

PATNA HIGH COURT

Maharaj Kishore Khanna

Vs

Raja Ram Singh

A.F.O.O. Nos. 89 and 90 of 1949

(Ramaswami and Chaudhury, JJ.)

28.04.1953

JUDGMENT

Ramaswami, J.

1. These appeals are presented on behalf of the judgment-debtor Maharaja Kishore Khanna against the order of the learned Subordinate Judge of Purnea overruling certain objections to the execution of a decree granted by the Special Judge of Banares under the United Provinces Encumbered Estates Act.

2. In the year 1929, the Bank of Banares brought a suit against Maharaja Kishore for recovery of certain money claims. The Allahabad Bank and certain other creditors were also joined as parties to the suit. A decree was obtained by the Banares Bank but on 6-3-1936 Maharaja Kishore Khanna filed an application under Section 4, United Provinces Encumbered Estates Act before the Collector of Banares. The Collector passed an order under Section 6 of the Act and forwarded the application to the Special Judge. On 21-3-1940 the Special Judge passed four decrees in favour of the Banares Bank and certain other creditors for a total amount of Rs. 11 lacs. The decrees were sent by the Special Judge to the Collector of Banares for execution. While the execution was pending the Allahabad Bank applied to the Collector for appointment of a receiver in respect of the entire property of the judgment-debtor. It is necessary to note that some properties of the judgment-debtor are located in the State of Bihar. The Collector allowed the application of the Allahabad Bank and appointed a receiver with respect to the properties in Bihar and United Provinces under Section 9C Encumbered Estates Act. An appeal was taken by the judgment debtor to the Additional Commissioner who held that Section 9C was not applicable but as regards the Banares properties a receiver should be appointed under Section 9D of the Act and as regards the properties situated in Bihar a receiver should be appointed under Order 40 Rule 1, Civil Procedure Code. The matter was taken in revision to the Board of Revenue who confirmed the order of the Additional Commissioner with respect to the appointment of a receiver for the landed properties located in Banares but the Board of Revenue set aside the order of the Additional Commissioner appointing a receiver for the properties situated in Bihar. While the revision application was pending before the Board of Revenue the Collector of Banares filed an execution petition before the Subordinate Judge of Purnea asking

that a sum of Rs. 12,54,636 and odd due under the decree should be realised from the judgment-debtor by the sale of the Somapur estate and other properties situated in the district of Purnea. The decree was sent direct by the Civil Judge Banares, to the Subordinate Judge of Purnea under Order 21 Rule 5, C. P. C., together with a certificate of non-satisfaction of the decree. The decree holder applied to the Subordinate Judge of Purnea for an order of attachment under Order 21 Rule 52, C. P. C., of the amount of Rs. 25,000 lying in the hands of the Additional Collector of Banares. The application was allowed and the Subordinate Judge issued an order of attachment under Order 21 Rule 52, C. P. C., requiring the Additional Collector of Banares to withhold payment of the sum of Rs. 25,000 which was the amount collected by the receiver from the Somapur estate in the district of Purnea for the period he was in charge.

3. The judgment-debtor objected to the execution of the decree on the ground that the Subordinate Judge of Purnea had no jurisdiction to execute the decree which was passed by the special Judge of Banares appointed under the United Provinces Encumbered Estates Act. The judgment-debtor further objected that the provisions of O. 21 Rule 5 were not complied with and that the decree was barred by limitation. These objections were overruled by the learned Subordinate Judge of Purnea, As regards attachment of the amount of Rs. 25,000 in the hands of the Additional Collector of Banares, the judgment-debtor filed a protest on the ground that the Subordinate Judge had no jurisdiction to make such an order as the property sought to be attached was outside the territorial limits of the State of Bihar. This objection was also overruled by the learned Subordinate Judge and the application filed by the judgment-debtor in this behalf was dismissed.

