

Before Mr. Justice Pigot and Mr. Justice Beverley.

GOKUL KRISTO CHUNDER (JUDGMENT-DEBTOR) *v.* AUKHIL CHUNDER
CHATTERJEE (DECREE-HOLDER).*

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February 7.

IN THE MATTER OF THE PETITION OF ISHAN CHUNDER DAS
(DECREE-HOLDER).

RASHARAJ BOSE AND OTHERS (JUDGMENT-DEBTORS), *v.* GOBINDA
RANI CHOWDHURANI (DECREE-HOLDER).†

MOOLA KUMARI BIBEE (DECREE-HOLDER) *v.* MOOL CHAND
DHAMANT AND ANOTHER (JUDGMENT-DEBTORS), AND
BISSUN CHAND DOODHURIA (DECREE-HOLDER) *v.* MOOL CHAND
DHAMANT AND ANOTHER (JUDGMENT-DEBTORS).‡

*Execution of decree—Transfer of decree for execution—Jurisdiction—Civil
Procedure Code (Act XIV of 1882) ss. 6 and 223.*

Having regard to the provisions of s. 6 of the Code of Civil Procedure, a Civil Court has no jurisdiction to execute a decree sent to it for that purpose under s. 223 of the Code, when the decree has been passed in a suit the value or subject-matter of which is in excess of the pecuniary limits of its ordinary jurisdiction. *Narasayya v. Venkata Krishnayya* (1) dissented from

Sidheshwar Pandit v. Harihar Pandit (2), *In re Balaji Ranchoddas* (3), and *Mungul Pershad Dicit v. Grija Kanti Lahiri* (4), referred to.

Appeal No. 284 of 1888.

THIS was an appeal from an order of the 16th July 1888, of the District Judge of Burdwan, affirming the order of the Munsiff of Cutwa, dated the 12th May 1888.

A decree of the High Court in its Ordinary Original Civil Jurisdiction had been sent to the Munsiff of Cutwa for execution. The application of the judgment-creditor for execution was objected to by the judgment-debtor on the ground that the Munsiff had no jurisdiction to execute the decree, inasmuch as it

* Appeal from Order No. 284 of 1888, against the order of F. B. Taylor, Esq., Judge of Burdwan, dated the 16th of July 1888, affirming the order of Baboo Raj Narain Chuckerbati, Munsiff of Kutwa, dated the 12th of May 1888.

† Civil Rule No. 1082 of 1888, against the order passed by Baboo Upendra Nath Bose, Munsiff of Munshigunge, dated the 28th of April 1888.

‡ Civil reference No. 8A. of 1888, made by Baboo Nobin Chunder Ganguli, Judge of the Small Cause Court, Berhampore, dated the 10th of April 1888.

(1) I. L. R., 7 Mad., 397.

(2) I. L. R., 12 Bom., 155.

(3) I. L. R., 5 Bom., 680.

(4) I. L. R., 8 Calc., 51.

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had been passed in a suit, the value or amount of the subject-matter of which was in excess of the pecuniary limits of his ordinary jurisdiction. The Munsiff overruled the objection and ordered execution. On appeal, the District Judge upheld the order of the Munsiff on the authority of the case of *Narasayya v. Venkata Krishnayya* (1).

The judgment-debtor appealed to the High Court.

Civil Rule No. 1032 of 1888.

This was a rule on the judgment-debtors and the decree-holder, Govinda Rani Chowdhurani, to show cause why an order of the Second Munsiff of Munshigunge, dated the 28th April 1888, allowing Govind Rani to participate in the assets to be realized in execution of the petitioner's decree, should not be set aside.

