

found for the view expressed, though somewhat tentatively, in the case of *Jagabandhu Saha v. Hari Mohan Roy*⁽¹⁾ that the executing court has any of the suggested power to go behind the decree which it is ordered to execute. For this reason I think the judgment of the Subordinate Judge on the preliminary point is erroneous. He has no power to discuss the validity of the terms of the decree which he is directed to execute. The matter must be remanded to him to try the objection case on its merits and the judgment-debtor must pay the costs of this court and of the lower court.

SAUNDERS, J.—I agree.

Appeal allowed.

Case remanded.

APPELLATE CIVIL.

Before Courtney Terrell, C. J. and Saunders, J.

CHANDMAL MARWARI

v.

RAJA SHIBA PRASAD SINGH.*

Execution—constitution of Civil Courts—Bengal, Agra and Assam Civil Courts Act, 1887 (Act XII of 1887), section 3—court of Subordinate Judge and court of Additional Subordinate Judge, whether one—section 13, effect of—division of work between the two courts, whether affects jurisdiction—suit in respect of property situated in Dhanbad instituted in the court of Subordinate Judge of Manbhumi sitting at Purulia—decree passed by that court—subsequent Government notification establishing court of Subordinate Judge at Dhanbad in the district of Manbhumi—execution levied in the court of Subordinate Judge of Manbhumi, whether bad—notification, effect of—decree-holder, whether can apply to the court which

* Appeals from Original Order nos. 225, 226 and 274 to 277 of 1931, from an order of Babu Jitendra Nath Ghosh, Subordinate Judge of Manbhumi, dated the 29th August, 1931.

(1) (1921) 62 Ind. Cas. 653.

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passed the decree for execution in respect of property outside the territorial jurisdiction of such court—Privy Council costs, whether carry interest unless specifically mentioned.

The various classes of Civil Courts established by section 3 of the Bengal, Agra and Assam Civil Courts Act, 1887, are (1) the court of the District Judge; (2) the court of the Additional Judge; (3) the court of the Subordinate Judge; and (4) the court of the Munsif. When there is too much work for a single Subordinate Judge to do, an Additional Subordinate Judge is appointed to assist him. The division of work between the Subordinate Judge and his assistant may be settled in one of two ways. Either the Government under section 13 (1) may prescribe territorial limits or the matter may be left to the discretion of the District Judge who may divide the work either according to the territorial limits or according to the magnitude or class of cases as he may think fit.

Held, (i) that in either case there is but one court of the Subordinate Judge though two or more individuals may exercise the jurisdiction of that court within the district;

(ii) that suits are not instituted "in the court of the Additional Subordinate Judge" but in the court of the Subordinate Judge, the question of the individual before whom the case is ultimately heard depending upon the order which may be passed in pursuance of sub-sections (1) and (2) of section 13.

The appellants instituted a suit in 1911 in the court of the Subordinate Judge of Manbhūm (who at that time sat at Purulia) for possession of certain lands situated in the subdivision of Dhanbad. The suit was decreed but an appeal by the respondents to the High Court was successful and the judgment of the High Court was affirmed by the Privy Council. The suit was accordingly dismissed with costs. In 1931 the respondents applied for execution of the decree for costs in the court of the Subordinate Judge of Manbhūm sitting at Purulia. Since 1911 when the suit was begun, by an order of the Lieutenant-Governor of Bihar and Orissa

"In exercise of the powers conferred by section 13, sub-section (1) of the Bengal, Agra and Assam Civil Courts Act (Act XII of 1887) the Lieutenant-Governor in Council is pleased to establish with effect from the 31st October, 1917, a Subordinate Judge's court at

Dhanbad in the district of Manbhum, and to fix with effect from that date the local limits of the executive subdivision of Dhanbad as the local limits of his jurisdiction."

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By an order of the same date

"In exercise of the powers conferred by section 13, sub-section (7) of the Bengal, Agra and Assam Civil Courts Act (Act XII of 1887), the Lieutenant-Governor in Council is pleased to declare that the local limits of the executive subdivision of Dhanbad ceased to be included in the local limits of the Subordinate Judge of Purulia with effect from the 31st October, 1917."

