

THE
INDIAN LAW REPORTS

(MADRAS SERIES)

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Krishnan.

J. V. RANGANATHA RAO (COUNTER PETITIONER, PLAINTIFF),
PETITIONER,

1922,
January, 11.

v.

HANUMANTHA RAO AND TWO OTHERS (DEFENDANTS,
PETITIONERS), RESPONDENTS.*

*Civil Procedure Code (V of 1908), sec. 150 and Or. IX, r. 13—
Ex parte decree by a Court as regards certain immovable
properties—Transfer of territorial jurisdiction to another
Court—Application to the latter Court to set aside ex parte
decree—Jurisdiction.*

After the passing of an ex parte decree by Court P in a suit to recover certain immovable properties, part of its territorial jurisdiction including the locality in which the properties were situate was transferred to Court A. Thereafter the defendant applied to Court A to set aside the ex parte decree.

Held, that under section 150, Civil Procedure Code, Court A had jurisdiction to entertain the application, and there was nothing in Order IX, rule 13 of the Code providing the contrary.

Meaning of "transfer" in section 150 considered.

PETITION under section 115 of Act V of 1908, praying the High Court to revise the order of T. SAMA RAO, District Munsif of Anantapur, in Interlocutory Application No. 177

* Civil Revision Petition No. 869 of 1920.

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of 1920 (in Original Suit No. 1230 of 1919 on the file of the District Munsif of Penukonda).

The facts are given in the judgment of KRISHNAN, J. The plaintiff decree-holder preferred this petition to the High Court.

K. Bashyam for petitioner.—The Anantapur Court had no jurisdiction to set aside the ex parte decree passed by the Penukonda Court. Order IX, rule 13 of Civil Procedure Code states that the application should be made “to the Court by which the decree was passed.” Section 150 of Civil Procedure Code does not apply; see the words “save as otherwise provided” in section 150. Where a certain Court is mentioned as having jurisdiction in certain matters, that Court alone has jurisdiction and no other; compare Order XXXIX, rule (2), clause (3), Civil Procedure Code, and *Mathura Dass v. Venkat Rao*(1), *Sheik Jaharuddi v. Hari Charan Podder*(2), and *Paramananda Das v. Mahabeer Dossji*(3). The decisions relating to execution by Courts other than those which passed a decree turn on the special wording of section 37, Civil Procedure Code. Section 150 can apply only to cases where all the business of one Court is transferred to another or where the original Court is abolished and another substituted for it and not to cases where there had been only a partial adjustment of jurisdiction and transfer of its business with reference to that part alone to another Court. Moreover, the lower Court should not, under the circumstances of the case, have set aside the ex parte decree.

M. Patanjali Sastri for *B. Somayya* for respondents.—The Anantapur Court has jurisdiction. Section 150, Civil Procedure Code, is wide enough to cover such cases of partial transfer of jurisdiction; compare cases of execution

(1) (1911) 21 M.L.J., 829.

(2) (1913) 18 C.W.N., 470.

(3) (1897) I.L.R., 20 Mad., 378.

by Courts other than those that passed a decree; *Seeni Nadan v. Muthusamy Pillai*(1), *Panduranga Mudaliar v. Vythilinga Reddi*(2) and *Subbiah Naicker v. Ramanathan Chettiar*(3). One Court can under certain circumstances review decisions of another Court: see *Sarangapani v. Narayanasami*(4). If the ex parte decree cannot be set aside, the party will be without a remedy and the provision in Order IX, rule 13 that the Court shall appoint a day to rehear the suit would be meaningless. Filing an appeal from ex parte decree would be practically useless. On the merits the lower Court's order was right.

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JUDGMENT.

SPENCER, J.—Section 150 which appeared for the first time in the Civil Procedure Code of 1908 provides for a Court to which the business of any other Court is transferred having the same powers as the Court from which the business is so transferred. But this useful provision is qualified by the words “save as otherwise provided,” and the question in the case before us is whether the wording of Order IX, rule 13 of the Code of Civil Procedure is such as to take away the power of a Court that has territorial jurisdiction over the subject-matter of a suit to set aside an ex parte decree passed by another Court that originally tried the suit.

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That rule declares that applications to set aside ex parte decrees may be made to the Court by which the decree was passed. It goes on to state that on making an order setting aside the ex parte decree the Court shall appoint a day for proceeding with the suit.

Our attention has been drawn to reported decisions which relate to the powers of Courts other than the Court which granted an injunction to deal with a breach

(1) (1919) I.L.R., 42 Mad., 821 (F.B.).

