

Messrs. Ghaki
Mal-Hukam
Chand, firm
Hindu Joint
Family,
Ludhiana
and others
v.
Punjab National
Bank, Ltd.

Dua, J.
Falshaw, J.

National Bank, Ltd., on 25th of May, 1951, before the enforcement of the Displaced Persons (Debts Adjustment) Act. Since the appellants have succeeded exclusively on the basis of the additional evidence led in support of the new plea provided by Act No. LXX of 1951, the parties are directed to bear their own costs throughout.

FALSHAW, J.—I agree.

B. R. T.

APPELLATE CIVIL

Before K. L. Gosain and A. N. Grover, JJ.

BASANT SINGH AND ANOTHER,—*Appellants.*

versus

TIRLOKI NATH AND OTHERS,—*Respondents.*

1959

Execution First Appeal No. 2-P of 1952

Feb., 24th

Code of Civil Procedure (Act V of 1908)—Section 47—Objections to the validity of the decree—Whether and when can be entertained by the executing court—Suit filed in a competent court transferred to a court not competent to try it—Effect of:

Held, that an executing court cannot go behind the decree and the jurisdiction of the Court executing a decree must be determined with reference to and is circumscribed by the directions contained in the decree. An executing Court cannot obviously question the legality or correctness of the decree because of the simple reason that a proceeding to enforce a judgment is collateral to the judgment itself and, therefore, no enquiry into its regularity or validity can be permitted in such a proceeding. The executing Court is bound to execute the decree in spite of the fact that the decree is contrary to law or is erroneous on facts. If, however, what purports to be a decree has been passed by a Court not duly constituted in accordance with law such an adjudication is not a decree at all in the eye of

law. Such a decree in the strict sense of the terms is a nullity, a "mere nothing" that need not be set aside and may be disregarded by any Court to which it is presented. In a case in which the want of pecuniary jurisdiction is patent and where the question of under-valuation or over-valuation of the suit is not to be investigated, the decree of the Court will be obviously without jurisdiction and therefore, a nullity. Such a decree must be refused to be executed on the short ground that it is not a decree in the eye of law having been passed by a Court having no jurisdiction to pass it.

Held, that a Court must have jurisdiction to entertain the suit at all its stages and not merely at the initial stage. The Court in which the present suit was filed had no doubt jurisdiction to entertain the suit but on abolition of the said Court the suit went over to the Court of a Sub-Judge who was exercising only second class powers and who had no jurisdiction to entertain the suit for over Rs. 5,000 in value. On the valuation given in the plaint the Sub-Judge could not have tried the suit and the decree passed by him must, therefore, be held to be a nullity and inexecutable.

Case referred by Hon'ble Mr. Justice Gurnam Singh, of the Pepsu High Court on 3rd July, 1953 to a Division Bench for decision owing to the importance of the legal question involved in the case and latter on decided by a Division Bench consisting of Honble Mr. Justice K. L. Gosain and Hon'ble Mr. Justice A. N. Grover, on 24th February, 1959.

Execution First Appeal from the order of Shri Fauja Singh Gill, Sub-Judge, II Class, Sultanpur Lodhi, dated 17th December, 1951 holding that that Court had no jurisdiction to try the suit and the decree granted on 29th May, 1950 was null and void and also granting the application of the judgment-debtor, dated 6th December, 1950, objecting its execution and dismissing the execution application.

K. N. TEWARI, for Appellants.

ATMA RAM, for Respondents.

JUDGMENT

The following Judgment of the Court was delivered by—

Gosain, J.

K. L. GOSAIN, J.—The facts giving rise to this appeal are as under. On 6th of October, 1945. Basant Singh and Bhola Singh, appellants instituted a money suit for the recovery of a sum of Rs. 7,500 in the Court of Adalat Bahadur Kapurthala. While this suit was pending Kapurthala and certain other States joined to form a State named as Pepsu (Patiala and East Punjab States Union). It appears that the Court of Adalat Bahadur Kapurthala was abolished and the suit then went over to a Sub-Judge who was exercising second class powers and could entertain suits only up to the pecuniary limit of Rs. 5,000. Nobody pointed out the defect of jurisdiction to the Sub-Judge with the result that he passed an *ex parte* decree on the 29th of May, 1950, awarding to the plaintiffs an amount of Rs. 5,810 plus costs amounting to Rs. 1,017-5-0. Judgment-debtors respondents applied for setting aside the *ex parte* decree on the 28th of June, 1950, but the said application was dismissed in default on the 25th of September, 1950. On the 11th July, 1950, the decree-holders took out execution proceedings before the same Sub-Judge who had passed the decree. A notice was issued to the judgment-debtors who filed objections under section 47, C.P.C., urging that the decree was beyond the pecuniary jurisdiction of that Court and was, therefore, a nullity and could not be executed. The decree-holders contested the objections filed by the judgment-debtors and the executing Court framed the following two issues on the 16th of January, 1951:—

- (1) Whether the present decree is inexecutable?