The respondents sought to sell in execution lands situated in the subdivision of Purulia, that is to say, outside the subdivision of Dhanbad. The appellants resisted the execution on the ground that the proper court in which to institute the execution case was that of the Additional Subordinate Judge of Dhanbad and not the Subordinate Judge sitting at Purulia.

Held, (i) that the effect of the notification issued under the Act was not to transfer the jurisdiction of the court sitting at Purulia to the court sitting at Dhanbad but to divide between two individuals the jurisdiction of the Subordinate Judge in the district of Manbhum;

(ii) that although, when the suit was instituted in the court of the Subordinate Judge of Manbhum, the business of that court was transacted at Purulia and the Subordinate Judge stayed there, it was open to the Government to fix the holding of the court for the district of Manbhum at any convenient place;

(iii) that, therefore, the mere fact that for administrative purposes the court of the Subordinate Judge was divided between the Subordinate Judge and an Additional Subordinate Judge and that a certain class of business or area had been allotted to the Additional Subordinate Judge did not make the court of the Subordinate Judge sitting at Purulia any the less the court of the Subordinate Judge of Manbhum nor did it prevent it from executing the decree.

Seeni Nadan v. Muthusamy Pillai(1), followed.

(iv) that if it had been the fact that the court of the Subordinate Judge of Manbhum sitting at Purulia neither at

(1) (1919) I. L. R. 43 Mad. 821.

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the time of the suit nor at the time of the application for execution had jurisdiction over the property against which execution was asked the application would have been bad.

Prem Chand Dey v. Mokhoda Debi(1), followed.

A decree-holder has the right to apply as of course to the court which passed the decree for its execution even if it be in respect of property outside the territorial jurisdiction of such court and even if execution by such court can be no more than execution by transmission to another court. Such an application can be entertained by such a court and if made within time would save limitation.

Sreenath Chakravarti v. Priyanath Bandopadhya(2), followed.

The costs of the Privy Council do not carry interest unless such interest is specifically mentioned.

Appeal nos. 225 and 226 by the judgment-debtors.

Appeal nos. 274 to 277 by the decree-holders.

The facts of the case material to this report are stated in the judgment of Courtney Terrell, C. J.

P. R. Das and *M. K. Mukharji*, for the appellants in M. A. 225 and 226, and the respondents in M. A. 274 to 277.

Sir Sultan Ahmed (with him *S. C. Bose* and *N. N. Roy*), for the appellants in M. A. 274 to 277 and the respondents in M. A. 225 and 226.

COURTNEY TERRELL, C. J.—The first point for decision in these appeals is as to the proper court for the execution of a decree against the appellants in favour of the respondents. The suit was instituted by the appellants in the year 1911 in the court of the Subordinate Judge of Manbhum (who at that time sat at Purulia) for possession of certain lands situated in the subdivision of Dhanbad and for mesne profits. The suit was decreed but an appeal by the respondents

(1) (1890) I. L. R. 17 Cal. 699, F. B.

(2) (1930) 35 Cal. W. N. 77.

to the High Court was successful and the judgment of the High Court was affirmed by the Privy Council. The suit was accordingly dismissed with costs.

In the month of February, 1931, the respondents, the present decree-holders, applied for execution in the court of the Subordinate Judge of Manbhum sitting at Purulia. Since 1911 when the suit was begun, by an order of the Lieutenant-Governor of Bihar and Orissa (no. 233-A.P., dated the 1st December, 1917, duly published in the *Bihar and Orissa Gazette*)

" In exercise of the powers conferred by section 13, sub-section (1) of the Bengal, Agra and Assam Civil Courts Act (Act XII of 1887) the Lieutenant-Governor in Council is pleased to establish with effect from the 31st October, 1917, a Subordinate Judge's court at Dhanbad in the district of Manbhum, and to fix with effect from that date the local limits of the executive Subdivision of Dhanbad as the local limits of his jurisdiction."

By an order of the same date (no. 235-A.P.)

" In exercise of the powers conferred by section 13, sub-section (1) of the Bengal, Agra and Assam Civil Courts Act (Act XII of 1887), the Lieutenant-Governor in Council is pleased to declare that the local limits of the executive Subdivision of Dhanbad ceased to be included in the local limits of the Subordinate Judge of Purulia with effect from the 31st October, 1917."

