

Firm Gulab
Singh-Johri Mal
v.

Union of India,
New Delhi

Falshaw, J.

succeeds and the suit of the plaintiff-firm is decreed for that amount with costs, throughout.

FALSHAW J.—I agree.

B. R. T.

APPELLATE CIVIL.

Before Khosla, J.

KASTURI AND OTHERS,—Appellants.

versus

MEHAR SINGH AND BACHAN SINGH,—Respondents.

1957

Sept., 26th

Execution Second Appeal No. 6(P) of 1956.

Code of Civil Procedure (V of 1908)—Sections 37, 38, 39 and 150—Court passing the decree ceasing to have territorial jurisdiction in the place where property is situate by reason of change in the territorial jurisdictions of the Courts—Execution applications filed in the Court having territorial jurisdiction at that time—Whether competent—“Court which passed the decree”—Interpretation of.

Held, that both the Courts which passed the decree and the Court which has been invested with the territorial jurisdiction of the first court are competent to entertain the application for execution and to execute the decree. This appears to have been the intention of the Legislature and the too narrow interpretation of the condition set out in section 37(b) would defeat rather than further the ends of justice. Section 37 enlarges the meaning of the expression “Court which passed the decree” and does not merely provide an alternative meaning to it.

Case law discussed.

Appeal under Section 47, of Civil Procedure Code, from the order of Shri Ranjit Singh Sarkaria, District Judge, Sangrur, dated 3rd February, 1956, affirming that of Shri Kahan Chand Kalra, Sub-Judge, II Class, Sunam, dated 15th July, 1955, accepting the objections and holding that this Court has no jurisdiction to entertain the Execution application.

D. S. NEHRA, for Petitioner.

DALIP CHAND GUPTA, for Respondents.

JUDGMENT

KHOSLA, J.—This order will deal with the two execution appeals Nos. 6(P) and 7(P) of 1956, in both of which the same point is involved.

Khosla, J.

The facts are that the appellant-decree-holders obtained two decrees for possession of land and the recovery of sums of money from the Court of the Sub-Judge, Second Class, Sangrur. The decrees were passed on 10th May, 1948. At that time the land being the subject-matter of the decree was situated within the territorial jurisdiction of the Sub-Judge, Sangrur. Subsequently, the territorial jurisdiction of the Sangrur Court was altered and the land now lies within the territorial jurisdiction of the Sub-Judge, Sunam. After this change two execution applications were filed by the decree-holders in the Court of the Sub-Judge, Sunam. An objection was taken that the execution applications could not be entertained by the Sub-Judge, Sunam. This objection was upheld, and the two applications for execution were dismissed. The learned District Judge of Sangrur upheld this decision on appeal. The decree-holders have come up in second appeal to this Court.

The question, therefore, for decision is whether these execution applications should have been filed in the Court of the Sub-Judge, Sangrur, or the Sub-Judge, Sunam, was competent to entertain them. For the decision of this case it is necessary to consider the provisions of sections 27, 38, 39 and 150, Civil Procedure Code. The relevant portions of these sections may be quoted.

“Section 37. The expression “Court which passed a decree,” or words to that

Kasturi
and others
v.
Mehar Singh and
Bachan Singh

Khosla, J.

effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include.—

(a) * * * * *

(b) Where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.”

“Section 38. A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.”

“Section 39. The Court which passed a decree may, on the application of the decree-holder send it for execution to another Court,—

(a) * * * * *

(b) * * * * *

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it.”

“Section 150. Save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so

transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred."

Kasturi
and others
v.
Mehar Singh and
Bachan Singh

Khosla, J.

The arguments of the learned counsel for the appellants may be summarised as follows : The Court of the Sub-Judge, Sangrur, ceased to have jurisdiction to execute these decrees because the property lay beyond its territorial jurisdiction. It would perforce have to transfer the decrees for execution to the Sub-Judge, Sunam. Therefore, the condition required by section 37(b) was fulfilled and the Sunam Court was competent to entertain the execution applications. Moreover, the territorial jurisdiction of the Sangrur Court was transferred to the Sunam Court, and this amounted to a transfer of business within the meaning of section 150. So the Sunam Court could, in the first instance, entertain the execution applications without an order of transfer being made to it by the Sangrur Court. As against this, the argument of the learned counsel for the respondents is that the Sangrur Court did not cease to have jurisdiction to execute the decrees and, therefore, the condition required in section 37 was not fulfilled. Moreover, this was not a case of transfer of business but change of territorial jurisdiction, and that being so the provisions of section 150, Civil Procedure Code, did not come into play.

