

APPELLATE, CIVIL.

Before Mr. Justice Wallace and Mr. Justice

Madhavan Nair.

AMIRTHA NADAN AND ANOTHER (PETITIONERS,
DEFENDANTS), APPELLANTS,

1929,
April 26.

v. *

INNASI MUPHU NADAN (RESPONDENT, AUCTION-
PURCHASER AND PLAINTIFF), RESPONDENT.*

*Madras Village Courts Act (I of 1889), ss. 51 and 66—
Decree of Village Court—Execution by District Munsif on
original side, validity of.*

The combined effect of sections 51 and 66 of the Madras Village Courts Act (I of 1889), the latter of which enacts that a District Munsif to whom a Village Court's decree (which is only a decree of a Small Cause nature) is transmitted for execution can execute it "as if it were a decree passed by himself," is to enable him to execute it not merely on the Small Cause side as if it were a Small Cause decree passed by himself but also to execute it on the Original Side by attachment and sale of immovable property.

APPEAL against the Order of the Court of the Subordinate Judge of Tuticorin in A.S. No. 175 of 1927, preferred against the Order of the Court of the District Munsif of Koilpatti, dated the 7th May 1927 and made in E. A. No. 420 of 1927 in Civil Suit No. 53 of 1923 on the file of the Village Munsif's Court, Lingampatti, Koilpatti Taluk.

K. S. Ramabhadra Ayyar for appellant.

A. Narasimhachariar for respondent.

JUDGMENT.

WALLACE, J.—The facts necessary for the disposal of this C.M.S.A. are as follows :—The respondent obtained

* Appeal Against Appellate Order No. 203 of 1927.

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a money decree in C.S. No. 53 of 1923 in the Village Court of Lingampatti against the appellants. That decree was sent for execution to the District Munsif's Court of Koilpatti and received there on 13th February 1925. E.P. No. 539 of 1925 presented in that Court was dismissed for failure of prosecution. A fresh E.P. No. 539 of 1926 was put in asking for attachment and sale of immovable property. That was treated by the District Munsif's Court as an execution petition on the Original Side and immovable property was attached and sold. The sale was confirmed on 22nd February 1927. The appellants applied under Order XXI, rule 90, C.P.C., to the District Munsif's Court to set aside the sale because of irregularities and the sale was set aside. The respondent appealed to the Sub-Court, Tuticorin, which set aside the Order of the District Munsif and maintained the sale. The appellants have come up here in Second Appeal.

Clearly no Second Appeal lies, and the appeal is not maintainable as such. The appellants asked us to treat this as a civil revision petition, raising a question of jurisdiction, viz., whether the District Munsif had any jurisdiction to execute the decree on the Original Side at all, and we have had this point, which is not free from difficulty, argued before us. It was taken for the first time in this Court.

The decision of the point rests on the interpretation of section 66 of the Village Courts Act I of 1839. The section as it stands empowers the District Munsif to whom a Village Court decree is transmitted for execution to execute it "as if it were a decree passed by himself." This phrase is ambiguous. It may mean, 'execute the decree as if this particular decree was a decree signed by him and not by the Village Court,' or, it may mean, 'execute the decree with all the powers of

execution which a District Munsif possesses to execute any decree passed by him.' The first meaning would restrict the execution to the manner under which a small cause decree can be executed, since the decree on the face of it is a Small Cause decree. The second meaning would allow the decree to be executed also in the manner in which an Original Side decree is executed. The appellants contend in favour of the first meaning and the respondent in favour of the second. The appellants refer to the definition, given in section 5 of the Act, of the words "District Munsif." That definition originally was

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"The District Munsif within the local limits of whose jurisdiction the village is situate."

That definition was amended by section 4 of Act II of 1920 by the addition of two provisos, the second of which is

"provided further that, if in any area the District Munsif does not exercise small cause jurisdiction and a separate Court of Small Causes has been established, the Judge of such a Court shall be deemed to be the District Munsif."

The appellants contend that that implies that "District Munsif" as used in the Act is restricted to the Small Cause side of the District Munsif's Court, since provision was thought necessary for the cases where in any district or locality there is no District Munsif exercising Small Cause powers. There is considerable force in that contention, coupled with the obvious fact that the decrees of Village Courts are always in substance Small Cause decrees.