The facts of the case in which this rule was issued were as follows :—

A decree for Rs. 853 was made in favor of the petitioner, Ishan Chandra Das, by the Munsiff of Patuakali, on 17th February 1879. This decree was transferred to the Second Munsiff of Munshigunge for execution, and on the 27th October 1887, certain of the judgment-debtor's property within his jurisdiction was attached, and on the 12th March sold for Rs. 300. On the 7th March 1888, five days before the sale, Govinda Rani Chowdhurani who, with others, on the 6th April 1877, had obtained a mortgage decree against the same judgment-debtor for upwards of Rs. 11,000 in the Court of the First Subordinate Judge of Dacca, applied to that Court to send the decree to the Munsiff of Munshigunge for execution. The application was granted, and on the 11th March 1888, Govinda Rani applied to the Munsiff for execution, and for a rateable distribution of sale proceeds in execution of the petitioner's decree under s. 295 of the Civil Procedure Code. On the 14th April the petitioner objected to this application; but the Munsiff overruled the objection, and by his order, dated the 28th April 1888, directed a rateable distribution of the sale proceeds. Against this order, on the 2nd August 1888, the petitioner moved the High Court on the ground, *inter alia*, that Govinda Rani's decree, being for a sum of over Rs. 11,000, must presumably have been made in a suit which the

(1) I. L. R. 7 Mad., 397.

Munsiff would have had no jurisdiction to try, and that, therefore, the Munsiff was not competent to execute the decree or to make any order respecting it under s. 295 of the Code, and a rule was issued in the above terms.

Civil Reference No. 8A of 1888.

This was a reference to the High Court from the Small Cause Court at Berhampore.

The facts of the case in which the reference was made were these: The Judge of the Small Cause Court at Berhampore was also the Subordinate Judge of Moorshedabad. On the 4th January 1888, Moola Kumari Bibee obtained a decree against Mool Chand Dhamant and another in the Small Cause Court at Berhampore. In execution of her decree, she attached the moveable properties of the judgment-debtors on the 20th January 1889. The properties were sold on 9th March 1889; prior to the sale, on the 2nd March, Rai Bissun Chand Doodhuria Bahadour, who had, on the 28th January 1889, obtained a decree for Rs. 3,209 against the same judgment-debtor in the Court of the Subordinate Judge of Moorshedabad, applied to that Court to send the decree to the Small Cause Court at Berhampore for execution. The application was granted; and on 7th March Rai Bissun Chand applied to the Judge of the Small Cause Court for execution, and for a rateable distribution of the sale proceeds under s. 295 of the Civil Procedure Code. Moola Bibee met the application with the objection, amongst others, that inasmuch as the Judge of the Small Cause Court had no jurisdiction to try the suit, he was not competent to execute the decree. The Judge made an order for rateable distribution contingent on the opinion of the High Court.

In Appeal No. 284 of 1888,—

Baboo *Karuna Sindhu Mukerjee* for the appellant.

Baboo *Benode Behari Mukerjee* for the respondent.

In Rule No. 1032 of 1888,—

Baboo *Hurri Mohun Chuckerbutty* for the petitioner.

Baboo *Lal Mohun Das* for the opposite parties.

In Reference No. 8A of 1888,—

Baboo *Srinath Das* for the decree-holders.

Baboo *Kali Kissen Sen* for the judgment-debtors.

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The following judgments were delivered by the High Court
(PIGOT and BEVERLEY, JJ.)

BEVERLEY, J.—In these three cases the question raised is practically one and the same. It may be broadly stated thus: Has a Civil Court jurisdiction to execute a decree sent to it for that purpose under s. 223 of the Code when that decree has been passed in a suit the value or amount of the subject-matter of which was in excess of the pecuniary limits of its ordinary jurisdiction?

[The judgment here set out the facts in the three cases and then proceeded.]

In all three cases, therefore, the point is virtually the same: namely, whether under s. 223 of the Code a decree can be sent for execution to, and can be executed by, a Court which, as regards its pecuniary jurisdiction, was not competent to make the decree.