4. Miscellaneous Appeal no. 89 of 1949 relates to the order of the Subordinate Judge rejecting the objection of the judgment-debtor that the Court had no jurisdiction to attach under Order 21 Rule 52 the amount of Rs. 25,000 lying in the hands of the Additional Collector of Banares. Miscellaneous Appeal no. 90 of 1949 is preferred against the order of the Subordinate Judge overruling the objection of the judgment-debtor that the Civil court of Purnea had no jurisdiction to execute the decree passed by the Special Judge of Banares under the United Provinces Encumbered Estates Act.

5. The First question raised by Mr. S.N. Dutt on behalf of the appellant is whether the Subordinate Judge of Purnea had jurisdiction to execute the money decree granted by the special Judge of Banares in favour of the Banares Bank and the other creditors. The submission of the learned Counsel is that the United Provinces Legislature has jurisdiction to legislate only with respect to property within its jurisdiction and that the United Provinces Legislature cannot by any legislation affect property situated in another province. It was argued that if any provision of the United Provinces Encumbered Estates Act had any extraterritorial effect, the legislation would be unconstitutional and void. In my opinion, the proposition for which Mr. Dutt contends is correct. The United Provinces Encumbered Estates Act was passed by the Provincial Legislature acting under the authority conferred by Section 80A, Government of India Act, 1919. That section empowered the Provincial Legislature to make laws for peace and good government of the territories for the time being constituting the province. The language of Section 80A makes it clear that the Provincial Legislature could not legislate for territories outside its jurisdiction or promulgate laws that may have extra-territorial application or affect person or properties beyond its jurisdiction. The general principle is that the exercise of civil jurisdiction is conditioned by territorial limits. The basis of civil jurisdiction is the principle of effectiveness- or to borrow the language of Holmes, J. "The foundation of jurisdiction is physical power" - *Mc Donald v.*

*Mabee*¹, The position was clearly stated by Lord Selborne in the leading case of - '*Sirdar Gurdial Singh v. Maharaja of Faridkote*²',

"All jurisdiction is properly territorial and Extra territorium jus dicenti impune non paratur Territorial jurisdiction attaches (with special exceptions) upon all persons either permanently or temporarily resident within the territory while they are within it; but it does not follow them after they have withdrawn from it, and when they are living in another independent country. It exists always as to land within the territory, and it may be exercised over moveables within the territory."

The principle applies not merely to the jurisdiction of a judicial tribunal but to exercise of legislative jurisdiction. It is relevant in this connection to quote a passage from the judgment of the Supreme Court of America in - '*St. Louis v. Perry Co.*³,

"If the legislature of a State should enact that the citizens or property of another State or Country should be taxed in the same manner as the persons and property within its own limits and subject to its authority, or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. Jurisdiction is as necessary to valid legislative as to valid judicial action".

In the light of this principle and specially in the light of Section 80A, Government of India Act, 1919, it must be held that the Legislature of the United Provinces has no power to make laws which would have extra-territorial application or which would affect person or property outside its jurisdiction.

6. Keeping this principle in view it is necessary to examine the scheme and purpose of the United Provinces Encumbered Estates Act. The preamble states that the object of the Act is to "provide for the relief of Encumbered Estates in the United Provinces." Section 2 (d) of the Act defines 'land' to consist of a share of or interest in a mahal in the United Provinces'. Section 2(g) defines 'landlord' to mean 'a proprietor of a mahal or of a share of or interest in a mahal.' The Local Government of the United Provinces are authorised under Section 3 of the Act to appoint any civil judicial officer to be a "special judge" who is to have jurisdiction within the area so specified. Under Section 4 a landlord whose immovable property is encumbered with private debts may apply to the Collector of the district where his land is situated requesting that the provisions of the Act may be applied to him. He is also required under the section to give a list of his debts private or public both decreed and undecreed. After the Collector has passed order under Section 6 and forwarded the application to the Special Judge

"all proceedings pending at the date of the said order in any civil or revenue court in the United Provinces in respect of any public or private debt to which the landlord is subject shall be stayed."

according to Section 7 (1) of the Act. Section 14 of the Act is important. It refers to the examination of claim made in pursuance of the notice published under Section 9 and to the

determination of the amount of debts. After the Special Judge examines the claims and determines the amount of debt he grants under Section 14 (7), a simple money decree for such amount together with any costs in respect of the proceedings in his court together with 'pendente lite' and future interest. Section 14 (7) provides that

"such decree shall be deemed to be a decree of a civil court of competent jurisdiction but no decree against the landlord shall be executable within the United Provinces except under the provisions of this Act."

