

there is any reference to chapters IV and V, whereas in explanations II and VI there are references to chapters II, III and VI. It follows that applications which are governed by chapters IV and V are completely covered by the proviso and not affected by the explanations. We accordingly dismiss the appeal under order XLI. rule 11 of the Code of Civil Procedure.

1937

SHEO
SHANKAR
DAS
v.
MUHAMMAD
HASAN

REVISIONAL CIVIL

Before Mr. Justice Niamat-ullah

BRIJ MOHAN DAS (DECREE-HOLDER) *v.* PIARI
(JUDGMENT-DEBTOR)*

1937
April, 6

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 7—Jurisdiction—Forum—Decree passed ex parte—No plea under section 7 raised—Decree transferred for execution—Execution court questioning jurisdiction of court which passed the decree—Civil Procedure Code, section 21.

A money decree was passed *ex parte* by a court in Benares district. The defendant, who was a resident of Jaunpur district, did not appear and raise the plea that he was an agriculturist and therefore under section 7 of the U. P. Agriculturists' Relief Act the suit could be instituted only in the Jaunpur district. The decree was transferred for execution to a court in Jaunpur district and the judgment-debtor there raised the plea that the decree was passed by a court which had no jurisdiction to pass it:

Held that the court executing the decree was not competent to embark on an inquiry into facts which, if established, would tend to show that the court passing it had no jurisdiction to do so. In the present case the court executing the decree took evidence to decide whether the judgment-debtor was an "agriculturist"—a fact which did not appear on the face of the record—and secondly it had to decide whether the suit was for recovery of an unsecured loan as defined in the U. P. Agriculturists' Relief Act; and it was beyond its competence to allow such questions to be raised in the execution

1937

BRIJ
MOHAN
DAS
v.
PIARI

department, or to proceed to decide them after taking evidence on those questions.

Held, further, that section 7 of the U. P. Agriculturists' Relief Act did not confer or take away jurisdiction from any court; it merely modified the provisions of the Civil Procedure Code as regards alternative places of suing. It could not, therefore, be said that the court which passed the decree had no jurisdiction to pass it, the nature of the suit and the amount claimed having been well within its jurisdiction and it having had territorial jurisdiction according to section 20 of the Civil Procedure Code. If the court executing the decree were justified in doing what it did in this case the result would be contradictory to the principle of section 21 of the Civil Procedure Code.

Mr. *Harnandan Prasad*, for the applicant.

Mr. *Gopalji Mehrotra*, for the opposite party.

NIAMAT-ULLAH, J.:—This is a revision under section 115 of the Code of Civil Procedure against an order passed by the Munsif of Shahganj in execution proceedings. The applicant Brij Mohan Das obtained as *ex parte* decree against the opposite party, Mst. Piari, for a sum of Rs.500, in a suit which, so far as the Civil Procedure Code is concerned, could be instituted in Benares and also in Jaunpur, the plaintiff having the choice of forum. The judgment-debtor resides in Jaunpur district, and the decree-holder obtained a certificate of transfer of the decree for execution in Jaunpur. When he applied to the court at Jaunpur for execution of his decree, the judgment-debtor objected on the ground that the court which passed the decree sought to be executed had no jurisdiction, as he (the judgment-debtor) was an agriculturist and the suit against him could be instituted only in the district in which he resided. The court executing the decree gave effect to this objection, holding that the Benares court had no jurisdiction to pass the decree under execution. It is contended in revision that this view is erroneous.