- (2) Whether on account of their conduct the judgment-debtors are estopped from making this objection ?

Basant Singh
and another
v.

Tirloki Nath
and others

—
Gosain, J.

After going into the whole matter the executing Court found both the issues in favour of the judgment-debtors and accepting the objections filed by them held that the decree was inexecutable. The decree-holders filed an appeal in the Pepsu High Court which came up for hearing on the 3rd of July, 1952, before Gurnam Singh, J.; who in view of the conflict of judicial opinion in the various Courts referred the case to a hearing by a larger Bench. The case remained pending in the Pepsu High Court till the integration of that High Court with the Punjab High Court and the case has now been placed before us for disposal.

Mr. K. N. Tiwari, learned counsel for the appellants, concedes that the Sub-Judge who passed the decree in question had only second class powers and could not entertain suits of which the valuation was more than Rs. 5,000. He, however, urges that the executing Court cannot go behind the decree and the judgment-debtors having taken no objections to the pecuniary jurisdiction of the Court passing the decree cannot now raise objections against the executability of the decree. We are afraid we cannot accept this view. There is no doubt that an executing Court cannot go behind the decree and the jurisdiction of the Court executing a decree must be determined with reference to and is circumscribed by the directions contained in the decree. An executing Court cannot obviously question the legality or correctness of the decree because of the simple reason that a proceeding to enforce a judgment is collateral to the judgment itself and, therefore, no enquiry into its regularity or validity can be permitted in such a proceeding. The executing Court is bound to

Basant Singh
and another
v.
Tirloki Nath
and others
Gosain, J.

execute the decree in spite of the fact that the decree is contrary to law or is erroneous on facts. If, however, what purports to be a decree has been passed by a Court not duly constituted in accordance with law such an adjudication is not a decree at all in the eye of law. Such a decree in the strict sense of the terms is a nullity, a "mere nothing" that need not be set aside and may be disregarded by any Court to which it is presented. In *Pirji Safdar Ali v. The Ideal Bank, Ltd.* (1), a Full Bench of this Court held as under:—

"It is a well established rule of law that the executing Court is bound to execute the decree and cannot go behind it. The only exception to this rule is that when the decree is passed by a Court which had no jurisdiction to pass it, then by reason of the inherent defect of jurisdiction in the Court passing the decree the executing Court can ignore it. The executing Court cannot, however, refuse to execute the decree because it is against law or contravenes any provisions of any statute."

In *Kiran Singh and others v. Chaman Paswan and others* (2), their Lordships of the Supreme Court observed as under in paragraph (6) of the judgment:—

"* * * * *

It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced

(1) A.I.R. 1949 E. Pb. 94 (F.B.)
(2) A.I.R. 1954 S.C. 340

or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties."

Basant Singh
and another
v.
Tirloki Nath
and others
Gosain, J.

In that particular case their Lordships were concerned with a case in which an objection to the under-valuation of the suit had not been taken in the trial Court and by reason of section 11 of the Suits Valuation Act the said objection could not be taken in a Court of appeal. In those circumstances their Lordships held in that particular case that the hearing of the appeal by the District Court was not illegal and had not caused any prejudice to the appellants. The general observations of their Lordships which I have quoted above would be applicable to all the cases which are not governed by section 21 of the Civil Procedure Code or section 11 of the Suits Valuation Act. In a case in which the want of pecuniary jurisdiction is patent and where the question of under-valuation or over-valuation of the suit is not to be investigated the decree of the Court will be obviously without jurisdiction and, therefore, a nullity. Such a decree must be refused to be executed on the short ground that it is not a decree in the eye of law having been passed by a Court having no jurisdiction to pass it. In *Sitaram Singh v. Tika Ram Singh and another* (1), it was observed as under:—

"Where the question is one of want of pecuniary jurisdiction and not of over-valuation or under-valuation section 11.

