

## APPELLATE CIVIL.

Before Mr. Justice Baguley, and Mr. Justice Mosely.

## U PO MYA v. FATHER RIOUFREYT.\*

1938

Mar. 8.

*Execution—Order confirming sale—Application to re-open case—Appeal from order of refusal—Administration suit—Defendants claiming relief under decree—Court-fees—Pecuniary jurisdiction of Court—Plaintiff's valuation in plaint—Decretal amount exceeding pecuniary jurisdiction—Execution by Court passing the decree—Execution by transferee Court—Pecuniary jurisdiction of executing Court—Civil Procedure Code, O. 9, r. 13; O. 20, r. 13; O. 21, r. 8.*

No appeal lies from an order refusing to re-open a case in which an order of confirmation of sale held in execution of a decree has been made. Order 9, r. 13 of the Civil Procedure Code has no application to execution proceedings, but only to decrees in suits or in proceedings in administration or guardianship akin to suits.

*Thakur v. Fakir-ullah*, 22 I.A. 44, referred to.

In an administration suit the defendants who claim to come in under O. 20, r. 13 of the Code must pay their Court fees if they wish to obtain relief under the decree.

*Shashi Bhushan Bose v. Nandy*, I.L.R. 44 Cal. 890, referred to.

The plaintiff's valuation in his plaint determines the jurisdiction of the Court and the Court is competent to execute its own decree, although the amount found and decreed by the Court exceeds the limit of its pecuniary jurisdiction.

*A.K.A.C.T.V. Chettyar v. A.L.P.R.S. Chettyar*, [1937] Ran. 214; *Mungul Prasad v. Chowdhury*, 8 I.A. 123; *Shamrao v. Ranaji*, I.L.R. 10 Bom. 200, referred to.

[Question whether the pecuniary jurisdiction of the Court to which the decree is transferred for execution depends on the value of the suit at the time of its institution or on the amount of the decree considered and decided. Subsequent change of the law stated.]

*Kyaw Din* for the appellant.

*Clark* for the respondent.

MOSELY, J.—This purports to be an appeal under Order 43, rule 1 clause (j) but is really under clause (d) of Order 40, rule 1 of the Civil Procedure Code.

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\* Civil Misc. Appeal No. 64 of 1937 from the order of the Assistant District Court of Pegu in Civil Execution No. 22 of 1936.

The circumstances are as follows. The plaintiff Khin Ma Gyi filed a suit for accounts or an administration suit against the defendant judgment-debtor and present appellant U Po Mya, in which she valued her share of the inheritance of U Po Set deceased at Rs. 5,100. Three other defendants, Khin Maung Lat, Khin Maung Pyon and Ma Khin Nwe made common cause with her, and a decree was passed to the effect that the defendant, U Po Mya, should deliver to these four persons 125 acres of unspecified paddy land, or its value Rs. 7,500, *plus* Rs. 13,500 in cash, the total amount decreed being Rs. 21,000 and costs. The decree was passed in the Assistant District Court of Insein, where execution was opened. The decree was also transferred, under section 39 of the Code, read with Order 21, rule 5, to the District Court of Pegu, which transferred it under rule 8 to the Assistant District Court, Pegu, for disposal.\*

Certain property of the judgment-debtor, Po Mya, was sold in execution for Rs. 3,500 on the 9th June and the 21st July was fixed for confirmation of the sale. On the 13th July the judgment-debtor filed an application to stay confirmation of the sale pending orders of the Assistant District Court of Insein. The grounds of the application appear to have been that certain payments had been made at Insein, and an application had been made there for the payment of the balance by instalments and, therefore, the order of confirmation of the sale should be postponed. Notice was duly issued to the other side for the 21st July, but the advocate for the judgment-debtor failed to appear, and it was ordered that the sale be confirmed and the certificate of execution sent to the issuing Court. Later that day the judgment-debtor's advocate and the

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\*The respondent is the assignee of the decree-holders—*Ed.*

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judgment-debtor appeared. The diary merely records their appearance on the 7th August. The judgment-debtor's advocate applied for reopening of his application which was refused as the certificate had been sent on the 21st July (after the advocate had appeared).

It is clear, as is contended by the respondent in this appeal, that no appeal lies. Order 9, rule 13, has no application to execution proceedings, but only to decrees in suits or in proceedings in administration or guardianship akin to suits, *vide Thakur Pershad v. Sheikh Fakir-ullah and another* (1).

It may be that the Judge would have been acting more considerately if, when the advocate appeared later he had heard him, or had cancelled his previous order and given a subsequent opportunity of hearing; but as I have said no appeal lies, and I do not consider that any case has been made out for interference in revision.

