

the will is a suit for declaration, though brought after the testator's death. The words "after the death of the alienor" define the nature of the suit and not the time at which it is brought. Such a suit may be brought before or after the testator's death provided the statutory period has not expired. In this case that period had expired before the suit was instituted.

The appeal must fail and the suit must be dismissed with costs throughout in all Courts.

N. F. E.

*Appeal dismissed*

**APPELLATE CIVIL.**

*Before Addison and Coldstream JJ.*

**GHULAM MOHAMMAD (DECREE-HOLDER)**

Appellant

*versus*

**MST. FAZAL NISHAN (JUDGMENT-DEBTOR)**

Respondent.

**Civil Appeal No. 1759 of 1929.**

*Execution of decree—passed by Court in excess of its pecuniary jurisdiction—whether executing Court can question the validity of the decree—Civil Procedure Code, Act V of 1908, Order XXI, rule 7 (section 225 of Act XIV of 1882).*

A Subordinate Judge, 4th Class, having passed a compromise-decree for pre-emption on payment of Rs. 1,100 (the Court's pecuniary jurisdiction being limited to Rs. 1,000) it was objected in execution proceedings that the decree was a nullity as it had been passed by a Court without jurisdiction.

*Held*, that the words "or of the jurisdiction of the Court which passed it" which existed in section 225 of the old Code of Civil Procedure having been omitted in Order XXI, Rule 7 of the new Code of 1908 the executing Court has no power to question the validity of the decree on the ground of want of jurisdiction of the Court which passed it.

1931

HARNAMAN

v.

MST. TABI.

HARRISON J.

1931

May 7.

1931

GHULAM  
MOHAMMAD  
v.  
MST. FAZAL  
NISHAN

*Sheopat Rai v. Harak Chand* (1), *Lahore Bank v. Ghulam Jilani* (2), *Hari Govind v. Narsingrao Konherra* (3), *Ramchandra Govind v. Jayanta* (4), *Ramnath v. Gajanan* (5), *Zamindar of Ettiyapuram v. Chidambarram Chetty* (6), and *Ram Charan v. Salik Ram* (7), followed.

*Jugli Lal v. Laddu Ram* (8), and *Gora Chand v. Prafulla Kumar Roy* (9), not followed.

*Miscellaneous appeal from the order of Lala Jaswant Rai, Taneja, District Judge, Jhelum, dated the 1st May 1929, reversing that of Diwan Sita Ram, Senior Subordinate Judge, Jhelum, dated the 14th December 1928, and ordering that the execution of the void decree could not proceed.*

BARKAT ALI, for Appellant.

AMAR NATH CHONA, for Respondent.

COLDSTREAM J.

COLDSTREAM J.—Ghulam Mohammad, the appellant, instituted a suit for pre-emption of property against *Mussammata Fazal Nishan* in the Court of the Subordinate Judge, 4th Class, Jhelum, alleging Rs. 500 to be the price of the property. The defendant-respondent appeared and the parties compromised, *Mussammata Fazal Nishan* agreeing to pay Rs. 1,100. The pecuniary limit of the Subordinate Judge's jurisdiction was Rs. 1,000 but he passed a decree in accordance with the compromise.

Ghulam Mohammad applied for execution. The successor of the Subordinate Judge who passed the decree, considering that he had no jurisdiction, sent the case to the District Judge who forwarded it to the

(1) 22 P. R. 1919.

(5) (1921) I. L. R. 45 Bom. 946.

(2) (1924) I. L. R. 5 Lah. 54.

(6) (1920) I. L. R. 43 Mad. 675, 687.

(3) (1914) I. L. R. 38 Bom. 194.

(7) (1930) I. L. R. 52 All. 217, 221.

(4) (1921) I. L. R. 45 Bom. 503.

(8) (1919) 50 I. C. 529 (F.B.).

(9) (1926) I. L. R. 53 Cal. 166 (F.B.).

Court of the Senior Subordinate Judge. There, execution was resisted on the ground that the decree was invalid for lack of jurisdiction and could not be enforced. This objection was overruled by the Senior Subordinate Judge who held that the executing Court could not go behind the decree. The respondent-vendee appealed to the District Judge who reversed this decision on the ground that the decree was a nullity, and the executing Court could not execute it.

Against this judgment the decree-holder has preferred the present appeal.

There is some conflict between the High Courts on the point in issue, but so far as this Province is concerned the question appears to have been settled by several judgments in the appellant's favour. As noticed by the executing Court, section 225 of the old Civil Procedure Code, was altered when its provisions were reproduced in Order 21, Rule 7 of the present Code by the omission of the words 'or of the jurisdiction of the Court which passed it' after the word 'thereof' and it was held by the Chief Court in *Sheopat Rai v. Harak Chand* (1) that the effect of the change had been, as had been held in *Hari Govind v. Narsingrao Konherra* (2), to deprive the executing Court of power to question the jurisdiction of the Court which passed the decree.