(1) A.I.R. 1942 Oudh. 481

Basant Singh
and another
v.
Tirloki Nath
and others

Gosain, J.

Suits Valuation Act, cannot apply. Nor can section 21, Civil Procedure Code, have any application as it is concerned only with territorial jurisdiction. The principle under section 11, Suits Valuation Act, cannot be extended to a case where there is a want of inherent jurisdiction."

Same view was taken in *Kuppuswamy v. Ayyammai* (1), and *Gora Chand Haldar and another v. Prafulla Kumar Roy and others* (2). Mr. Tewari relies on *Ghulam Mohammad v. Mt. Fazal Nishan* (3), in which Coldstream, J., with whom Addison, J., concurred held that it was 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. In the said case, however, a suit for pre-emption of property had been filed in the Court of the Subordinate Judge, Fourth Class, Jhelum, alleging Rs. 500 to be the value of the property. The defendant appeared and the parties compromised, by virtue of which the plaintiff agreed to pay Rs. 1,100 instead of Rs. 500 and the Court thereupon passed a decree in accordance with the compromise. Coldstream, J., found that the decree was not a nullity and the only ground for it which we have been able to find in the judgment is couched in the following words:—

"But in the present case the decree was not a nullity and even in appeal could only be impugned with the limitation laid down in section 11, Suits Valuation Act. The present decree was passed upon a

(1) A.I.R. 1935 Mad. 723

(2) A.I.R. 1925 Cal. 907 (F.B.)

(3) A.I.R. 1932 Lah. 289

compromise and no question of prejudice could arise.”

This view, we must say with great respect, does not seem to be quite correct. The next case on which reliance is placed by Mr. Tewari is *Amir Khan and another v. Khair Mohammad-Ghulam Habib and others* (1), in which it was held:—

Basant Singh
and another
v.
Tirloki Nath
and others
Gosain, J.

“Section 11, Suits Valuation Act, and section 21, Civil Procedure Code, are two legislative exceptions to the general principle of law that where a Court has no jurisdiction, its judgments and orders are mere nullities and can be declared to be void by every Court in which they may be presented. In view of only these exceptions it has been generally held that question of territorial or pecuniary jurisdiction of the decretal Court cannot be raised in execution proceedings before it.”

We have no quarrel so far as the first portion of the above observation is concerned but the general proposition given in the latter portion of the observation cannot be accepted as wholly correct. In the case before the Judicial Commissioner the jurisdiction of the Court which passed the decree was challenged on the ground of under-valuation of the suit and the Judicial Commissioner found that an objection regarding under-valuation should have been taken in the Court itself as provided in section 11 of the Suits Valuation Act. The case was really decided by the Peshawar Court on the ground of *res judicata* and the observations quoted above were merely in the nature of *obiter*. As has already been pointed out above the executing

(1) A.I.R. 1938 Peshawar 77

Basant Singh
and another
v.
Tirloki Nath
and others
Gosain, J.

Court cannot refuse to execute the decree on the basis that the suit in which the decree was passed had been over or under valued, but it must refuse to execute the decree when the question of valuation of the suit is not to be investigated and it is found that on the valuation as given in the plaint the Court passing the decree had no pecuniary jurisdiction to pass it. Mr. Tiwari lastly contended that the suit was filed in a Court which had jurisdiction to entertain it and, therefore, there was no defect of jurisdiction in the Court passing the decree. It has been repeatedly held that a Court must have jurisdiction to entertain it at all its stages and not merely at the initial stage. The Court in which the present suit was filed had no doubt jurisdiction to entertain the suit but on abolition of the said Court the suit went over to the Court of a Sub-Judge who was exercising only second class powers and who had no jurisdiction to entertain the suit for over Rs. 5,000 in value. On the valuation given in the plaint the Sub-Judge could not have tried the suit and the decree passed by him must, therefore, be held to be a nullity and inexecutable. The appeal has, therefore, no merit and is dismissed with costs.

B. R. T.

CIVIL WRIT

Before G. L. Chopra, J.

JIT SINGH AND OTHERS,—Petitioners

versus

THE DIRECTOR OF CONSOLIDATION OF HOLDINGS,
PUNJAB, AND OTHERS,—Respondents

Civil Writ No. 692 of 1958

1957

Feb., 25th

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Section 42—Application under—Order “file” passed thereon—Such order whether amounts to the exercise of jurisdiction under the section—Subsequent order passed in the same case—Whether amounts to review of the previous order—Powers of