Another important section is Section 24 (1) which provides for the sale of the debtor's attachable property other than his proprietary interest in land and his residential house and furniture, and for the distribution of the sale proceeds amongst the claimants in accordance with the priority laid down under Section 16 of the Act. Section 24 (4) states that

"for realising the value of the debtor's property under this section the Collector may exercise all the powers of a civil court for the execution of a decree."

Section 24 (3) is also important. Section 24 (3) states that

"for the purpose of execution against property outside the United Provinces the decrees passed by the Special Judge shall be deemed to be decrees in favor of the Collector".

On behalf of the respondent the Advocate General conceded the principle that a Provincial Legislature cannot promulgate laws having extra-territorial effect but he submitted that by enacting Section 24 (3) the Provincial Legislature was merely providing that the decrees passed by the special Judge shall be deemed to be decrees in favor of the Collector. Learned Counsel referred to Section 14 (7) of the Act which states that

"the decree passed by the Special Judge shall be deemed to be a decree of a civil court of competent jurisdiction".

The Advocate General contended that Section 24 (3) must be read along with Section 14 (7) of the Act. He argued that if the decree of the Special Judge had the force of a decree passed by a civil court of competent jurisdiction the decree could be validly transferred for execution to the Sub-ordinate Judge of Purnea under Section 39, Civil Procedure Code. The argument of the Advocate General proceeds on the assumption that the language of Section 14 (7) should be construed in the wide sense and that the decree passed by the special Judge should be deemed to be a decree of a civil court of competent jurisdiction not only within the territorial limits of the United Provinces but also in other Provinces where the Civil Procedure Code is applicable. But the argument of the Advocate General is open to the strong objection that the Legislature cannot be permitted to do indirectly what it dare not do directly. If the legislature of the United Provinces cannot legislate directly for property outside its territorial limits the Legislature cannot by a process of fiction treat the decree of the special Judge as a decree of a civil court of competent jurisdiction and make such decree executable against immovable property outside its territorial limits by taking recourse to the provisions of the Civil Procedure Code which is a

Central Act. It is manifest that such an interpretation would make the operation of the Act 'ultra vires'. On the other hand, if Section 14 (7) is construed to mean that the decree of the Special Judge will be deemed to be a decree of the Civil Court only within the territory of the United Provinces the operation of the Act would be 'intra vires'. In a matter of this description the principle to be applied is clear. The principle is that if two constructions of a statute are possible, one of which would make it 'intra vires' and the other 'ultra vires' the court must lean to that construction which would make the operation of the Act 'intra vires'. The reason is that no intention can be imputed to the Legislature that it would exceed its own jurisdiction. On the contrary the court must presume that the legislature in enacting the statute was dealing with things or person within its own jurisdiction. In *-Macleod v. Attorney General for New South Wales*⁴ the Legislature of New South Wales had enacted a law providing that

"whosoever being married marries another person during the life of the former husband or wife, wheresoever such second marriage takes place, shall be liable to penal servitude for seven years."

