

1924-25.

SHAIKH
MUHAMMAD
KHALIL
v.
SHAIKH
ABDUL
RAHIM.

MULLICK, J.

The matter, however, appears to be settled by authority. Neither in *Kunj Lall v. Banwari Lall*⁽¹⁾ nor in *Jaldhari Rai v. Muhammad Abdul Karim*⁽²⁾ was any reference made to the decisions of the Privy Council in *Buta v. Municipal Committee of Lahore*⁽³⁾ and *Amir Begam v. Badr-ud-din Husain*⁽⁴⁾ but these cases seem to be directly in point and conclusive. In both these cases it was held by the Judicial Committee that if the part made with jurisdiction could be separated from the rest, then the former part of the award was valid and could be maintained. There is, therefore, no occasion to refer the question to a Full Bench even if it could be held that the point now raised was directly decided in *Jaldhari Rai v. Muhammad Abdul Karim* ⁽²⁾.

S. A. K.

Appeal dismissed.

APPELLATE CIVIL.

Before Mullick and Ross, J.J.

1925.

March, 17,
18.

MUSSAMMAT BIBI KHODAJATUL KOBRA

v.

HARIHAR MISSIR.*

Code of Civil Procedure, 1908 (Act V of 1908), sections 37 and 38—Decree made by Additional Subordinate Judge—court abolished but subsequently re-established—application for execution—New Additional Subordinate Judge, jurisdiction of, to execute the decree—“ceased to exist”, meaning of.

* Appeal from Appellate Order nos. 171 and 172 of 1924, from an order of F. F. Madan, Esq., I.C.S., District Judge of Gaya, dated the 23rd April, 1924, reversing an order of B. Jajindra Nath Ghosh, Subordinate Judge of Gaya, dated the 15th December, 1923.

(1) (1919) 4 Pat. L. J. 394.

(2) (1923) All. Ind. Rep. (Pat.) 470.

(3) (1902) I. L. R. 29 Cal. 854; L. R. 29 I. A. 168.

(4) (1916) I. L. R. 86 All. 386, P.C.

Two decrees were made on 21st August, 1920, by the Additional Subordinate Judge. Sometime afterwards the Court of the Additional Subordinate Judge was abolished, and the business of that Court was transferred to the 3rd Subordinate Judge's Court. Subsequently the Court of the Additional Judge was re-established, and, on the 27th August, 1923, two applications were made to it for the execution of the decrees of 1920. The Additional Subordinate Judge held that he had jurisdiction to entertain the applications. 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 which passed the decree.

Held, on second appeal, that under sub-clause (6) of section 37, Civil Procedure Code, the new Additional Subordinate Judge had jurisdiction to execute the decree as he had jurisdiction to try the suit to which the decree related, there being nothing on the record to show that he had not got jurisdiction to try such a suit.

Held, also, 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.

Tara Chand Marwari v. Ram Nath Singh(1), distinguished.

Appeals by the decree-holders.

These two appeals arose out of two orders made by the District Judge of Gaya on the 23rd April, 1924, setting aside two orders made on the 15th December, 1923, by the Additional Subordinate Judge of that district.

The events leading up to the last mentioned orders were as follows. Two decrees were made on the 21st August, 1920, by the Additional Subordinate Judge of Gaya. Some time afterwards, it was not known on what precise date, the Court of the Additional Subordinate Judge was abolished and the business of

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(1) (1906) 4 Cal. L. J. 473.

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that Court was transferred to the 3rd Subordinate Judge's Court. Subsequently the additional Court was re-established, and, on the 27th August, 1923, two applications were made to it for the execution of those decrees, and on the 15th December, 1923, the Court held that it had jurisdiction to entertain the applications.

Against this decision two appeals were preferred before the District Judge who disagreed with the Additional Subordinate Judge and held that the Additional Subordinate Judge had no jurisdiction and that the execution applications must be dismissed.

Syed Nurul Hasan, for the appellants.

S. N. Roy, for the respondents.

MULLICK, J. (after stating the facts as set out above, proceeded as follows): The decision of this appeal turns upon sections 37 and 38 of the Civil Procedure Code of 1908. The learned District Judge is of opinion that the Additional Subordinate Judge's Court having ceased to exist, the present Additional Subordinate Judge's Court cannot be the Court which passed the decree, and therefore is not competent to entertain the execution application. The learned Judge does not address himself to the latter part of sub-clause (b) of section 37 which provides that if the Court of first instance has ceased to exist or to have jurisdiction to execute the decree the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such a suit, shall be included within the expression "the Court which passed the decree". Therefore, even if it be held in this case that the Court of first instance has ceased to exist, the present Additional Subordinate Judge would have jurisdiction to execute the decree if he has jurisdiction to try the suit to which the decree relates. Now there is nothing on the record to show that the present Additional Subordinate Judge has

not got jurisdiction to try the suit. Ordinarily Additional Subordinate Judges have jurisdiction over the whole district and unless that jurisdiction has been curtailed by an express order made by the local Government under section 13 of the Civil Courts Act or in consequence of re-arrangement of business made by the District Judge under sub-clause (2) of that section it must be assumed that the Additional Subordinate Judge has jurisdiction to try the suit and therefore also to execute the decree.

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In point of fact I doubt if it can be said that the Court of the Additional Subordinate Judge has ceased to exist. What has happened is that the Court was temporarily abolished and was re-established and that at the time when the application for execution was made it was in fact in existence. It is contended that the expression "ceased to exist" means "is not in existence at the time when the application for execution is made". If that view is accepted, then the Court of the present Additional Subordinate Judge being the Court which passed the decree has jurisdiction to execute it. The argument of the respondents is that if a Court once ceases to exist that Court cannot again be revived and that although another Court of the same designation is established within the district with the same jurisdiction it cannot be said that it is the same Court. Now "Courts" in the Civil Courts Act are designated by their titles and if there are more Courts than one of the same designation, then they are further distinguished by numerals. If the officer presiding over the Court of the 1st Subordinate Judge is temporarily transferred and after an interval another officer is appointed to preside over that Court it would not be a straining of ordinary language to hold that the 1st Court ceased to exist but has been re-established. I am of opinion that in this case the Court of the present Additional Subordinate Judge being a Court of the same designation bears the impress of the identity of the Court which was abolished.

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In this view, the latter part of section 37, clause (b), is not required for the purposes of this case: nor has the third sub-clause of section 13 any application.

Reference has been made to section 17 of the Civil Courts Act; but that also has no application to this case, because it does not relate to execution proceedings.

MULLICK, J.

The decision in *Tara Chand Marwari v. Ram Nath Singh*⁽¹⁾ appears at first sight to be against the view which we have just taken; but on an examination of the facts of the case it would seem that the decision there turned upon the question whether there was at the time when the application for execution was made any Additional Subordinate Judge in the district. Apparently there was not and therefore the permanent Subordinate Judge of the district assumed jurisdiction over the case. But while the execution case was proceeding, another officer was posted to the district as Additional Subordinate Judge and the question arose whether the permanent Judge ceased to have jurisdiction to continue the execution proceedings which were pending before him. It was held that he had jurisdiction to continue the proceedings. Reference was incidentally made in that decision to section 17 of the Civil Courts Act; but it is not clear how that section applied.

The result is that upon the provisions of the Civil Procedure Code it seems quite clear that the learned District Judge's order cannot be supported and that the Additional Subordinate Judge's order was correct.

The appeals therefore will be decreed with costs. There will be separate costs in each case.

Ross, J.—I agree.

S. A. K.

Appeals decreed.