The respondents decree-holders sought to sell in execution lands situated in the subdivision of Purulia, that is to say, outside the subdivision of Dhanbad. The appellants judgment-debtors resisted the execution on the ground that the proper court in which to institute an execution case was that of the Additional Subordinate Judge of Dhanbad and argued that the Subordinate Judge sitting at Purulia had no proper jurisdiction though it was admitted that the case might afterwards be transferred to him. They rely on sections 13(1) and 17(1) of Act XII of 1887. This Act established Civil Courts for Bengal, Bihar and Assam. By section 3 it is enacted

" There shall be the following classes of Civil Courts under this Act, namely:—(1) the Court of the District Judge; (2) the Court of the Additional Judge; (3) the Court of the Subordinate Judge; and (4) the Court of the Munsif."

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By section 13 (1) the Local Government may, by notification in the official Gazette, fix and alter the local limits of the jurisdiction of any Civil Court under this Act and by sub-section (2) if the same local jurisdiction is assigned to two or more Subordinate Judges or to two or more Munsifs, the District Judge may assign to each of them such civil business cognizable by the Subordinate Judge or Munsif, as the case may be, as, subject to any general or special orders of the High Court, he thinks fit. Section 17 is as follows:—

“(1) Where any Civil Court under this Act has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of the former Court has been transferred.”

“(2) Nothing in this section applies to cases for which provision is made in section 623 or section 649 of the Code of Civil Procedure or in any other enactment for the time being in force.”

(Under the Code of Civil Procedure of 1908 the references are to sections 36, 37 and 114 and Rule 1 of Order XLVII).

By section 37 of the Code of Civil Procedure :

“The expression ‘Court which passed a decree’ or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include :—.....

(b) Where the Court of first instance has ceased to exist or to have jurisdiction to execute it, 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 suit.”

Now it is clear that the various classes of courts are established by section 3 of Act XII of 1887 and no such court as that of the “Additional Subordinate Judge of Dhanbad” exists. When there is too much work for a single Subordinate Judge to do an Additional Subordinate Judge is appointed to assist him. The division of work between the Subordinate Judge and his assistant may be settled in one of two ways. Either the Government under section 13 (1) may

prescribe territorial limits as was done in this particular case or the matter may be left to the discretion of the District Judge who may divide the work either according to territorial limits or according to the magnitude or class of cases as he may think fit. In either case there is but one court of the Subordinate Judge though two or more individuals may exercise the jurisdiction of that court within the district. Suits are not instituted "in the court of the additional Subordinate Judge" but in the court of the Subordinate Judge, the question of the individual before whom the case is ultimately heard depending upon the orders which may be passed in pursuance of sub-sections (1) and (2) of section 13 above quoted. Section 17 (1) has no application at all. The case is not one in which "A civil Court under this Act" has ceased to have jurisdiction with respect to any case. Moreover sub-section (2) expressly states that nothing in the section applies to cases for which provision is made by section 37 of the Code of Civil Procedure and by paragraph (2) of section 37 the words "court which passed the decree" are to include the court which would have jurisdiction to try the suit if it were instituted at the time of making the application for execution. That section, however, though including such court does not exclude the court wherein the decree was passed.

In my opinion the effect of the notifications issued under the Act was not to transfer the jurisdiction of the court sitting at Purulia to the court sitting at Dhanbad but to divide between two individuals the jurisdiction of the Subordinate Judge in the district of Manbhum and in this case the suit was begun in the court of the Subordinate Judge at Manbhum. It is true that at that time the business of the court was transacted at Purulia and the Subordinate Judge stayed there but it was open to the Government to fix the holding of the court for the district of Manbhum at any convenient place. The suit was instituted in the court of the Subordinate Judge of Manbhum sitting at Purulia and the decree was passed by that

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court. The mere fact that for administrative purposes the court of the Subordinate Judge is now divided between the Subordinate Judge and an Additional Subordinate Judge and that a certain class of business or an area has been allotted to the Additional Subordinate Judge does not make the court of the Subordinate Judge sitting at Purulia any the less the court of the Subordinate Judge of Manbhum nor does it prevent it from executing the decree. If as between two or more Subordinate Judges' courts within a district the identity of any particular court had to be fixed by territorial limits the identity of the court might easily change from time to time and applicants for execution would have an intolerable burden thrown upon them in finding the court for execution of their decrees.