The appellant, who had during the lifetime of his wife married another woman in the United States of America, contended that the court had no jurisdiction to try him for the alleged offence since the Act under which he was tried, according to its true construction was limited to offences committed within the jurisdiction of the local Legislature by persons subject at the time of the offence to its jurisdiction; and that upon any other construction the Act would be 'ultra vires'. The Judicial Committee observed that if the statute was construed as it stood and upon the bare words, any person, married to any other person, who married a second time anywhere in the habitable globe, was amenable to the criminal jurisdiction of New South Wales, if he could be caught in that Colony. The Judicial Committee observed :

"It appears to their Lordships that the effect of giving the wider interpretation to this statute necessary to sustain this indictment would be to comprehend a great deal more than Her Majesty's subjects; more than any persons who may be within the jurisdiction of the Colony by any means whatsoever; and that, therefore, if that construction were given to the statute, it would follow as a necessary result that the statute was ultra vires of the Colonial Legislature to pass. Their Lordships are far from suggesting that the Legislature of the Colony did mean to give to themselves so wide a jurisdiction. The more reasonable theory to adopt is that the language was used, subject to the well-known and well-considered limitation, that they were only legislating for those who were actually within their jurisdiction, and within the limits of the Colony."

7. Applying the principle in the present case it is clear that Section 14 (7) of the Act cannot be construed to mean that the decree of a special judge is deemed to be the decree of a Civil Court of competent jurisdiction even beyond the territorial jurisdiction of the State Legislature. In other words, the decree passed by the Special Judge of Banares has not the effect of a decree of a Civil Court outside the territorial limits of United Provinces. It follows that the Subordinate Judge of Purnea has no jurisdiction to execute the decree or to direct that the properties of the judgment-debtor in Purnea should be attached in execution of the decree. In my opinion, the contention of the appellant on this point is correct and the execution proceeding should be dismissed on the

ground that the Subordinate Judge of Purnea has no jurisdiction to execute the decree.

8. The point was taken on behalf of the respondent that the judgment-debtor had applied under Section 4, United Provinces Encumbered Estates Act, to the Collector of Banares and had submitted to the jurisdiction of the Collector and the Special Judge of Banares who passed the decree under Section 14 (7) of the Act in favour of the various creditors. It was argued on behalf of the respondent that the judgment-debtor having submitted to the jurisdiction is estopped from raising the objection that the decree passed by the Special Judge has no extra-territorial effect or that the Subordinate Judge of Purnea to whom the decree was sent for execution has no jurisdiction in the matter. In my opinion, this contention has no merit. I have already held that the Legislature of the United Provinces had no power to legislate in respect of the property situated in another province and in the absence of such authority no amount of consent or acquiescence can confer jurisdiction on the Court of the Special Judge of Banares or on the Court of the Subordinate Judge of Purnea. The principle is well-established that submission cannot give any court jurisdiction to entertain an action or proceeding which in itself lies beyond the competence or authority of the Court. In - *'Parquharson v. Morgan'*⁵, Lord Justice Davey states :

"The other principle is correlative to the first : is that the parties cannot by agreement confer upon any Court or Judge a coercive jurisdiction which the Court or judge does not by law possess. To do so would be an usurpation of the prerogative of the Crown, and it has always been the policy of our law as a question of public order to keep inferior Courts strictly within their proper sphere of jurisdiction : see the judgment of the Common Pleas in - *'Worthington v. Jeffries'*⁶, It follows that a party may, notwithstanding that he has contracted to have the dispute decided, or a decision in the matter enforced, by a Court not possessing by law jurisdiction, refuse to be bound by his contract and object to the jurisdiction subject to the provisions embodied in the Arbitration Act, 1889, so far as applicable. It also follows that jurisdiction cannot be given by acquiescence. These principles are so well known that they need no illustration from decided cases or other authority."

9. The question may be examined from another aspect. If the decree passed by the Special Judge cannot be effective outside the United Provinces the submission of the judgment-debtor alone cannot be the basis for the exercise of the jurisdiction. To put it differently, if there is a conflict between the principle of submission and the principle of effectiveness, that is to say, if the judgment of the court cannot be effective against the party who has submitted to it, the principle of effectiveness prevails and the Court will not exercise jurisdiction. This proposition is supported by the decision of Lord Merivale in - *'Tallack v. Tallack'*⁷, in which it was held that an appearance

"qualified at all stages of the case by a distinct and reasoned denial of the existence of jurisdiction could not with any propriety be regarded as a submission to the exercise of the jurisdiction so derived."

