

## APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice,  
and Mr. Justice Yorke*

1937  
August, 5

KRISHNA CHANDRA AGARWAL (JUDGMENT-DEBTOR) *v.*  
MOHANLAL BHIKAMDAS AND CO. (DECREE-HOLDER)\*

*Civil Procedure Code, section 42; order XXI, rules 28, 50(2)—  
Decree transferred for execution—Subsequent application  
for leave under order XXI, rule 50(2)—Whether leave can  
be granted by court which passed the decree, after the decree  
has been transferred for execution—Jurisdiction.*

Order XXI, rule 50, sub-rule (2) of the Civil Procedure Code lays down that the court to which the application for leave under that sub-rule can be made is the court which passed the decree. That court does not cease to have jurisdiction to grant leave under order XXI, rule 50(2) merely because it has transferred the execution of the decree to another court. As provided by order XX, rule 28, any order passed in this respect by the court which passed the decree would be binding on the court to which the decree was sent for execution.

It was not necessary to decide in the present case whether the court to which the decree had been transferred for execution would have power, by virtue of section 42 of the Civil Procedure Code, to entertain an application under order XXI, rule 50(2) and to grant leave thereunder.

Messrs. *K. C. Mital, S. N. Seth and S. N. Misra*, for the appellant.

Mr. *S. N. Sahai*, for the respondent.

SULAIMAN, C. J., and YORKE, J.:—This is an appeal by the judgment-debtor arising out of an execution proceeding. The decree had been obtained originally from the Bombay High Court against a firm Kishan Chand Har Govind carrying on business at Cawnpore, as well as some other persons. This decree was transferred for execution to the Fatehpur court for the realisation of the amount by attachment of certain shops. The court allowed time to the decree-holder to state clearly whether he would proceed against the firm or against the personal

\*First Appeal No. 355 of 1934, from a decree of Fariduddin Ahmad Khan, Civil Judge of Fatehpur, dated the 7th of August, 1934.

properties of Kishan Chand and Har Govind. In the meantime the decree-holder filed an application in the Bombay High Court, which had passed the original decree, and obtained an order directing that the decree-holder was at liberty to execute the decree against Kishan Chand and Har Govind also. Objection was then taken in the Fatehpur court to which execution had been transferred that the Bombay High Court had no jurisdiction in the matter and its order was *ultra vires* inasmuch as the decree had been transferred to the Fatehpur court for execution. This contention has been repelled, and we think rightly, by the court below. The learned counsel for the appellant relies on the case of *Maharaja of Bobbili v. Narasaraju Bahadur* (1). But in that case although the decree had been transferred by a District court to a Munsif's court for execution and had not been returned, a subsequent application was nevertheless made in the court of the District Judge, which their Lordships of the Privy Council said could not amount to a valid step in aid of execution. After the execution itself is transferred, the only court to which an application for execution could be made or step in aid could be taken would be the court executing the decree and not the court which had passed the original decree. That case therefore has no application to the case before us. Order XXI, rule 50(2) which applies to the facts of this case lays down expressly that "Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the court which passed the decree for leave . . . ." *Prima facie* therefore the court to which the application for leave can be made is the court which passed the decree, and that would be the High Court of Bombay. It appears, however, that a Division Bench of this Court in *Sital Prasad v. Clement Robson and Company* (2) came to the conclusion that by virtue of the provisions of section 42 of the Civil Procedure

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(1) (1916) LL.R., 39 Mad., 640.

(2) (1921) I.L.R., 43 All., 394.

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Code the executing court also has the same power, for under that section the court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself; although the learned Judges at page 398 remarked that for the purposes of execution the executing court is to be deemed to be the court which passed the decree, apparently all that they intended to lay down was that the court would have jurisdiction to entertain the application and grant leave under order XXI, rule 50. It seems to us that the Patna High Court in *Kalu Ram v. Firm Sheonand Rai Jokhi Ram* (1) has taken a contrary view holding that it is only the original court which passed the decree and not the court to which the decree has been transferred for execution which can entertain such an application. It is not necessary for us to consider that point in this case. *Sital Prasad's* case (2) is certainly distinguishable because the learned Judges did not lay down that the court which had passed a decree ceases to have jurisdiction in the matter although order XXI, rule 50(2) expressly refers to such court. Furthermore, order XXI, rule 28 also provides that "Any order of the court by which the decree was passed, or of such court of appeal as aforesaid, in relation to the execution of such decree shall be binding upon the court to which the decree was sent for execution." We are therefore unable to hold that the Bombay High Court had ceased to have jurisdiction to grant leave under order XXI, rule 50(2) merely because it had transferred the execution of its own decree to the Fatehpur court. If the appellant wishes to raise any question as to fraud in getting service effected of the summons issued by the Bombay High Court, or wishes to have the order of the Bombay High Court set aside or reviewed, his remedy is apparently to apply to that Court. The appeal is accordingly dismissed with costs.

(1) (1932) I.L.R., 11 Pat., 580.

(2) (1921) I.L.R., 43 All., 394.