An examination of sections 37, 38 and 39 shows that the Legislature was enlarging the scope of the expression "Court which passed a decree". Under the provisions of Section 38, a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. Therefore, execution application should, in the first instance, be presented only to the Court which passed the decree and not to

Kasturi
and others
v.
Mehar Singh and
Bachan Singh
Khosla, J.

any other Court, but under Section 37 an application may be presented to another Court also provided the first Court (the Court which passed the decree) ceases to exist or ceases to have jurisdiction to execute it. The object of section 37 was to give greater facilities to the decree-holder for executing his decree than were allowed to him under section 38. Section 39 deals with the transfer of decrees. Now an application for execution can always be entertained by the Court which passed the decree. This is provided for by section 38, but under section 37 the decree-holder may in addition present his application to another Court if the original Court cannot execute the decree. There are, therefore, two stages, (a) the entertaining of an application for execution, and (b) the actual execution of the decree itself. As far as stage (a) is concerned, it can always begin in the Court which passed the decree, but stage (b) can only be reached in the Court within whose territorial jurisdiction the property lies. In the present case, for instance, the Sangrur Court is unable to deliver the immoveable property to the decree-holders, because the property lies beyond its territorial jurisdiction. Therefore, in a sense the Sangrur Court has no longer jurisdiction to execute the decrees. It may entertain the applications for execution, but it must transfer these applications to the Sunam Court for execution. And as the change was brought about in the territorial jurisdiction of the two Courts after the passing of the decrees, it is clear that the phraseology employed in section 37(b) applies.

I am making a distinction between jurisdiction to entertain the application for execution and jurisdiction to execute the decree. This distinction was made by the Sind Chief Court in *Naraindas Hasrajmal v. Saindad* (1), and it was observed:—

“The consensus of judicial authority is that section 37, Civil Procedure Code, does not

(1) A.I.R. 1944 Sind 173.

take away from the Court which passed the decree the power to execute it conferred under section 38, Civil Procedure Code. Section 37, Civil Procedure Code, gives a wider meaning to the expression "the Court which passed the decree" for the purpose of executing the decree. It gives the power of execution to a Court which could have passed the decree at the time when execution application is made, if the Court which passed the decree has ceased to exist or has ceased to have jurisdiction to execute it. Manifestly, a Court other than the Court which passed the decree is contemplated by this definition. Under section 38, Civil Procedure Code, the Court which passed the decree has always the power to execute the decree and does not lose it until it ceases to exist. A Court which ceases to exist does not, however, exhaust the definition of a "Court which passed the decree" under section 37, Civil Procedure Code. It still leaves to be considered the case of a Court which still exists but which ceases to exercise jurisdiction within the meaning of the definition. That case must obviously include a case such as the present, when the Sukkur Court has ceased to exercise territorial jurisdiction over the lands once in the jurisdiction of the Sukkur Court, but now in the jurisdiction of the Shikarpur Court, and which are made the subject of an execution application."

Kasturi
and others
v.
Mehar Singh and
Bachan Singh

Khosla, J.

This distinction was also referred to in *Sreenath Chakarvarti and others v. Priyanath Bandopadhyaya*.

Kasturi
and others
v.
Mehar Singh and
Bachan Singh

Khosla, J.

and others (1), but Mukherjea J. discounted it in *Masrab Khan v. Debnath Mali alias Abhu Mali and others* (2). It seems to me, however, that the distinction does exist, because here we are dealing not with abstract phrases but with the practical execution of a decree. Jurisdiction to execute a decree cannot be confined to competence to entertain the application. The execution of a decree entails much more than the entertainment of an application and the issue of a notice to the judgment-debtor. The execution involves the delivery of possession or sale of immovable property. There will be delivery of possession as in the present case, or the sale of immovable property. This cannot be done unless the property lies within the territorial jurisdiction of the executing Court and if after the passing of the decree or at any subsequent stage the property ceases to be within the territorial jurisdiction of the executing Court, then it can be said that for all practical purposes the Court has ceased to have jurisdiction to execute the decree and when that happens the condition laid down in section 37 (b) is fulfilled. It is quite clear that section 37 enlarges the scope of the expression "Court which passed a decree" with the object of giving greater facilities to a decree-holder to realise his decree. A too narrow interpretation of the wording of section 37 (b) would defeat the very object of this section. I cannot conceive of any case in which the Court of the first instance exists, and yet ceases to have jurisdiction in the sense that it cannot entertain the application. Clause (b) only makes sense if ceasing to have jurisdiction to execute the decree means that it cannot effectively issue process whereby the claim of the decree-holder can be satisfied. Therefore, although it is clear that

(1) A.I.R. 1931 Cal. 312.

(2) A.I.R. 1942 Cal. 321.

under section 38 the Sangrur Court could entertain the execution applications, it is equally clear that the Sunam Court can also entertain them because, by virtue of section 37 (b), the Sunam Court is to be considered as the Court which passed the decrees.

Kasturi
and others
v.
Mehar Singh and
Bachan Singh
Khosla, J.

Apart from the Sind Chief Court ruling referred to above, there are a number of decisions of the Calcutta High Court and one decision of the Patna High Court in which it has been held that where the territorial jurisdiction of a Court is transferred to another Court, the transferee Court is competent to entertain directly an application for execution of the decree passed by the first Court. The first of these cases is *Latchman Pundeh v. Maddan Mohun Shye and others* (1), in which it was clearly held that both the first Court and the second Court are competent to deal with an execution application where the first Court has ceased to have jurisdiction to execute the decree. In *Udit Narain Chaudhuri v. Mathura Prasad* (2), a decree was obtained from the Court of the Sub-Judge, Muzuffurpore. The territorial jurisdiction of this Court was transferred to the Court of the Sub-Judge, Darbhanga. It was held that an application for the execution of a decree passed by the Muzuffurpore Court could be entertained by the Darbhanga Court. In *Masrab Khan v. Debnath Mali alias Abhu Mali and others* (3), it was held that both Courts have jurisdiction to entertain the application. In this case a decree was passed by the First Munsif of Kishoreganj and the territorial jurisdiction of this Court was transferred to the Second Munsif. An application for execution was filed in the Court of the Second Munsif within time and when this was

(1) I.L.R. 6 Cal. 513.

