

challenged within time and the property obviously became the self-acquired property of the purchaser.

For the reasons given we accept this appeal, set aside the decree of the learned Single Judge of this Court, and restore the decree of the lower appellate Court decreeing the plaintiffs' suit. Parties will bear their own costs throughout.

A. K. C.

Appeal accepted.

APPELLATE CIVIL.

Before Dalip Singh J.

RADHA KISHAN-RUP LAL (JUDGMENT-DEBTOR) Appellant,

versus

THE BOMBAY COMPANY, LIMITED,
AMRITSAR (DECREE-HOLDER) Respondent.

Execution First Appeal No. 369 of 1938.

Civil Procedure Code (Act V of 1908), SS. 39 (2), 42 — Transfer of decree based on award — District Judge whether can assign it for execution to Subordinate Judge — Expression — “competent jurisdiction” in S. 39 (2) — meaning of — Indian Arbitration Act (IX of 1899), S. 4.

The Sindh Judicial Commissioner's Court forwarded an award to the District Judge, Amritsar, for execution. The District Judge assigned it to the Subordinate Judge, First Class, for execution. It was contended that the Subordinate Judge had no jurisdiction to entertain the execution.

Held (overruling the contention) that under s. 42 of the Civil Procedure Code, the District Judge had the same powers as the Court of the Sindh Judicial Commissioner and under s. 39 (2) he could of his own motion transfer it to a Court of competent jurisdiction subordinate to himself.

That the words “competent jurisdiction” in s. 39 (2) refer to territorial and pecuniary jurisdiction to deal with the decree and do not mean competency to try the original suit.

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GURBACHAN
SINGH
v.
ARJUN SINGH
alias SADHU
SINGH.

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RADEHA
KISHAN-
RUP LAL
v.
THE BOMBAY
COMPANY,
LIMITED,
AMRITSAR.

Kewal Krishan v. Punjab National Bank, Ltd. (1), dis-
sented from.

Ghulam Ahmad Khan v. Abu Bakar Abdul Rahman & Co.
(2), distinguished.

*Execution First Appeal from the order of Pandit
Rajindar Kishan Kaul, Subordinate Judge, 1st Class,
Amritsar, dated 27th July, 1938, rejecting the objec-
tions of the judgment-debtor filed under sections 47
and 151, Civil Procedure Code.*

JAGAN NATH TALWAR, for Appellant.

DEV RAJ SAWHNEY, for Respondent.

DALIP SINGH J.

DALIP SINGH J.—In this case the Sind Judicial
Commissioner's Court forwarded an award to the
learned District Judge, Amritsar, for execution. The
learned District Judge, by his order, dated the 11th
July, 1938, assigned it to the Subordinate Judge, 1st
Class, for execution. An objection was raised that
the Court had no jurisdiction to entertain this execu-
tion. The learned Subordinate Judge overruled the
objection. An appeal has been taken from the order
of the Subordinate Judge to this Court.

The only point contended has been the question
of the jurisdiction of the Court. The learned counsel
for the appellant relies on *Kewal Krishan v. Punjab
National Bank, Ltd.* (1), which undoubtedly supports
him. No ruling to the contrary has been cited by the
learned counsel for the respondent who, however,
relies on the reasoning in *Ghulam Ahmad Khan v.
Abu Bakar Abdul Rahman & Co.* (2). That ruling
however is not directly in point. The case really
turns on the interpretation to be put on the words
“ Court of competent jurisdiction ” in section 39 (2),
Civil Procedure Code. Under section 42 the District

(1) 1934 A. I. R. (Pesh.) 107.

(2) 1931 A. I. R. (Nag.) 170.

Judge had the same powers as the Court of the Sind Judicial Commissioner and under section 39 (2) he could of his own motion transfer it to a Court of competent jurisdiction subordinate to himself. The question really is whether the words 'competent jurisdiction' refer to territorial and pecuniary jurisdiction to deal with the decree or whether they refer to competence in jurisdiction to try the original suit. If they mean the former, then obviously the Court below had jurisdiction; and if they mean the latter, then the Court below had no jurisdiction. After considering the matter and with great respect to the opinion of the Division Bench of the Peshawar Judicial Commissioners, I am of opinion that the words 'competent jurisdiction' refer to territorial and pecuniary jurisdiction to deal with the decree and do not mean competency to try the original suit; otherwise it would follow that where an award had been filed under the Indian Arbitration Act and was sent to a place to which the Arbitration Act did not apply, there would be no Court competent to try the original suit and therefore no Court competent to execute the decree. This could hardly be the meaning or intention of the Legislature. I would therefore dismiss the appeal. No order as to costs.

As I have found only one ruling and that is contrary to the view I have taken, I would allow a Letters Patent Appeal,* if applied for.

A. N. K.

[*An appeal under the Letters Patent No. 53 of 1939 from this judgment was dismissed by a Division Bench composed of Addison and Ram Lall JJ. on 21st March, 1939.—ED.]

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RADHA
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LIMITED,
AMRITSAR.

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