(2) (1907) I.L.R., 30 Mad., 537.

(3) (1914) I.L.R., 37 Mad., 462.

(4) (1885) I.L.R., 8 Mad., 567.

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In matters of execution the law must now be regarded as settled by the definition of the expression "Court which passed a decree" in section 37 of the Code of 1908, and by the Full Bench judgment in *Seeni Nadan v. Muthusamy Pillai*(6). Applications to get a review of judgment have been peculiarly restricted by Order XLVII, rule 2, permitting them to be made only to the Judge who personally passed the decree or made the order, when they are based upon other grounds than the discovery of new and important matter or the existence of a clerical or arithmetical error. The use of the words "the Court granting injunction" was not considered by SRINIVASA AYYANGAR, J., in *Suppi v. Kunhi Koya*(3) or by KRISHNASWAMI AYYAR and MUNRO, JJ., in *Mathura Dass v. Venkat Rao*(1) to be an obstacle to a Court, to which the general business of another Court is transferred dealing with applications to enforce

(1) (1911) 21 M.L.J., 829.

(2) (1913) 18 C.W.N., 470.

(3) (1916) I.L.R., 39 Mad., 907 (F.B.).

(5) (1914) I.L.R., 37 Mad., 462.

(4) (1907) I.L.R., 80 Mad., 537.

(6) (1919) I.L.R., 42 Mad., 821 (F.B.).

(7) (1885) I.L.R., 3 Mad., 567.

(8) (1897) I.L.R., 20 Mad., 378.

injunctions through the powers given to them under sections 150 and 37, the objection in the last named decision being only to the transfer of an application from the Court which had express power to deal with it.

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The case thus being one of first impression we must put a reasonable construction on the words of the Code. It is one thing to say that an application made to the Court that passed the decree or order should not be transferred to another Court, which has by transfer acquired jurisdiction to deal with further proceedings in the connected suit; it is another thing to argue that where the whole business of one Court has been transferred to another Court, the expression "the Court by which the decree was passed" is so definite and precise as to create an exception to the general rule introduced by section 150.

To adopt the latter argument is in effect to leave a defendant against whom an ex parte decree has been passed by a Court, which is afterwards abolished, without any remedy beyond a general right of appeal against the final decree; vide *Karuppan v. Ayyathorai*(1), *Krishna Ayyar v. Kuppan Ayyangar*(2), and section 96 of the Code of Civil Procedure.

The direction at the end of this rule that upon setting aside an ex parte decree the Court shall appoint a day for proceeding with the suit would be, as my learned brother pointed out, meaningless, if such applications were to be disposed of by Courts, which had ceased to have jurisdiction over the suit itself.

I would, therefore, place a liberal construction on the wording of section 150 and of Order IX, rule 13, and hold that the District Munsif of Anantapur had jurisdiction to deal with this petition.

(1) (1886) I.L.R., 9 Mad., 445.

(2) (1907) I.L.R., 30 Mad., 54.

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As to the merits, the service of notice of suit is purported to be by affixture to the outer door of the respondent's residence, the information given by his sister being that he had gone to a village in Mysore. The statement in his affidavit that he did not know till he attended the Taluk office on 27th March 1920 that an ex parte decree had been passed against him stands uncontradicted in detail. There appears thus to have been good reason for ordering the ex parte decree to be set aside. The Civil Revision Petition is dismissed with costs.

KRISHNAN, J.

KRISHNAN, J.—The main question for our decision in the revision petition is one of jurisdiction regarding the setting aside of an ex parte decree.

The petitioner before us, who was the plaintiff in Original Suit No. 1230 of 1919 on the file of the District Munsif's Court of Penukonda, obtained a decree against the respondent and others, the decree against him being an ex parte decree. Subsequently there was a readjustment of territorial jurisdiction between that Court and the District Munsif's Court of Anantapur, as the result of which all the properties included in the decree were transferred to the jurisdiction of the latter Court. Consequently the respondent applied to that Court to set aside the ex parte decree against him and that Court has granted his prayer. The revision is against that order and it has been contended before us, that the Penukonda Court, as the Court which passed the decree, was the only Court competent to act under Order IX, rule 13 of the Code of Civil Procedure to set aside the decree and that the Anantapur Court had no jurisdiction to do so. That rule, it is true, authorizes an application to the Court that passed the decree; but the respondent relies upon section 150 of the Code of Civil Procedure as extending the power to act under that rule to the Anantapur Court in the present case, as the whole business of the former

Court within the local area in which the suit properties are situate, has been transferred to the latter Court and he contends that section 150 applies. .

