

APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice,
and Mr. Justice Cornish.*

RAMANATHAN CHETTIAR AND TWO OTHERS
(PETITIONERS-PLAINTIFFS), APPELLANTS,

1935,
March 7.

v.

A. M. R. MUTHAYYAN CHETTIAR (FIRST RESPONDENT-
DEFENDANT), RESPONDENT.*

*Execution of decree—Jurisdiction—Temporary Court established
for one year and continued thereafter—Decree passed by,
in one year—Execution in subsequent year of—Jurisdiction
of that Court as to.*

A temporary Court has jurisdiction not only to pass decrees but also to execute the decrees passed by it. The mere fact that a temporary Court is established for one year and is thereafter continued cannot deprive that Court of its character of the Court which passed the decree and of its power to execute the decree passed by it. A Court which is originally established for one year and whose existence is continued year after year does not cease at the end of each year to have jurisdiction in following years to execute decrees passed by it in the previous year of its life.

Mussammat Bibi Khodaijatul Kobra v. Harihar Missir,
(1925) I.L.R. 4 Pat. 688, relied upon.

APPEAL against the order of the Court of the Subordinate Judge of Salem, dated 5th December 1932 and made in Execution Petition No. 79 of 1932 in Original Suit No. 54 of 1919.

K. Sankara Sastri for appellants.

V. Ratnam for respondent.

JUDGMENT.

BEASLEY C.J.—This is an appeal from an BEASLEY C.J. order of the Subordinate Judge of Salem holding

* Appeal Against Order No. 172 of 1933.

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that the execution petition presented by the appellants here was barred by limitation having been presented more than twelve years after the passing of the decree. The short facts of the case are that a decree was passed in 1919 by the Temporary Sub-Court, Salem. That Court was established in 1919 for a period of one year by a notification published in the *Fort St. George Gazette*, dated 29th January 1919. At the end of that period there was another notification sanctioning the same Sub-Court but no period of life of that Court was specified in it. It would appear that from 1919 onwards until 1929 this temporary Court was, by notification in various years, continued. The decree-holder, having obtained the decree in the Temporary Sub-Court in 1919, subsequently applied for the transfer of the decree to the Mayavaram Sub-Court. The decree was accordingly transferred and some amount was realized there. It was then re-transferred to the Temporary Sub-Court, Salem, in 1926 on an application of the decree-holder, dated 10th March 1926. Subsequently on 7th March 1929 an application for execution was made to the District Court. That application was returned for information about previous execution petitions several times and eventually the decree-holder, who took time to furnish the information, did not re-present it. Then an application was made to the District Court on 2nd November 1931 and, after several returns and re-presentations there, the learned District Judge returned the application on 2nd February 1932 on the ground that the decree-holder should have applied to the Court which passed the decree, and accordingly the

execution petition was presented to the Sub-Court, Salem, on 5th February 1932. The question which the learned Subordinate Judge had before him was whether the application presented to the District Court on 7th March 1929 was a valid one. It could only be valid if that was the proper Court for the application to be presented to. If that was the right Court, then clearly the application was not barred by limitation. On the other hand, if it was the wrong Court and the Subordinate Court of Salem was the proper one, then the application was barred by limitation. It was argued before the learned Subordinate Judge, as it was here, that the fact that the decree was passed by the Subordinate Court of Salem when it was a temporary Court for one year made it obligatory, unless execution was sought of the decree in the same year in which it was passed, to apply to the District Court, because at the end of each period of one year the temporary Court ceased to exist, and that the Court which passed the decree being dead the application for execution had then to be presented to the District Court. It is of course conceded, it being well-established, that temporary Courts have jurisdiction not only to pass decrees but also to execute the decrees passed by them. It is difficult to see any logical reason for the contention which is put before us. The mere fact that a temporary Court is established for one year and is thereafter continued, it seems to me, cannot deprive that Court of its character of the Court which passed the decree. If it is the Court which passed the decree, then clearly execution must be had in that Court. It

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is conceded that the property which is the subject-matter of the execution petition lies within the jurisdiction of the Salem Sub-Court. That Court is now become permanent as a matter of fact, but I do not think that that is a matter which is at all material. It is difficult to see how it can seriously be contended that, because a Court is originally established for one year and its existence is continued year after year, it ceases at the end of each year to have any jurisdiction in the following years to execute decrees passed by it in the previous year of its life. On the contrary, there is the decision of the Patna High Court in *Mussamat Bibi Khodaijatul Kobra v. Harihar Missir*(1) which is very much against the contention advanced here. The facts of that case as they appear in the head-note are as follows:— Two decrees were made on 21st August 1920 by the Additional Subordinate Judge. Some time afterwards the Court of the Additional Subordinate Judge was abolished, and the business of that Court was transferred to the third Subordinate Judge's Court. Subsequently the Court of the Additional Subordinate Judge was re-established, and, on the 27th August 1923, two applications were made to it for the execution of the decree of 1920. The Additional Subordinate Judge held that he had jurisdiction to entertain the application. On appeal the District Judge reversed the order and held that the new Additional Subordinate Judge had no jurisdiction on the ground that the Court of the First Additional Subordinate Judge having ceased to exist the present Court could not be the Court

(1) (1925) I.L.R. 4 Pat. 638.

which passed the decree. It was held that in point of fact the Court of the Additional Subordinate Judge had not ceased to exist as the present Court being a Court of the same designation was identifiable with it. I entirely agree with the reasons given in the judgment. The Temporary Subordinate Court at Salem clearly had jurisdiction to execute decrees passed by the same Court in previous years. The mere fact that it was a temporary Court and required a renewal at the end of every year—even that fact does not appear to be established—cannot possibly make any difference. The learned Subordinate Judge was, therefore, quite correct in holding that the execution petition was barred by limitation. This appeal must, therefore, be dismissed with costs.

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CORNISH J.—I agree.

A.S.V.