It was also held even if the steps taken by the respondent in the proceedings amounted to

submission, the Court had no jurisdiction to adjudicate upon the claim for having regard to the law of Holland (where the respondent's property was situate) a decree directing a settlement of the wife's property would be an idle and wholly ineffectual process.

10. On this part of the case, therefore, my conclusion is that the Subordinate Judge of Purnea had no jurisdiction to execute the decree granted by the Special Judge of Banares under Section 14, Encumbered Estates Act.

11. This conclusion is sufficient to dispose of Miscellaneous Appeal No. 90 of 1949 but it is right that I should indicate my views on two other questions which were fully argued by learned counsel for parties. It was contended in the first place that the decree of the Special Judge has not been validly transferred to the Subordinate Judge of Purnea and the requirements of Order 21 Rule 5 have not been complied with. On behalf of the appellant Mr. Dutt pointed out that Order 21 Rule 5 provides that where the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed. In the present case the decree was sent direct to the Subordinate Judge and not to the District Judge of Purnea as required by Order 21 Rule 5. Mr. Dutt submitted on behalf of the appellant that the proceeding before the Subordinate Judge was therefore, void and without jurisdiction. I am unable to accept this argument. The jurisdiction to transfer a decree for execution from one court to another arises not under Order 21 Rule 5 but under Section 39, Civil Procedure Code Order 21 Rules 5 and 8 merely prescribe the procedure by which the transfer is to be carried out. It is clear that failure to observe the provisions of Order 21 Rule 5 or Rule 8 is a mere irregularity and does not affect the jurisdiction of the Subordinate Judge of Purnea to execute the decree. Mr. Dutt referred in support of his argument to the decision in - '*Kunja Bihari Singh v. Tarapada Mitra*⁸', in which it was held that the Subordinate Judge had no jurisdiction to execute the decree sent to him for execution and the decree should have been sent in the first instance to the District Judge. This decision is not authoritative in view of the later decision of the Judicial Committee in

- '*Jang Bahadur v. Bank of Upper India, Ltd.*⁹', where a distinction has been drawn between complete absence of jurisdiction and irregular exercise of jurisdiction. In that case an application under Section 50, Civil Procedure Code, which should have been made to the Court which passed the decree, was in fact made to the Court executing it. The Court was allowed to proceed until the last moment when the property was being actually put up for sale. The Judicial Committee held that the provisions of Section 50 were merely matters of procedure. Before execution can proceed against the legal representative of a deceased judgment-debtor, the decree-holder must get an order for substitution from the Court which passed the decree. "This", they say,

"is a matter of procedure and not of jurisdiction. Jurisdiction over the subject-matter continues as before, but a certain procedure is prescribed for the exercise of such jurisdiction. If there is non-compliance with such procedure, the defect might be waived and the party who has acquiesced in the Court exercising it in a wrong way cannot afterwards turn round and challenge the legality of the proceedings".

In - '*Inderdeo Prosad v. Deonarayan Mahton*¹⁰', it was held by a Division Bench of this Court in

consonance with the decision of the Judicial Committee that non-compliance with the provisions of Order 21 Rule 5, was a mere irregularity and that it did not touch the jurisdiction of the transferee court to execute the decree. The contention of Mr. Dutt on this point must, therefore, be overruled.