In the same sense is the Division Bench ruling of this Court in *Lahore Bank v. Ghulam Jilani* (3). That was a case in which the lower Courts had refused to execute a decree on the ground that the judgment-debtor was a minor and had not been represented before the liquidation Court which has passed the decree. In

1931

GHULAM  
MOHAMMAD  
v.  
MST. FAZAL  
NISHAN.

COLDSTREAM J.

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1931

GHULAM

MOHAMMAD

v.

MST. FAZAL

NISHAN.

COLDSTREAM J.

his judgment leRossignol J. remarked that "the broad clear rule is that an executing Court has no jurisdiction to criticise or to go behind the decree; all that concerns it is the executing of it. If the decree should be annulled, that is not the function of an executing Court."

In a Full Bench Judgment of the Madras Court, Wallis C.J. had expressed a similar view, *Zamindar of Ettiyapuram v. Chidambaram Chetty* (1). "An objection to the jurisdiction is a ground for setting aside the decree and is not one of the questions relating to the execution or discharge of the decree which are required by section 47 to be dealt with in execution. The provision in section 225 of the old Code that a Court might proceed to execute decrees transferred to it without requiring further proof, among other things, of the jurisdiction of the Court which passed the decree lent some colour to the view that it was open to a Court to which a decree had been sent for execution to go into the question whether the Court which passed the decree had jurisdiction to do so \* \* \*. These words, however, have been omitted advisedly in the corresponding Order 21, Rule 7 of the Code."

In Bombay also it has been held that whatever powers a Court executing a decree has to decide questions relating to the execution of the decree, the Court cannot deal with the question whether the decree should stand or whether it should be set aside on any of the grounds on which a decree can be set aside [*Ramchandra Govind v. Jayanta* (2); see also *Ramnath v. Gajanan* (3) which re-affirmed this view].

The reasoning in *Ram Charan v. Salik Ram* (4) indicates a similar view in the Allahabad Court.

(1) (1920) I.L.R. 43 Mad. 675, 687 (F.B.). (3) (1921) I.L.R. 45 Bom. 946.

(2) (1921) I.L.R. 45 Bom. 503.

(4) (1930) I.L.R. 52 All. 217, 221.

There it was remarked that section 47 of the Civil Procedure Code is limited to cases where the satisfaction of the decree, as distinguished from the validity of the decree itself, is in question.

Mr. Chona for the respondent relies on the decisions of the Patna and Calcutta Courts, *Jugli Lal v. Laddu Ram* (1) and *Gora Chand v. Prafulla Kumar Roy* (2). In the Patna case it was held that it was open to the representatives of a judgment-debtor to object to execution of a decree on the ground that the judgment-debtor was dead at the time the decree was passed and that the decree was therefore a nullity. But in the present case the decree was not a nullity and even in appeal could only be impugned within the limitation laid down in section 11 of the Suits Valuation Act. The present decree was passed upon a compromise and no question of prejudice could arise.

The Patna judgment was cited before the Full Bench of the Calcutta Court in *Gora Chand v. Prafulla Kumar Roy* (2). In that case the Court decided that where the decree presented for execution was made by a Court which apparently had not jurisdiction, to make the decree, the executing Court is entitled to refuse to execute it on the ground that it was made without jurisdiction. The decision was on a reference made by a Bench who had decided that the decree was void and a nullity as the Court which made it had no territorial jurisdiction.

\* The same ruling was fully considered by the Lahore Court in its judgment *Lahore Bank v. Ghulam Jilani* (3) where it preferred to follow the previous

1931

GHULAM  
MOHAMMAD  
v.  
MST. FAZAL  
NISHAN.

COLDSTREAM J.

(1) (1919) 50 I. C. 529 (F.B.). (2) (1926) I. L. R. 53 Cal. 166 (F.B.).

(3) (1924) I. L. R. 5 Lah. 54.

1931

GHULAM  
MOHAMMAD  
v.  
MST. FAZAL  
NISHAN.  
COLDSTREAM J.

decision of the Calcutta Court in *Kalipada Sarkar v. Hari Mohan Dalal* (1). In the latter case, after a discussion of the authorities, the Court thought it proper to "adhere rigidly to this established principle that every order and judgment, however erroneous, is, in the words of Lord Cottenham in *Chuck v. Cremer* (2), good until discharged or declared inoperative and that the execution Court cannot enquire into the validity or propriety of the decree." The view which Mr. Chona now urges us to adopt would appear to open the way for a judgment-debtor, who had failed to attack an order against him by appeal, or application for review, to re-open the case against him in the execution Court, possibly in defiance of the provisions of section 21 of the Code of Civil Procedure, or section 11 of the Suits Valuation Act, which provisions might have precluded interference by an appellate Court or in revision.

The weight of authority is against the decision of the learned District Judge. My own view is that it is not open to an executing Court to question the validity of a decree on the ground that the Court which made the decree had not pecuniary jurisdiction to make it. Setting aside the judgment appealed against I would accept the appeal with costs and restore that order.

ADDISON J.

ADDISON J.—I concur.

A. N. C.

*Appeal accepted.*


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(1) (1917) I. L. R. 44 Cal. 627. (2) (1847) 16 L. J. Ch. (N. S.) 92.