

## **Mt. Mojibunisa Bibi And Ors. vs Kadir Bux on 7 September, 1950**

**Equivalent citations: AIR1951ALL380, AIR 1951 ALLAHABAD 380**

### **JUDGMENT**

Agarwala, J.

1. This is a decree-holders' appeal. The facts are as follows : In a suit for recovery of Rs. 4,500, a decree for Rs. 4,500 with costs amounting to Rs. 487 and interest at 6 per cent. per annum was passed on 21-2-1938, against the respondent. On 10-2-1940, the decree-holders applied for execution of the decree in the Court of the City Munsif, Jaunpur. The prayer made in the application was that the decree may be transferred to the Court of Small Causes at Calcutta for execution by that Court. On 18-2-1941, an order for transfer was made. The execution application was, however, struck off by the Calcutta Court on 18-4-1941, and the proceedings were struck off by the City Munsif on 18-3-1943.

2. Then, on 14-8-1944, a second application for execution was made. This application was filed in the Court of the Civil Judge, Jaunpur probably because the City Munsif ceased to have jurisdiction with regard to the matter. In this application also a prayer for transfer of the decree for execution by the Small Cause Court at Calcutta was made. The decree was transferred to that Court by an order dated 30-8-1944. The Calcutta Court attached certain immovable properties. The judgment-debtor filed an objection in that Court urging that the Court had no jurisdiction to execute the decree inasmuch as its value was beyond the pecuniary limits of the jurisdiction of that Court. The Registrar of the Court overruled this objection on the ground that it was not the function of the transferee Court to question the order of transfer. Then the judgment-debtor filed an objection in the Court of the Civil Judge, Jaunpur, on 27-7-1945, and the main point taken on his behalf was that the second execution application was barred by limitation because the first execution application was not in accordance with law inasmuch as a prayer was made in it for transfer of the decree to a Court which had no jurisdiction to execute the decree. This objection was dismissed by the Civil Judge. On appeal, however, the objection was accepted and the execution application was dismissed as time barred.

3. Two points have been urged before us by counsel for the decree-holders. It has been contended that the Civil Judge had no jurisdiction to entertain the objection of the judgment-debtor when the same objection had been dismissed by the Presidency Small Cause Court at Calcutta. This objection has no force. As stated above, the Registrar of the Small Cause Court at Calcutta rejected the judgment-debtor's objection on the ground that he had no jurisdiction to entertain it. He, therefore, did not decide it on the merits. Further, it is the judgment-debtor's contention that the Small Cause Court, Calcutta, had no jurisdiction to execute the decree. If it had no jurisdiction to do so, its order dismissing the judgment-debtor's objection would also be without jurisdiction and would be a nullity. By the transfer of the decree, the transferring Court did not cease to have jurisdiction in a

matter like this when the objection related to the transfer of the decree to the transferee Court.

4. It has next been contended that the decree could not be validly transferred to the Small Cause Court at Calcutta and as such the application for execution made on 10-2-1940, could not be said to be not in accordance with law. Under Section 39 (1), a transfer can be made "to any Court". Under Sub-section (2), a Court can transfer a decree for execution to a Court of competent jurisdiction" when it transfers it suo motu. In the present case, the transfer was made, not suo motu, but on the application of the decree-holders. The case thus falls under Section 39 (1) and, therefore, it is alleged that the transfer could be made to any Court irrespective of the question of the limits of its pecuniary jurisdiction. Learned counsel in support of his contention has relied upon a decision of a Division Bench of this Court in *Shanti Lal V. Mt. Jamni Kuer*, A. I. R. (27) 1940 ALL. 331: (I. L. R. (1940) ALL. 318). In that case it was held that if the amount of the decree sought to be executed did not exceed the pecuniary limits of the transferee Court, the transfer of the decree could be made to that Court in spite of the fact that the original suit in which the decree was passed was valued at a figure higher than the pecuniary limits of the transferee Court. The case is, therefore, distinguishable, but learned counsel relies upon certain observations made in that judgment which go to show that the Court was inclined to favour the Madras view, according to which a transfer could be made to any Court irrespective of the question whether the amount of the decree was within the limits of its pecuniary jurisdiction or not. It is not necessary for us to express any opinion upon this point as in the present case the matter has to be determined with reference to Order 21, Rule 4. Under that rule "Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be, the copies and certificates mentioned in rule 6, and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself."

The rule undoubtedly implies that where the value of the suit in which the decree which is sought to be executed exceeds the amount of Rs. 2,000 it would not be transferred to the Courts mentioned in the rule. As in the present case, both the value of the suit and the decree exceeded the amount of Rs. 5,000, it is quite clear that the decree could not be transferred to the Calcutta Small Cause Court for execution. The application for execution, having contained a prayer which the Court had no jurisdiction to grant, was, therefore, not in accordance with the law. That being so, the first execution application cannot be taken to be a step-in-aid of execution and the second application for execution having admittedly been made beyond three years of the passing of the decree is barred by limitation.

5. There is no force in this appeal and it is dismissed.

6. In the circumstances of the case, we order the parties to bear their own costs of this appeal.