12. The question was also raised whether the execution of the decree by the Court of the Subordinate Judge of Purnea is barred by limitation. It was pointed out on behalf of the appellant that the decree was passed by the Special Judge on 21-3-1940 and that transfer of the decree to the court of the Subordinate Judge of Purnea was made on 4-1-1947, more than three years after the passing of the decree. From the record it appears that the Special Judge had sent the decree to the Collector for execution on 29-5-1940. The argument on behalf of the appellant is that the period during which the decree was being executed in the Court of the Collector cannot be deducted since the Collector was not a proper Court within the meaning of Article 182, Limitation Act, and any application on behalf of the creditor made before the Collector would not be a step-in-aid of the execution within the meaning of Article 182(5), Limitation Act. I think that the argument addressed on behalf of the appellant is not sound. No question of limitation arises in this case for the execution proceeding in Purnea Court is merely a continuation of the execution proceeding pending before the Collector of Banares. It appears that on 29-5-1943 the Special Judge had sent the decree to the Collector of Banares for being executed and that from 29-5-1940, till up to date the decree is under execution before the Collector of Banares. The application made to the Purnea Court in the present case is not an application to initiate a new execution but it is an application which is intended to revive and carry through a pending execution. The proper article applicable in this case is Article 181 and not Article 132, Limitation Act. In a case of this description the right to file an application to continue the execution accrues from day to day and the right will not be barred until three years have elapsed after the proceedings have ceased to be pending. This view is supported by the decision in - '*Subba Chariar v. Muthuveera Pillai*¹¹', (K). A similar view is enunciated by a Division Bench of this Court in - '*Mt. Kaniz Zohra v. Syam Kissen*¹²' In my opinion, therefore, the argument of the appellant on the question of limitation must be rejected and it must be held that the execution proceeding pending in the court of the Subordinate Judge of Purnea is not time-barred.

13. But for the reasons I have already expressed I hold that the Subordinate Judge of Purnea has no jurisdiction to execute the decree or to attach the properties of the judgment-debtor located in the district of Purnea. In this view of the matter I would allow Miscellaneous Appeal No. 90 of 1949 and set aside the judgment of the learned Subordinate Judge.

14. As regards Miscellaneous Appeal No. 89 of 1949 it was pointed out on behalf of the respondent that the receiver against whom the order of attachment was issued has deposited the amount of Rs. 25,000 in bank in the name of the Additional Collector of Banares. The report of the Receiver, Krishna Bihari Lal, dated 26-9-1948 is printed on page 35 of the paper-book. Counsel for the respondent, however, conceded that the order of the learned Subordinate Judge attaching the money in the hands of the receiver was illegal. It cannot be disputed that the jurisdiction of a Court in enforcing execution of a decree is restricted by its territorial limits. If a Court desires to seize or attach property of a judgment-debtor outside its jurisdiction it can only reach the property by means of the recognised legal procedure, viz., the decree to be executed must be transferred to the court within whose local limits the property sought to be attached is for

the time being situate. The principle was laid down by the Calcutta High Court in - '*Begg, Dunlop and Co. v. Jagannath*¹³', in which all the authorities have been reviewed. The principle has been repeated by a Division Bench of this Court in - '*Bank of Bengal v. Sarat Chandra Mitra*¹⁴', Applying the principle it is obvious that the Subordinate Judge of Purnea had no jurisdiction to issue order of attachment against the Receiver Krishna Bihari Lal or against the Additional Collector of Banares with respect to the amount of Rs. 25,000 collected from the Semapore estate. It is manifest that Miscellaneous Appeal No. 89 of 1949 preferred on behalf of the judgment-debtor must be allowed.

15. For the reasons stated I would set aside the judgment of the Subordinate Judge of Purnea dated 25-1-1949 and allow both Miscellaneous Appeals 89 and 90 of 1949 with costs.

Choudhury, J.

16. I agree.

Appeals allowed.

Cases Referred.

¹(1917) 37 SC 343

²(1894) AC 670

³(1871) 11 Wall. 423 at p. 430

⁴(1891) AC 455

⁵(1894) 1 QB 552

⁶(1875) LR 10 CP 379

⁷(1927) PD 211

⁸AIR 1919 Pat 324

⁹AIR 1928 PC 162

¹⁰AIR 1946 Pat 301

¹¹36 Mad 553 at p. 556

¹²AIR 1916 Pat 101

¹³39 Cal 104

¹⁴AIR 1918 Pat 126