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The petitioner's vakil has put forward two contentions to exclude the applicability of section 150 and I shall consider them separately. He first argued that the section applied only when the whole of the business of the Court with reference to the whole of its jurisdiction is transferred to another Court or, in other words, when the Court is abolished and another is substituted for it and not to a case of partial adjustment of jurisdiction and transfer of its business with reference to that part alone to another Court. There is nothing in the language of the section which compels us to put this restricted meaning on it; to do so would greatly reduce its scope and usefulness. No authority has been cited in favour of the restricted construction, nor is any general reason shown in support of it. On the other hand, there is as much reason to apply the section to cases of transfer of defined local areas as to cases of transfer of the whole jurisdiction. What little authority there is on the point, is in favour of the view I am taking, for in the Full Bench case *Seeni Nadan v. Muthusamy Pillai*(1), there is an observation of AYLING, J., on page 835 which supports it, where the learned Judge says "this section (section 150 of the Code of Civil Procedure) certainly seems to cover the case of the transfer of all the litigations arising out of a tract of country from one Court to another." The first objection must therefore be overruled.

KRISHNAN, J.

The next point taken is, that the words "save as otherwise provided" in the section prevent its applicability to the present case, as it is argued that Order IX, rule 13, requires that the application should be made to the Court that passed the decree and to no other Court.

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It does not say anything about other Courts, and I am unable to read it as excluding the application of section 150. The rule is an enabling one which prescribes what is to be done in the ordinary course, to get an ex parte decree set aside. It does not say that the Court that passed the decree is the only Court that can set it aside. Nor is there anything restrictive in the wording.

No authorities have been cited on the precise point before us by either side, but the petitioner's *vakil* has tried to argue by way of analogy with reference to certain rulings under Order XXXIX, rule 2, clause (3) of the Code of Civil Procedure that when a forum is mentioned in a rule as having authority to do a certain thing it must be held that the jurisdiction of every other forum in the matter is excluded and he cited *Sheikh Jaharuddi v. Hari Charan Podder*(1) and *Mathura Dass v. Venkata Rao*(2). It is sufficient to say that in these cases, the effect of section 150 of the Code of Civil Procedure did not arise for decision and they are thus of little value in the present case. On the other hand, with reference to this very point, SRINIVASA AYYANGAR, J., in his judgment in the Full Bench case *Suppi v. Kunhi Koya*(3), expresses a clear opinion when he says that,

“where the business of one Court is transferred to another, the Court to which the business is so transferred may, I think under section 150, entertain an original application for attachment or arrest under clause (3), rule 2 of Order XXXIX.”

That Full Bench overruled the rather extraordinary contention that because the clause said that the Court granting the injunction may attach the properties of or imprison in civil jail the person guilty of disobedience, even the appellate Court had no power to take action under it. If it is kept in mind that these are enabling

(1) (1913) 18 C.W.N., 470.

(2) (1911) 21 M.L.J., 829.

(3) (1916) I.L.R., 39 Mad. 907 (F.B.).

rules in which there are no restrictive words, as there is for example in Order XLVII, rule 2, under which except in certain circumstances an application for review can be made "only to the Judge who passed the decree or order" there is no difficulty in holding that the Court, given the same powers as the Court mentioned in the rules, as for example an appellate Court or a Court to which the former Court's business has been transferred under section 150 of the Code of Civil Procedure can itself exercise those powers. To hold otherwise will be, in my opinion, entirely erroneous and will defeat the very object of the legislature in extending such powers.

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I have not referred to section 37 of the Code or to cases under it, for they all refer to proceedings in execution.

I agree with my learned brother that the contention that the Anantapur Court had no jurisdiction must be overruled.

The objections taken to the order of the lower Court on the merits are equally untenable. It is clear from the record that the defendant was not duly served and that his application is within time, as he has sworn in his affidavit that he was not aware of the suit or of the affixture of the summons at his residence or of the existence of the ex parte decree till the 27th March, some twelve days before his application. The matter was tried on affidavits, no application being made to take evidence or to cross-examine the defendant. The plaintiff filed no affidavit himself but he left it to his vakil to file an argumentative statement merely alleging that the defendants' affidavit could not be true. In these circumstances, the District Munsif cannot be said to have acted irregularly or even wrongly in setting aside the ex parte decree.

I agree that the Civil Revision Petition fails and must be dismissed with costs.