But the respondent refers us to section 51 of the Village Courts Act, which runs thus:

"Subject to the provisions of sections 66 and 67, no judgment-debtor shall be arrested and no immovable property attached in execution of a decree of a Village Court."

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This clearly implies that the power of attaching immovable property in execution of a Village Court decree—a power which no Small Cause Court has—is somehow inherent in or conferred by section 66, and that can only be so if the phrase “may execute as if it were a decree passed by himself” covers execution not merely on the Small Causes Side but on the Original Side as well. The appellants’ argument, as their advocate realizes, implies that a Village Court decree can never be executed by attachment of immovable property, although section 51 says that it may, and his rejoinder to section 51 is merely to say that section 51 must be regarded as a dead letter, a view which he can hardly expect us to adopt unless the opposite view is wholly untenable. Section 51 to my mind clearly permits, in conformity with its tenor, attachment under section 66 of immovable property in execution of a Village Court decree, and an application for execution based on that section must be on the Original Side, because it asks for reliefs which can only be given on the Original Side. Section 66, therefore, must be read as empowering a District Munsif to execute a Village Court decree as if it were an Original Side decree passed by himself. The second proviso to the definition of “District Munsif” under section 5 is evidently intended to deal with cases where the decree-holder wishes to execute the Village Court decree as a Small Cause decree in a locality where the District Munsif does not possess Small Cause powers, and has therefore to present it in a Court which is the Small Cause Court for that locality.

I hold that section 66 gives the District Munsif jurisdiction to receive such execution petitions on the Original Side and to execute them on that side. Therefore, there is no lack of jurisdiction. This also decides

the second point of jurisdiction raised by the appellants, viz., that the lower Court has no jurisdiction to entertain an appeal against the Order of the District Munsif setting aside the sale.

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I therefore dismiss the C.M.S.A. with costs.

MADHAVAN NAIR, J.—I have had the advantage of reading the judgment of my learned brother and I agree with it. The question for decision is whether a decree passed by a Village Munsif, i.e., obviously a decree of a Small Cause nature, transmitted for execution to the District Munsif, may be executed by the latter by attachment and sale of immovable property. The contention for the appellants is that the District Munsif has no such power and that he can execute the decree only in the same way as he would execute a Small Cause decree passed by himself. According to section 66 of the Village Courts Act, a District Munsif to whom a decree passed by a Village Courts has been transmitted for execution may execute it “as if it were a decree passed by himself.” The expression “as if it were a decree passed by himself” may mean (1) as if it were a Small Cause decree passed by himself or (2) as if it were a decree passed by him on the Original Side, since the District Munsif has jurisdiction to pass both kinds of decrees. It is this ambiguity in the meaning of this expression that causes difficulty in this case. The appellant’s argument that the District Munsif can execute the decree in question only in the same way as if it were a Small Cause decree passed by him is based on the definition of the term “District Munsif” in the Village Courts Act as amended by Madras Act II of 1920 (see section 5, proviso 2), which is as follows:—

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“Provided further that, if in any area the District Munsif does not exercise small cause jurisdiction and a separate Court of Small Causes has been established, the Judge of such Court shall be deemed to be the District Munsif.”

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The argument has considerable force and is almost convincing; but it entirely overlooks section 51 of the Village Courts Act, which says:—

“Subject to the provisions of sections 66 and 67, no judgment-debtor shall be arrested and no immovable property attached in execution of a decree of a Village Court.”

This section clearly implies that under section 66 of the Village Courts Act, the District Munsif in executing a decree passed by a Village Court transmitted to him for execution can attach immovable property of the judgment-debtor. Having regard to this section, the second proviso of the definition of “District Munsif” contained in section 5 is, as pointed out by my learned brother, “evidently intended to deal with cases where the decree-holder wishes to execute the Village Court’s decree as a Small Cause decree in a locality where the District Munsif does not possess Small Cause powers and has therefore to present it in a Court which is the Small Cause Court for the locality.” If the Legislature intended by the amended definition of “District Munsif” to show that the District Munsif in executing the Village Court’s decree transmitted to him for execution should execute it only as if it were a decree passed by him on the Small Cause side, then it seems to me that it would have omitted section 51 of the Act altogether.

I agree in the order proposed by my learned brother.

N.R.
