

BOMBAY HIGH COURT

Jagannath Nathu

Vs

Ichharam Naroba Vani

(Norman Macleod, Kt., C.J. Coyajee, J.)

13.02.1925

JUDGMENT

Norman Macleod, Kt., C.J.

1. A consent decree was passed in this case on March 18, 1912, by the First Class Subordinate Court at Dhulia against two defendants separately, each being made liable for Rs. 6,600 payable by annual installments of Rs. 6,500 each together with interest due commencing from November 1, 1912. The decree charged the properties of the two defendants separately. The decree against the first defendant is being executed in Dhulia, as his property is in that Court's jurisdiction, The property of the second defendant at the time of the decree was passed was also within the jurisdiction of the Dhulia Court. On June 9, 1920, the Jalgaon Court was made a First Class Court, and as the second defendant's property was within the jurisdiction of that Court, a question arose with regard to the further execution of the decree against him. The darkhast of 1921 was filed against both the defendants in the Dhulia Court. On February 22, 1922, the Dhulia Court held that as far as the second defendant was concerned it had no jurisdiction as the properties of defendant No. 2 were not in that Court's jurisdiction. The plaintiff then presented a darkhast to the Jalgaon Court on August 14, 1923.

2. The second defendant contended that the darkhast of 1921 was not a proper step-in-aid of execution, not being made to the proper Court. The First Class Subordinate Judge, following the Full Bench decision in *Seeni Nadan v. Muthusamy Pillai*¹ held that the application to the Dhulia Court which passed the decree originally, even after the territorial jurisdiction was transferred to the Jalgaon Court, would be a proper step-in-aid. He, therefore, held that the darkhast filed in his Court was in time. The Madras decision relied upon by the First Class Subordinate Judge is directly in point. The matter there was fully argued, and we see no reason why we should dissent from the view taken by the learned Judges on the question of the construction of Sections 37 and 38 of the Code taken together with Section 150. The Dhulia Court was the Court which passed the decree, and after certain territories within its jurisdiction had been transferred to the Court at Jalgaon, then under the provisions of Section 37 the Jalgaon Court would be deemed to be the

Court which passed the decree. It does not follow that the Dhulia Court ceased to be the Court which passed the decree so as to make an application for execution made to it an application to a Court which was not the proper Court. As the decree itself must have been lying in the Dhulia Court, we should have thought that the proper order to be made on the darkhast of 1921 was to transfer the decree or a certified copy thereof so far as it concerned the second defendant to the Jalgaon Court, In any event we think the Judge was right in holding that the darkhast was in time. The appeal, therefore, must be dismissed with costs.

Cases Referred.

1(1919) I.L.R. 42 Mad. 821