

APPELLATE CIVIL.

*Before Mr. Justice Oldfield and Mr. Justice Devadoss.*1923,
March 6.

SANKARAN NAIR (DECREE-HOLDER), PLAINTIFF.

v.

ATCHUTHAN AND ANOTHER (JUDGMENT-DEBTORS), DEFENDANTS.*

Village Munsif's Court Act, Madras (I of 1889), ss. 48, 66 and 67—Execution of decree—Jurisdiction of District Munsif to withdraw execution from Village Munsif's Court and transfer it for execution to another District Munsif—Applicability of sec. 39, Civil Procedure Code.

A District Munsif receiving by transfer a decree of a Village Munsif's Court under section 66 of the Madras Village Munsif's Court Act (I of 1889) or withdrawing execution of a decree to his own file under section 67 of the Act has no jurisdiction to transfer it for execution to another District Munsif under section 39, Civil Procedure Code. His power of transfer is limited to sending it for execution to another village Court in which the defendant is represented to have movable property. The Village Munsif's Court Act is a complete Code of procedure by itself and the provisions of Civil Procedure Code cannot be imported into it, except to the extent provided by the Amending Act II of 1920.

CASE stated under section 113 of Civil Procedure Code, 1908, by B. VENKATA RAO, the Additional District Munsif of Tellicherry in Small Cause Execution Petition No. 364 of 1922 in Suit No. 278 of 1921 on the file of the Court of the Village Panchayat of Tiruvangad, Kottayam taluk, Malabar.

The facts are given in the Judgment.

JUDGMENT.

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

* Referred Case No. 24 of 1922.

section 67, has or has not jurisdiction to transfer it for execution to another District Munsif's Court under section 39, Civil Procedure Code.

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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.”

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”

(who is defined 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;”

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

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this one 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.

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.

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.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Devadoss.

1923,
arch 15.

GANAMMA AND ANOTHER (PETITIONERS), APPELLANTS,

v.

KATIREDDI AND FIVE OTHERS (COUNTER-PETITIONERS),
RESPONDENTS.*

Execution sale of shrotriyam village—Dismissal of application of judgment-debtor to postpone sale for want of due publication—Subsequent petition under O. XXI, r. 90, Civil Procedure Code, whether barred by res judicata—Quit-rent payable by shrotriyam village whether "revenue" for O. XXI, r. 54, Civil Procedure Code.

A judgment-debtor, whose shrotriyam village was proclaimed for sale in execution of a decree, applied for the postponement

* Civil Miscellaneous Appeal No. 149 of 1922.