

APPELLATE CIVIL.

Before Mr. Justice King and Mr. Justice
Krishnaswami Ayyangar.

1938,
August 30.

PABBATI VENKATA REDDI (PETITIONER), APPELLANT,

v.

DOREDLA VENKATARATNAM AND SONS REPRESENTED
BY DOREDLA SATYANARAYANAMURTHI AND
TWO OTHERS (RESPONDENTS), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), sec. 63—Court of highest grade calling up proceedings in execution of a decree transferred to Court of lower grade—Sale of property attached in execution of that decree—Jurisdiction of Court of highest grade as to—Decree not transferred to that Court—Sec. 63, if controlled by sec. 38 of the Code in this matter.

In execution of three decrees the same property of the same judgment-debtor was attached. Two of the decrees were transferred to the Subordinate Judge's Court of Narsapur, while the third, that held by the first respondent, was transferred to the District Munsif of Narsapur. Subsequently on action taken under section 63, Civil Procedure Code, the proceedings before the District Munsif were called up to the Subordinate Judge's Court and on an application made to the Subordinate Judge the attached property was sold.

Held that the Subordinate Judge's Court had jurisdiction to sell the attached property, that jurisdiction being necessarily implied in the use of the word "realize" in section 63, Civil Procedure Code, and that that section was not controlled by section 38, Civil Procedure Code, in that matter.

Where the facts come within the definition of the situation as given by section 63, it is obviously section 63 which must be applied and that section, if the facts apply, cannot be controlled or governed by section 38.

APPEAL against the order of the Court of the Subordinate Judge of Narsapur, dated 6th July 1935 and

* Appeal Against Order No. 486 of 1935.

made in Civil Miscellaneous Petition No. 1140 of 1934 (Original Suit No. 42 of 1926 on the file of the District Court, Kistna).

V. Govindarajachari and *N. Vasudeva Rao* for appellant.

P. Satyanarayana Rao for respondents.

The JUDGMENT of the Court was delivered by KING J.—This appeal raises a question of the interpretation of section 63, Civil Procedure Code. The facts are that in execution of three decrees against the same judgment-debtors the same property was attached. Two of the decree-holders, one of whom is the present appellant, had their decrees transferred to the Sub-Court, Narsapur. The third decree-holder, who is the present first respondent, had his decree transferred to the District Munsif of Narsapur. Subsequently action was taken under section 63 by which the proceedings before the District Munsif of Narsapur were called up to the Subordinate Judge's Court. The decree-holder whose decree had been thus called up, that is to say the first respondent, then applied to the learned Subordinate Judge to sell the attached property. The sale was duly held. Thereupon the present appellant filed an application under Order XXI, rule 90, Civil Procedure Code, requesting the Court to set aside the sale on two grounds: (i) that it was vitiated by material irregularities and (ii) that the Subordinate Judge had no jurisdiction to hold the sale at all. This application was filed on 23rd November 1934 whereas the sale had been held on 9th July. The application was therefore *prima facie* out of time and the learned Subordinate Judge has held that the appellant has not pleaded in sufficient detail any fraudulent actions on the part of the respondent which

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would enable him to rely upon section 18 of the Limitation Act. The learned Judge has therefore held that the application under Order XXI, rule 90, is barred by limitation.

In appeal we have been asked to read into the application what is not obviously there, namely, an allegation that there has been fraudulent conduct on the part of the respondent which has prevented the appellant from having knowledge of the sale. We are unable to find any material which would form the basis for such an assertion and we think that the decision of the learned Subordinate Judge on the question of limitation is right.

The main argument however in appeal was on the question of jurisdiction. It is contended that although it was necessary under section 63 to bring the proceedings which were then pending before the District Munsif up to the Court of the Subordinate Judge, the Subordinate Judge has by virtue of section 38 jurisdiction to execute only such decrees as have actually been transferred by the Court of first instance to his Court. The question then is whether section 63 overrides section 38 or not on the assumption that section 63 contains within itself any clause conferring jurisdiction upon the Subordinate Judge. We think that on a common sense interpretation of the language of section 63 this jurisdiction is certainly conferred. The language of section 63 is :

“Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto, shall be the Court of highest grade.”

It is conceded for the appellant that, in spite of the enactment of section 38, the Subordinate Judge in this case would have had jurisdiction to hear and

determine all claim petitions. To that extent therefore it is conceded that section 63 overrides section 38. It is however argued that section 63 does not give the Sub-Court any jurisdiction to sell the attached property except in execution of its own decrees. It seems to us that this jurisdiction is necessarily included in the use of the word "realize". "Realize such property" must obviously refer to bringing such property to sale. Nowhere in section 63 is there any restriction as to how and in what manner and in what petition the Court of highest grade should realize the property and inasmuch as it is already conceded that section 63 overrides section 38 with regard to claim petitions, we are of opinion that it overrides section 38 in this matter also. After all, section 38 is a general section dealing with execution. It contemplates only one decree-holder applying to execute only one decree and it lays down which is the proper Court to order execution. Section 63 deals with more complicated facts in which there are not only more decree-holders than one but the same property has been attached by more Courts than one. Where the facts come within the definition of the situation as given by section 63, it is obviously section 63 which must be applied and section 38, if the facts apply, cannot, we think, be controlled or governed by section 38. We are of opinion therefore that the Subordinate Judge in this instance had jurisdiction to conduct the sale.

The appeal must therefore fail on both points and is dismissed with costs.

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