There are two other matters, however, in the case which call for notice. The plaintiff alone has stamped her plaint, and the defendants who claim to come in under the provisions of Order 20, rule 13, sub-section 2, have not paid any Court fees. Under section 11 of the Court Fees Act, in a suit for accounts if the amount decreed is in excess of the amount at which the plaintiff valued the relief sought, the decree is not to be executed until the difference between the fee actually paid and the fee which would have been paid had the suit comprised the whole amount decreed shall have been paid. Under section 149 of the Code, no doubt, the Court may allow further time for payment of the deficit Court-fees. So far as I know, it is the practice in the mofussil to demand payment of Court fees from defendants, who come in under a preliminary decree in administration suits, and I see no reason why they should

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(1) (1894) 22 I.A. 44, 50.

obtain relief under the decree without payment of the proper court fee. There is, curiously enough, no authority for the practice in this Province. The only authority which I could find on the subject is *Shashi Bhushan Bose v. Manindra Chandra Nandy* (1). In my opinion that authority is correct.

The other matter for consideration and the one which has occupied most of the time of the Court is the question whether the Assistant District Court of Pegu can execute a decree the amount of which is beyond the limits of its ordinary civil jurisdiction. That is the form in which the question has been raised, but I consider it a wrong form. The proper form in my opinion would be whether the Court has jurisdiction to entertain an application in execution of a decree in a suit which is beyond its ordinary pecuniary jurisdiction, and whether the suit in question was actually beyond the ordinary pecuniary jurisdiction of the Court.

It was held by a Full Bench of this Court in *A.K.A.C.T.V. Chidambaram Chettyar v A.L.P.R.S. Muthia Chettyar* (2) that it is the plaintiff's valuation in his plaint which fixes the jurisdiction of the Court, and not the amount which may be found and decreed by the Court; so therefore in a suit for accounts if the plaintiff values his relief at Rs. 5,100 and brings a suit in the Court competent under section 7 of the Burma Courts Act XI of 1922, to try a suit of that value, the Court may grant a decree for Rs. 21,000 as was done here. The argument is that the original jurisdiction cannot be ousted by a subsequent finding as to the amount of the relief claimed or mesne profits,—a finding which the Court is authorized by the Code to make.

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(1) (1916) I.L.R. 44 Cal. 890.

(2) [1937] Ran. 214.

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Mr. Clark, for the respondent, contends, rightly in my opinion, that if the Court of the Assistant District Judge had jurisdiction to pass the decree for Rs. 21,000 (the limit of its ordinary jurisdiction is Rs. 15,000), then it must have jurisdiction to execute its own decree, for execution proceedings are merely further proceedings in the suit in which the decree was obtained, *vide Mungul Prasad Dichit and another v. Grija Kant Chowdhury* (1). The same conclusion was arrived at in *Shamrav Pangoji and others v. Niloji Ranaji and others* (2).

From this Mr. Clark argues that if the Assistant District Court, Insein, was competent to execute its own decree then the Assistant District Court, Pegu, was equally competent to execute it. The Burma Courts Act (following section 6 of the Code) contains provisions as to jurisdiction in suits only, and has no special provision for jurisdiction in execution proceedings. Jurisdiction in suits is governed, of course, by the value placed on the subject-matter of the suit in the plaint at institution. There was under the old Code, which corresponds in this respect with the new one save in one particular, a conflict of opinion as to whether section 223 (corresponding to section 39 sub-section 1 of the present Code), which allows the Court which passed a decree to send it for execution to another Court where the judgment-debtor resides or works or has property, etc., does (though not in terms) require that the executing Court shall be a competent Court.

[His Lordship considered various rulings of the Indian High Courts : *Narasayya v. Venkatakrishtnayya* (3); *Shanmuga Pillai v. Ramanathan Chetti* (4);

(1) (1881) 8 I.A. 123, 133.

(2) (1885) I.L.R. 10 Bom. 200.

(3) (1894) I.L.R. 7 Mad. 397.

(4) (1884) I.L.R. 17 Mad. 309.

*Shri Sidheswar Pandit v. Shri Harihar Pandit* (1); *Gokul Kristo Chunder v. Chatterjee* (2); *Durga Charan Mojumdar v. Umataru Gupta* (3); *Shamsundar Saha v. Anath Bandhi Saha* (4). His Lordship also referred to s. 6 and Order 21, rule 4 of the Civil Procedure Code and to the section (quoted in Woodroffe & Ameer Ali's Civil Procedure Code, 2nd ed., page 224) which was proposed to be put in the Code, but which was not inserted. Sub-section (1) of the proposed section read: "Save for the purpose of rateable distribution . . . no Court shall execute a decree which, by reason of the value or the nature of the suit at the time of its institution, it would have been incompetent to pass." His Lordship said that according to the Calcutta and Bombay decisions and the proposed legislation the criterion of the pecuniary jurisdiction of the executing Court was not the amount of the decree, but the value of the suit at the time of its institution. His Lordship held that the Assistant District Court of Pegu was competent to entertain the application in execution. Baguley J. concurred.

This portion of the judgment has been rendered obsolete by the subsequent amendment of O. 21, r. 8 by the High Court (by notification dated 6th July 1938) which now reads: ". . . the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court whose pecuniary jurisdiction is not less than the amount of the decree."]

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(1) (1887) I.L.R. 12 Bom. 155.

(3) (1889) I.L.R. 16 Cal. 465.

(2) (1889) I.L.R. 16 Cal. 457.

(4) (1910) I.L.R. 37 Cal. 574.