On the one side, it is contended that s. 223 contains no limitation as regards the pecuniary jurisdiction of the Court to which a decree may be sent for execution, similar to that contained in s. 25; that by s. 28 the Court to which a decree is sent for execution is expressly vested with the same powers in executing it as if the decree had been passed by itself; that if there is any force in the limitation sought to be imposed, the provisions of s. 295 regarding the rateable distribution of assets would, in many cases, be unfairly restricted in their operation. And we have been referred to the case of *Narasayya v. Venkata Krishnayya* (1) in which Turner, C.J., and Muttasami Ayyar, J., held that s. 223 gave an extraordinary jurisdiction to a Court to execute a decree in a suit beyond its pecuniary jurisdiction sent to it for execution.

On the other hand, it is said that the proceedings in execution are merely a continuation of the suit, and that a Court, which has no jurisdiction to try the suit, can have no jurisdiction to execute a decree made in that suit. And in support of this view, the case of *Shri Sidheshwar Pandit v. Shri Harihar Pandit* (2) decided by Sargent, C.J., and Nanabhai Haridas, J., has been cited before us.

(1) I. L. R., 7 Mad., 397.

(2) I. L. R., 12 Bom., 155.

It appears, therefore, that the Madras and Bombay authorities are opposed to each other on this point. The point is one of some importance, but it would seem that no decision of this Court upon it is to be found in the reports.

The question turns to some extent upon the Civil Courts Acts, which prescribe the pecuniary jurisdiction of the various Civil Courts. And it may be pointed out here that, whereas the Madras and Bombay Civil Courts Acts (Act III of 1873, s. 12, and Act XIV of 1869, s. 24) speak of the jurisdiction of the Courts in "*suits and proceedings*" of a civil nature, the Bengal Civil Courts Act refers to "*suits*" only. The distinction is probably unimportant, and, in fact, it appears that, in the report of the Madras case referred to, the words "*suits and applications*" are quoted by some mistake as being the words used in the Madras Act instead of the words "*suits and proceedings*."

The Madras decision proceeds upon the principle that s. 223 of the Code confers an extraordinary jurisdiction which is limited by no restriction such as is to be found in s. 25.

We are of opinion that we ought not to follow that decision.

It seems to us that the learned Judges who decided that case, overlooked the provisions of s. 6 of the Code of Civil Procedure, which appears to contain words which, we think, were expressly intended to limit the jurisdiction which would otherwise be given by s. 223. We are also of opinion that there are other indications in the Code going to show that, as Sargent, C.J., said in the Bombay case, a Court which could not have entertained the suit is incompetent to deal with it in execution.

The last clause of s. 6 runs as follows: "Nothing in this Code shall operate to give any Court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction."

It is contended that the word "*suits*" in this clause must be limited to proceedings in the cause up to the passing of the decree, and that it does not, therefore, operate to curtail the power of a Court to execute a decree. We see no sufficient reason for giving the word this restricted meaning. On the other hand, there would appear to be several weighty reasons for assigning it a

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wider signification so as to cover all proceedings in a suit, including the proceedings in execution.

By s. 9 the Code is divided into ten parts, the first of which treats of *suits in general*. It is important to observe that that part of the Code contains the rules relating to the execution of decrees (Chap. XIX). So far as it goes, this circumstance seems to show that the framers of the Code regarded the proceedings in execution as a part of the suit.

In s. 3, moreover, we find proceedings up to decree and proceedings after decree equally referred to as being proceedings in the suit.

Again, if the words "jurisdiction over suits" in s. 6 are to be limited to the institution and hearing of causes up to decree only, it is difficult to conceive any case to which the clause in question would apply. We have been unable to discover any provision in the Code which could, if uncontrolled by this clause, have operated to give a Court jurisdiction to try a suit in excess of the limits of its pecuniary jurisdiction. Chapter II contains the rules as to the Court in which a suit is to be brought: and it will be seen that in almost every section in that chapter the pecuniary jurisdiction of the Court is expressly or impliedly referred to. (See ss. 15, 16, 17, 19 and 25).

On the other hand, s. 223, if uncontrolled by s. 6, gives to a Court a very wide—in fact a practically unlimited—jurisdiction in many important matters in respect of suits, the amount or value of the subject-matter of which may exceed the pecuniary limits of its ordinary jurisdiction.