(2) I.L.R. 35 Cal. 974.

(3) A.I.R. 1942 Cal. 321.

Kasturi
and others
v.
Mehar Singh and
Bachan Singh
Khosla, J.

dismissed in default, the second application was presented in the Court of the First Munsif less than three years later. Objection was taken that the application was barred by time inasmuch as the first application should have been filed in the Court of the First Munsif. It was held that, having regard to the fact that the change of territorial jurisdiction was made by an order of the District Judge and the territorial jurisdiction of the First Munsif as determined by the Local Government under section 13 (1) of the Civil Courts Act had not been affected, the application in the first instance should have been made to the First Munsif. In *Raja Jagannath Prasad Singh v. Sheonandan Sahay* (1), the decree was passed by the Sub-Judge, 1st Court, Gaya. Subsequently, the District Judge passed an order whereby the Sub-Judge, 3rd Court, Gaya, was given all the business relating to the area within which the land, which was the subject-matter of the decree, was situated. An application for execution was made to the 1st Sub-Judge, but it was returned saying that he had no jurisdiction to hear it. The application was then made to the 3rd Sub-Judge. An objection was taken that the condition required by section 37 (b) had not been fulfilled. The Division Bench of the Patna High Court held that the application was properly made to the 3rd Sub-Judge and relied upon the provisions of section 150, Civil Procedure Code.

As against these decisions, my attention was drawn to some decisions of Madras High Court in which a contrary view has been taken. In only one of these cases, however, the decree-holder's application filed in the second Court was rejected, and the tendency of all Courts normally is not to

(1) A.I.R. 1921 Pat. 152.

non-suit the decree-holder and the reason appears to be obvious. Where the territorial jurisdiction of the first Court is altered the decree will have eventually to be executed by the second Court, and it is a question of pure formality that the application should in the first instance be filed in the Court of the first instance. In the present case even if the decree-holders have failed to go to the Sangrur Court, they will eventually have to go to the Sunam Court to execute their decrees because the Sangrur Court will have to transfer the decrees to the Sunam Court, and it seems pointless to send them to the Sangrur Court. I am sure this could not have been the meaning of section 37(b). My attention was drawn to certain remarks of their Lordships of the Supreme Court in *Merla Ramanna v. Nallaparaju and others* (1). These remarks, however, do not support the respondents' case. Their Lordships considered the opposite views of Calcutta and Madras High Courts and did not consider it necessary to decide which of the two views was correct. The only remark which appears to support the respondents' case is—

Kasturi
and others
v.
Mehar Singh and
Bachan Singh

Khosla, J.

“It is settled law that the Court which actually passed the decree does not lose its jurisdiction to execute it, by reason of the subject-matter thereof being transferred subsequently to the jurisdiction of another Court.”

This, however, is not in any way inconsistent with the Calcutta decisions or the interpretation which I have placed upon section 37(b), according to which both the Court which passed the decree and the Court which has been invested with the territorial jurisdiction of the first Court are competent to entertain the application for

(1) A.I.R. 1956 S.C. 87.

Kasturi
and others
v.
Mehar Singh and
Bachan Singh

Khosla, J.

execution and to execute the decree. This appears to have been the intention of the Legislature and the too narrow interpretation of the condition set out in section 37(b) would defeat rather than further the ends of justice. Section 37 enlarges the meaning of the expression "Court which passed the decree" and does not merely provide an alternative meaning to it. In this view of the matter, I would hold that the Courts below were wrong to hold that the execution applications could not be entertained by the Sunam Court. I would, therefore, allow these appeals and setting aside the orders of the Courts below direct that the execution applications be entertained by the Sunam Court. Since there was a conflict of decisions and the point was not free from difficulty, I would direct the parties to bear their own costs throughout.

B. R. T.

APPELLATE CIVIL.

Before Bhandari, C. J.

CHANAN SINGH AND OTHERS,—Appellants
versus

MAGHAR SINGH AND OTHERS,—Respondents.

1957

Sept., 25th

Regular Second Appeal No. 691 of 1952.

Custom—Gill Jats of Moga Tahsil—Whether an adopted son is entitled to succeed to the property of his natural father—Special Custom—Tribe, whether governed by—General customs stated.

Held, that the Gill Jats of Moga Tahsil are not regulated by the general agricultural custom of the province but by a special custom according to which an adopted son is precluded from inheriting the property of his natural father. The general custom in regard to succession by an adopted son is that ordinarily a person appointed or adopted does not lose his right to succeed to property in his natural family, as against collaterals, but does not succeed in the presence of his natural brothers.