In my opinion the order of the lower court cannot be supported. It is not disputed that, but for the Agriculturists' Relief Act, the court which passed the

1937

 Brij
 Mohan
 Das
 v.
 Prati

decree had jurisdiction to entertain the suit brought by the applicant and to pass a decree on proof of his claim. The opposite party did not appear and did not raise the question as regards the forum selected by the applicant. She could have pleaded that she was an agriculturist and that therefore the suit should have been instituted in the Jaunpur district only. She did not avail herself of the opportunity to raise such a plea and allowed an *ex parte* decree to be passed against her. It is a well known rule that the court executing the decree cannot go behind it and allow its validity to be impugned. The cases in which the court executing the decree can disregard its apparent tenor are laid down in the cases of *Cantonment Board, Muttra v. Kishan Lal* (1) and *Tahir Hasan v. Chandra Sen* (2). The present case does not fall within any of the exceptions therein referred to. Broadly speaking, it is not permissible for the court executing the decree to embark on an inquiry into facts which, if established, would show that the court passing it had no jurisdiction to pass it. Where the jurisdiction of a court to pass a decree depends on the existence of certain facts, the court executing the decree shall refuse to take evidence in proof of those facts for the purpose of determining the jurisdiction of the court passing the decree. In the present case the lower court was invited to hold that the opposite party was an agriculturist—a fact which did not appear on the face of the record. The court inquired into that question and found that she was so. It may be pointed out that the fact that she was an agriculturist itself does not attract the application of section 7 of the Agriculturists' Relief Act, which enacts, *inter alia*, that notwithstanding anything contained in any other enactment for the time being in force, every suit for recovering an unsecured loan in which the defendant, or where there are several defendants, any of the defendants, is an agriculturist, shall be instituted and

(1) (1934) I.L.R., 57 All., 1.

(2) (1935) I.L.R., 58 All., 98.

1937

BRIJ
MOHAN
DAS
v.
PIARI

tried in a court within the local limits of whose jurisdiction the agriculturist defendant, or any of the agriculturist defendants, where there are more than one such defendants, actually and voluntarily resides. It will be seen that another condition precedent to the application of section 7 is that the suit should be "for recovering an unsecured loan". "Loan" is defined in the same Act as meaning "an advance to an agriculturist, whether of money or in kind, and shall include any transaction which is in substance a loan". There are some exceptions engrafted on the definition of "loan", which may be ignored for the purposes of this case. It is perfectly clear that before the court executing the decree can entertain a plea of this kind, it must be prepared to take evidence on two questions, firstly, that the objector was an agriculturist, and secondly that the suit resulting in the decree sought to be executed was for recovery of an unsecured loan, as defined in the Agriculturists' Relief Act. In my opinion the court executing the decree will travel beyond its competence if it allows the judgment-debtor to raise questions of fact on proof of which it may appear that the decree sought to be executed was passed by a court which had no jurisdiction.

I am also of the opinion that section 7 of the Agriculturists' Relief Act does not confer or take away jurisdiction on or from any court. It merely modifies the provisions of the Civil Procedure Code as regards the place of suing. According to the Civil Procedure Code a plaintiff may sue in one of several courts mentioned in section 20. For the convenience of agriculturists section 7 has limited the choice of the plaintiff as regards forum to the court within whose jurisdiction the agriculturist defendant resides. Section 21 of the Civil Procedure Code, which is in no way excluded by section 7 of the Agriculturists' Relief Act, provides: "No objection as to the place of suing shall be allowed by any appellate or revisional court, unless such objection

was taken in the court of first instance at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice." If the view taken by the lower court be accepted as correct, the result will be a great anomaly. If the decree sought to be executed were appealed from and the question of jurisdiction such as is raised in this case were raised for the first time in appeal, section 21 would be a bar to the appellate court entertaining such objection, but *ex hypothesi* the court executing the decree can maintain such objection and do what the court of appeal could not have done. It is true that section 21 does not in terms apply to the present case. I refer to it in order to show the startling result which will happen if the view taken by the lower court be accepted as correct. For these reasons I hold that, in the first place, the court executing the decree had no power to question the validity of the decree which it was called upon to execute, and secondly it cannot be said that the court which passed it had no jurisdiction to pass it, the nature of the suit and the amount claimed being well within its jurisdiction.

The result is that this application is allowed with costs, the order of the lower court is set aside and the case is sent back to that court with the direction that the decree be executed according to law.

1937

BRJ
MOHAN
DAS
v.
PIARI