' are used in the heading prefixed to section 15, as descriptive of the subject matter of the provisions in sections 15 to 20 as to the Courts in which suits, including suits as to immovable property, are to be instituted.

I do not think the recent decision of the Privy Council in *Setrucherla Ramabhadraraju* v. *Maharaja of Jeypore*(1) is opposed to this view of the scope of section 21. In that case a suit had been instituted in the Subordinate Court of Vizagapatam on a mortgage of property which was partly situated in a Scheduled District over which the Subordinate Court had no jurisdiction and to which the Civil Procedure Code had not been applied. The contention for the appellant was that section 21 only applied where the right place of suing was one subject to the Code. On this ground their Lordships held that the objection was not an objection to the place of suing which could be cured by section 21 of the Code of Civil Procedure. They went further and held that the order for sale was bad as made under sections of the Code which did not apply to a Scheduled District. They had not to consider the application of section 21 where all the mortgaged property was within the jurisdiction of Courts governed by the Code of Civil Procedure.

As regards the second question, section 21 forbids any appellate or revisional Court to allow any objection as to the place of suing unless it was taken in the original Court and even then unless there was a consequent failure of justice. The effect of the section in my opinion is that objections which the appellate or revisional Court is thereby precluded from allowing must be considered cured for all purposes unless taken before the passing of the decree in the original Court. The ordinary way of questioning a decree passed without jurisdiction is on appeal or in revision, and if this is forbidden, a Court of first instance cannot in execution do that which the appellate or revisional Court is precluded from doing.

In view of the above answers to questions one and two,

(1) (1919) L.R., 46 I.A., 151.

question three would not arise but for a further question raised by Mr. A. Krishnaswami Ayyar at a late stage of the argument. He contended that, admitting that section 21 applied to suits about immovable property, it dealt only with the original institution of a suit and not with the prosecution of the suit in a wrong Court after the abolition of the Court in which it had been properly instituted. In support of this contention he relied on the fact that section 21 requires the objection to be taken "in all cases in which issues are settled at or before such settlement" as showing that the section was not intended to apply to an objection, such as the present, which only arose after the settlement of issues on the abolition of the Madura Subordinate Court and could not have been taken at or before such settlement. It is unnecessary to consider whether those particular words may not be read as applying only to cases where it is possible to take the objection at or before the settlement of issues, and whether the words 'place of suing' are not wide enough to include objections to the place of prosecuting as well as of instituting suits. Assuming, however, that section 21 does not apply, I am still of opinion that the present decree cannot be questioned in execution. An objection to the jurisdiction is a ground for setting aside the decree and is not one of those questions relating to the 'execution, discharge or satisfaction of the decree' which are required by section 47 to be dealt with in execution. The provision in section 225 of the old Code that a Court might proceed to execute decrees transferred to it without requiring further proof, among other things, of the jurisdiction of the Court which passed the decree lent some colour to the view that it was open to a Court to which a decree had been sent for execution to go into the question whether the Court which passed the decree had jurisdiction to do so, and influenced the decisions which are referred to in the order of reference. These words, however, have been omitted advisedly in the corresponding Order XXI, rule 7 of the new Code.

Without referring to the statement of objects and reasons, which is not permissible, *Krishna Ayyangar* v. *Nallaperumal Pillai*(1) we may, I think, infer that these words were omitted in

(1) (1920) I.L.R., 47 I.A., 33.

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the new Code because it was felt that it was not for the executing Court to go into questions of the jurisdiction of the Court which passed the decree, at any rate when, as in the present case, that Court was an ordinary Court in British India governed by the Code. This is the view taken in *Hari Govind* v. *Narsingrao Konherrao*(1) and *Kalipada Sarkar* v. *Hari Mohan Dalal*(2) is also a recent authority for the proposition that the Court executing the decree cannot go behind it. I would, therefore, answer the third question in the negative.

AYLING, J.

AYLING, J.—I agree.

COUTTS TROTTER, J.

COUTTS TROTTER, J.—I agree.

M.H.H.

APPELLATE CIVIL—FULL BENCH.

Before Sir John Wallis, C.J., Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.

1920, April 7 and 20.

THAZHATHITATHIL POORVANAYIL AYISSA AND TWO OTHERS (DEFENDANTS), APPELLANTS,

v.

PUTHAN PURAYIL KUNDRON CHOKEN (PLAINTIFF), RESPONDENT. *

Registration Act (XVI of 1908), sec. 17, sub-sec. (2)—Certifying adjustment of decree—Civil Procedure Code (V of 1908), Order XXI, rule 2—Whether exempted from registration.

A compromise made after decree, affecting any immoveable property of the value of over Rs. 100, and embodied in a petition presented under Order XXI, rule 2, Civil Procedure Code, which has been recorded by the Court, is exempt from registration.

Hemanta Kumari Debi v. *Midnapore Zamindari Company* (1919) 46 I.A., 240, followed.

Chelamanna v. *Rama Rao* (1913) I.L.R., 36 Mad., 46 and *Raja Venkatappa Nayanim Varu* v. *Raja Thimma Nayanim Varu* (1914) 27 M.L.J., 656, overruled.

SECOND APPEAL against the decree of V. S. NARAYANA AYYAR, Temporary Subordinate Judge of Tellicherry, in Appeal No. 75 of 1918 (Appeal Suit No. 591 of 1916 on the file of the District Court of North Malabar), preferred against the decree of

(1) (1914) I.L.R., 38 Bom., 194. (2) (1917) I.L.R., 44 Calc., 627.

* Second Appeal No. 474 of 1919 (F.B.).