

I therefore hold that the construction put by the learned Additional District Judge on Rule 1, Order 47, is correct and this application for revision must be dismissed.

1927
 MA HTA YI
 v.
 MA PWA
 HNIT.
 MAUNG BA,
 J.

APPELLATE CIVIL.

Before Mr. Justice Maung Ba.

KO SIT KAUNG AND ONE

v.

PERIAKARUPPAN.*

1927
 June 28.

Civil Procedure Code (Act V of 1908), s. 39, O. 21, rr. 5, 6—Transfer of decree for execution—Same Judge presiding over the two Courts in one place, effect of.

Held, that where the same Judge presides over two Courts in the same place and has only one common clerical establishment, it is not material irregularity if the judge without transferring a decree for execution from one such Court to the other in accordance with the provisions of Order 21, Rule 6 of the Civil Procedure Code, attaches property in execution of the decree of the former Court situate within the jurisdiction of the latter Court.

Prem Chand Dey v. Mohkoda Debi, 17 Cal. 699—*distinguished*.

Surti—for Applicant.

MAUNG BA, J.—In this revision case an interesting point of law has arisen.

The Subdivisional Judge of Twante in execution of a decree passed by him as Subdivisional Judge of Twante attached property which is situated within the local limits of the Subdivisional Court of Kyauktan without a previous transfer of the decree under Order XXI, Rule 6.

The Subdivisional Judge was asked to remove the attachment on the ground *inter alia* that the attachment was bad for want of jurisdiction. The

* Civil Revision No. 95 of 1927.

1927

KO SIT
KACNG
AND ONE

v.
PERIA-
KARUPPAN.

MAUNG BA,
J.

Subdivisional Judge overruled the objection. The present application has been made to revise that decision. Section 39 of the Civil Procedure Code provides how a decree may be executed where a person against whom the decree is passed has property within the jurisdiction of another Court. The Court may in such a case transfer the decree to the other Court. On making such a transfer, Rule 6 of Order XXI mentions three documents which should be transmitted.

A Full Bench of the Calcutta High Court in the case of *Prem Chand Dey v. Mokhoda Debi* (1), has held that a Court has no jurisdiction, in execution of a decree, to sell property over which it had no territorial jurisdiction at the time it passed the order of sale and that such a sale must be set aside as being without jurisdiction.

It has been urged that the same principle should ordinarily apply to the present attachment. No difficulty would be experienced in applying that principle if the Subdivisional Court at Twante and the Subdivisional Court at Kyauktan were presided over by different Judges. But in the present case the two Courts were presided over by one Judge who sat at Rangoon. No doubt it might appear ridiculous for the Judge to transfer the decree to himself with all the necessary documents. Actually the Judge sat in one office and had the same clerical establishment. The object of transmitting those documents is to convey the necessary information to the Judge of the other Court. In the present case there was no necessity to transmit such information because the same Judge sat at the same place as Judge of the two Courts. Possibly the system of one Judge presiding over more than one Court is

(1) (1890) 17 Cal. 699.

peculiar to Burma and not known in India. The Civil Procedure Code has made no provision for such exigency. Rule 5 of Order XXI says where the Court to which a decree is to be sent for execution is situated within the same district as the Court which passed such decree, such Court shall send the same direct to the former Court. As the two Courts are situated in the same district and if the law, as it stands, is to be literally enforced, the Subdivisional Judge might as well pass the record from one hand to the other. It must be conceded that the omission to make a formal transfer in the present case amounts to an irregularity but in my opinion that irregularity is not a material irregularity affecting the jurisdiction of the Court.

I therefore hold that it is not a fit case to exercise the powers of revision under section 115 seeing that there has been no material irregularity accompanied by substantial failure of justice.

The application is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Mya Bu.

KO BA CHIT AND THREE

v.

KO THAN DAING AND ONE.*

1927

KO SIT
KAUNG
AND ONE

v.
PERIA-
KARUPPAN.

MAUNG BA,
J.

1927

June 28.

Specific performance of contract for sale, decree for—Court's power to fix date for performance and its discretion to extend time—Order granting extension not appealable.

Held, that if no date has been fixed in a decree for specific performance of a contract of sale, such a date may be fixed by the Court which made the decree after the decree has been passed, and that, whether the date is fixed in the decree or in a subsequent order, the Court which made the decree has a discretion to extend the time. Such an order is not appealable.

* Civil First Appeal No. 114 of 1927.