In the case of *Seeni Nadan v. Muthusamy Pillali*(1) Chief Justice Sir John Wallis said :

“ The question really is, whether a litigant who has been authorized to bring his suit in a particular court and has obtained a decree in such court in his favour, which he is strictly bound to execute within the time limited in Article 182, is not entitled to apply as of course to that court as the proper court for the purpose of saving limitation under the article, or whether, when he decides to apply for execution possibly at the last moment, he is bound to stop and inquire whether the limits of the territorial jurisdiction of the court which passed the decree have been altered, and if so, whether the immovable property which is the subject of the suit or the place where the cause of action arose was within the limits of the transferred area, on pain of losing his right to execute under the article if he omits to make these inquiries or comes to a wrong conclusion when he makes them. This last proposition is so unreasonable and involves such hardships to the decree-holder in a country such

(1) (1919) I. L. R. 42 Mad. 821.

as India with a stringent law of limitation that we should hesitate to impute such an intention to the legislature if we can possibly avoid it."

If it had been the fact that the court of the Subordinate Judge of Manbhum sitting at Purulia neither at the time of the suit nor at the time of the application for execution had jurisdiction over the property against which execution was asked it is clear that the application would have been bad. [*See Prem Chand Dey v. Mokhoda Debi*(¹)]. That is not the case. Both at the time of the suit and at the time of the application for execution the court at Purulia had jurisdiction over the property now sought to be sold. But the decree-holders had always and still have the right to apply as of course to the court which passed the decree for its execution even if it be in respect of property outside the territorial jurisdiction of such court and even if execution by such court can be no more than execution by transmission to another court. Such an application can be entertained by such a court and if made within time would save limitation. [*See Sreenath Chakravarti v. Priyanath Bandopadhyaya*(²)]. Here the execution case was instituted in the proper court and there is no force in the contention of the appellants on this point.

A further point urged by the appellants related to the question as to whether the decree of the Privy Council covered interest on the costs of the High Court and those of the trial court in view of the fact that the judgment of their Lordships contains no reference to such interest. But the decree of the Privy Council affirms the judgment of the High Court which admittedly would have carried such interest. The learned Subordinate Judge thought that the lack of specific mention of interest in the Privy Council decree would eliminate such interest from the amount sought to be raised by execution. It was not seriously argued that his view could be supported on this point.

(1) (1890) I. L. R. 17 Cal. 699.

(2) (1930) 35 Cal. W. N. 77.

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There is also a cross-appeal by the decree-holders against the decision of the learned Subordinate Judge refusing to allow interest on the costs awarded by the Privy Council. In this matter it is clear that the Subordinate Judge was right and the learned Advocate for the decree-holders admitted that he could not seriously support the appeal. It has long been held that the costs of the Privy Council do not carry interest unless such interest is specifically mentioned.

In the result I would, save in the matter of the interest on the High Court and trial court costs, dismiss the appeals both of the judgment-debtors and the decree-holders. There will be no order as to costs.

SAUNDERS, J.—I agree.

Appeals dismissed.

APPELLATE CIVIL.

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Sept. 7, 11.

Before Courtney Terrell, C. J. and Saunders, J.

MUKTI RAM MARWARI

v.

FIRM GANGA RAM.*

Provincial Insolvency Act, 1920 (Act V of 1920), sections 4, 51 and 52—sale of debtor's property after adjudication—no notice to receiver—sale, whether is a nullity—court, power of, to annul sale and delivery of possession—section 4—decree-holder purchaser having notice of insolvency proceeding, whether entitled to protection afforded by section 51(3).

On the 23rd of April, 1928, the judgment-debtor filed a petition for an adjudication of insolvency. In December, 1928, one of the creditors, who had in the meantime brought a suit for money due to him by the debtor, obtained a decree and on the 23rd March, 1929, applied for execution. On the

* Appeal from Original Order no. 41 of 1932, from an order of H. R. Meredith, Esq., I.C.S., District Judge of Monghyr, dated the 2nd February, 1932.