By s. 228, the Court executing a decree sent to it has the same powers in executing the decree as if it had been passed by itself, * * * * and its order in executing such decree is made subject to the same rules in respect of appeal as if the decree had been passed by itself.

Accordingly, if the decree of a District or Subordinate Judge can be sent to a Munsiff for execution, the Munsiff has jurisdiction to try all questions relating to the execution of the decree (*e.g.*, limitation, claims to attached property, complaints of resistance or obstruction, and generally all questions under s. 244), and the appeal from his orders would lie in every case to the District Judge,—no matter

what might be the value of the suit. As Westropp, C.J., remarked in *Balaji Ranchoddas* (1), questions arising in the execution of decrees are frequently quite as important as the questions in issue in suits and appeals, and there would seem to be no reason why the limitation of jurisdiction thought necessary in respect of hearing the original suit should not be also necessary in respect of trying questions relating to the execution of the decree.

There are other considerations which go to bear out the view that the jurisdiction conferred by s. 223 must be considered as qualified by the last clause of s. 6.

Section 223 itself contains a clause empowering the Courts of Small Causes at Calcutta, Madras, Bombay, or Rangoon, to execute decrees sent to them in certain cases, but such a decree must have been passed in a case cognizable in a Court of Small Causes, or, as Act VII of 1888 more clearly puts it, "in a suit of which the value, as set forth in the plaint, did not exceed two thousand rupees, and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes." In other words, we have here a distinct recognition of the rule, which appears to be contained in s. 6, that no Court can execute a decree passed in a suit, the value of the subject-matter of which would have been in excess of its pecuniary jurisdiction.

Section 649 refers to a case in which a Court, which passed a decree, may have ceased "to exist or to have jurisdiction to execute it." The use of these words in the Code seems to imply that the jurisdiction of a Court in the execution of decrees is subject to limitation, and that it is not competent to every Court to execute the decree of another Court that may be sent to it for that purpose.

The last clause of s. 6 was first introduced into the Code of 1877. But the Code of 1859 everywhere assumes that the power to execute a decree is not a power possessed by all Courts indiscriminately, but is subject to restrictions of jurisdiction. That Code speaks of the Court "*whose duty it is to execute the decree*" (see ss. 206, 207, 285). That Court need not necessarily be the Court which passed the decree (s. 206), but it must be a

(1) I. L. R., 5 Bom., 680.

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Court having jurisdiction to execute it, and by s. 287 that Court must apparently be either the principal Civil Court of original jurisdiction in the district," or "any Court subordinate thereto to which it may entrust the execution of the decree."

In the case of *Mungul Pershad Dicit v. Grija Kant Lahiri* (1), their Lordships of the Privy Council said: "It appears to their Lordships that an application for the execution of a decree is an application in the suit in which the decree was obtained." This and similar remarks which are to be found elsewhere support the view that the proceedings in a "suit" do not necessarily terminate with the decree, but that the word "suit" may fairly be interpreted to include the proceedings taken to execute the decree. If this be so, it follows that s. 6 must operate to limit the jurisdiction conferred by s. 223. We are of opinion that it does so operate, and that these cases ought to be decided accordingly.

The rule will accordingly be made absolute with costs. The appeal from Order No. 284 will be allowed with costs, the order of the lower Courts being set aside. And the reference will be answered in the terms of this judgment.

FIGOR, J.—I am of the same opinion. In the judgment which has been just read, an argument adduced by the learned pleader, Babu Lal Mohan Das, has not been mentioned by us, and we think it is well to add these words of reference to it. That argument was used as an answer to the objections referred to in our judgment as to allowing Courts of inferior jurisdiction to deal with questions of great amount or great importance, and it was suggested that s. 239 meets that difficulty by providing for recourse to the Court making the decree in certain cases. That suggestion is, however, met by the observation that the power of having recourse to the Court granting the decree given by that section is limited to the judgment-debtor. We think that disposes of that argument.

Appeal allowed and Rule made absolute.

C. D. P.

(1) L. R., 8 Calc., 51; L. R., 8 I. A., 123.