

## APPELLATE CIVIL.

*Before Mr. Justice Beaman and Mr. Justice Hayward.*

1914.  
June 15.

BANDOO KRISHNA KULKARNI (ORIGINAL PLAINTIFF-APPLICANT), APPELLANT, *v.* NARSINGRAO KONHERRAO DESHPANDE AND ANOTHER BY VAHIWATDAR COURT OF WARDS, THE COLLECTOR OF BELGAUM, AND ANOTHER (ORIGINAL DEFENDANT-OPPONENTS), RESPONDENTS.\*

*Civil Courts Act (XIV of 1869), section 32—Civil Procedure Code (Act V of 1908), section 37—Decree—Court of Wards made party after decree—Execution—Jurisdiction of the Court to execute its own decree.*

The Court which passed the decree has jurisdiction to proceed with the execution notwithstanding that after the decree the Court of Wards has become a party to the execution proceeding.

*Gopal Apaji v. Keshavrao Konherrao*<sup>(1)</sup>, followed.

FIRST appeal against the decision of B. R. Koppikar, First Class Subordinate Judge of Belgaum, in execution of a decree under darkhast No. 443 of 1909.

The plaintiff Bandoo Krishna Kulkarni obtained a decree, No. 434 of 1897, against the defendants Narsingrao Konherrao Deshpande and Keshavrao Konherrao Deshpande in the Court of the First Class Subordinate Judge of Belgaum for the recovery of a certain sum. After the decree was passed the Collector of Belgaum took charge of the 'defendants' estate as Court of Wards.

\* First Appeal No. 76 of 1913.

(1) First Appeal No. 29 of 1913, Unreported. The said unreported first appeal was heard by Scott, C. J., and Batchelor, J., and decided on the 30th September 1913. The judgment was as follows :—

SCOTT, C. J. :—We see no reason why the Subordinate Judge should not have executed the decree which he had passed. We think that the learned District Judge has unnecessarily added to the successful plaintiff's costs by dismissing his darkhast, when he came to the conclusion that his was not the Court in which the decree should be executed. Acting under section 151 of the Code we set aside the order of dismissal and direct that the darkhast be returned for presentation to the Subordinate Judge for execution. Costs throughout to be costs in the darkhast.

Subsequently the plaintiff having applied for the execution of the decree, the Collector of Belgaum in his capacity as the Court of Wards was joined as a party to the execution proceeding. The First Class Subordinate Judge dismissed the darkhast for execution on the ground that he had no jurisdiction to entertain it under section 32 of the Civil Courts Act (XIV of 1869). The Subordinate Judge further relied upon an unreported judgment of the High Court under the extraordinary jurisdiction in Civil Application No. 58 of 1911 in which it was held "that suits to which the Court of Wards is a party cannot be heard by the Courts of Subordinate Judges".

Against the said order of dismissal the plaintiff-applicant appealed.

*Jayant G. Rele* for the appellant (plaintiff-applicant):—The lower Court erred in referring us to the District Court. Section 32 of the Civil Courts Act applies to the institution of suits and not to proceedings in execution. When the present suit was filed, the Court of Wards was not a party to it. Therefore the Court of the First Class Subordinate Judge had jurisdiction to entertain it and that jurisdiction was not taken away because the Court of Wards was subsequently made a party in the execution proceeding: *Hari Govind v. Narsingrao Konherrac*<sup>(1)</sup>, *Gopal Apaji v. Konherrac*<sup>(2)</sup>. An application for execution is not a suit but a proceeding in the suit: *Venkata Chandrappa Nayanivaru v. Venkatarama Reddi*<sup>(3)</sup>.

*N. A. Shiveshwarakar* for the respondents (defendant-opponents):—The Court of Wards being joined as a party to the execution proceeding, the jurisdiction of the Subordinate Judge to entertain the darkhast for execution was ousted. Section 37 (b) of the Civil Procedure Code lends support to our contention. If the

(1) (1913) 38 Bom. 194.

(2) See note to *ante* p. 662.

(3) (1898) 22 Mad. 256.

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Court of Wards had been made a party to the suit the Subordinate Judge could not have entertained the suit at all under section 32 of the Civil Courts Act.

BEAMAN, J. :—The only question arising in this First Appeal is whether the Court of the Subordinate Judge had jurisdiction to proceed with the execution of its own decree. When the suit was instituted no Government servant was a party to it, and it was not until after the decree that the Court of Wards was added. In terms, therefore, section 32 of the Civil Courts Act does not apply. But it is contended inferentially with reference to section 37 of the Civil Procedure Code that where a party is added in execution, who, had he been a party when the suit, wherein the decree was passed, was instituted, would have deprived the Court of its jurisdiction, that Court ceases to have jurisdiction for all purposes of executing its own decree. That contention gained some colour from section 37. But we find that the facts here cannot be distinguished in any material particular from the facts in *Gopal Apaji v. Keshavrao Konherra*<sup>(1)</sup>, where a Bench of this Court decided that the Court which passed the decree had jurisdiction to proceed with the execution, notwithstanding that after the decree the Court of Wards had become a party to the execution proceeding. And we see no reason to doubt that that case was correctly decided, nor why by giving a different decision here on the same facts we should encourage uncertainty and a conflict of opinion. We, therefore, think that the present appeal must be allowed, and the Court below be directed to proceed with the execution of the decree. The appellant must have the costs of this appeal.

*Appeal allowed.*

G. B. R.

(1) See note to *ante* p. 662.