



# UTTAR PRADESH

Judicial Services Exam

CIVIL JUDGE (Junior Division)

Uttar Pradesh Public Service Commission (UPPSC)

**Judgement**

**Volume - 1**



# UTTAR PRADESH JUDICIAL SERVICES

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## [Section 21 of Civil Procedure Code, 1908]

### **Executing Court Has No Jurisdiction to Decide Whether The Court Which Decreed the Suit Had Territorial Jurisdiction**

Sneh Iata Goel  
Versus  
Pushpalta and ors.

#### **Division Bench of Hon'ble Supreme Court**

Hon'ble D.Y Chandrachu & Hon'ble Hemant Gupta jj.

**Judgment** pronounced by Hon'ble D. Y. Chandrachud J.

**Dated:** 7th Jan 2019

#### **Law Points**

1. Want of territorial jurisdiction does not travel to the root of or to the inherent lack of jurisdiction whereas want of jurisdiction as to subject matter does.
2. Executing court has no jurisdiction to decide whether the court which passed the decree had territorial jurisdiction or not
3. Objection as to territorial or pecuniary jurisdiction must be raised at the court of first instance at the earliest possible opportunity.
4. Consequent failure of justice must entail to such proceedings.

#### **Relevant Facts in Brief**

In a family of 4 members, 3 daughters and their mother, petitioner is one of the daughter claiming a share of > via a suit of partition in the properties situated at Ranchi and Varanasi. The suit was instituted at Ranchi before the Court of Subordinate Judge

On 10th May 1989 a suit was filed by one of the defendants questioning the jurisdiction of the above mentioned suit, in Patna High Court, which was disposed along with the directions to the special subordinate judge at Ranchi to determine any question as to jurisdiction as a preliminary question.

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On 13th June 1990 a preliminary decree was passed ex-parte granting the petitioner 14th share in the scheduled property and was further confirmed by the final decree passed on 5th April 1990. One of the daughter in the partition suit filed title suit in the same court in Ranchi which was dismissed on 22nd July 2003 for non- prosecution. Also the respondent filed a title suit before the same court in Varanasi which was dismissed under Order VII Rule 11 of CPC on 12th April 2005 on the ground of being barred under Section 21A of CPC.

On 12 May 2014 appellant filed proceedings for execution of the final decree at Ranchi. On 1 Jan 2015, respondent filed an objection under Section 47 of CPC contending that the decree so passed were without jurisdiction and therefore a nullity.

### **Decision of Executing Court**

On 10 March 2015, the first respondent challenged the decree of 13 June 1990 in appeal under Section 96 of CPC.

On 10 March 2016 the executing Court dismissed the objections of the first respondent under Section 47 of CPC and observed

"When a decree is made by a court which has no inherent jurisdiction, an objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record where the objection as to the jurisdiction of the court to pass the decree does not appear on the face of the record and requires examinations of the questions raised and decided at trial, which would have been but have not been raised, the executing court will have no jurisdiction to entertain an objection as to the validity of the decree on the ground of jurisdiction."

### **Decision of High Court**

Respondent filed an appeal from the order of executing court under Article 227 of the Constitution of India before the High Court, which was decided in the favour of respondent and it was further held that under Section 47 CPC the petitioner has not challenged the validity of the decree on merits, rather the plea taken by the respondent is that the decree cannot be executed for it has been passed by a Court which had no territorial jurisdiction to entertain

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Partition suit. High Court further directed the executing court to decide the question as to jurisdiction.

Assailing the judgment of the High Court, proceeding before the Supreme Court was instituted by the appellant/ petitioner challenging the order of HC.

## Issues

1. Whether High Court was manifestly in error to direct the executing court to decide whether a decree in the suit of partition was passed in the absence of territorial jurisdiction.
2. Whether the Executing court can go behind the decree.

## Contention of appellant

- \* Ld. Counsel Mukul Rohtagi submitted on behalf of appellant that An objection as to territorial jurisdiction does not relate to the inherent jurisdiction of the civil suit.
- \* Such objection has to be addressed before the Court in which the proceedings were going on and in event of rejection, in the appellate court.
- \* High Court was in error in directing the executing court to deal with such objection.
- \* Respondent was aware of the proceedings which were taking place and now, deliberately making efforts to delay and obstruct the execution.

## Contention of Respondent

Ld. Counsel S.R. Singh submitted on behalf of the respondent that

- \* Objection to the lack of jurisdiction is an objection to the subject matter of the suit hence can be raised before the executing court and placed reliance on Kiran Singh v. Chaman Paswan (1954 SC) and Harshad Chiman Lal Modi v. DLF Universal Ltd. (2005 SC)
  - \* Property on the basis of which jurisdiction was found at Ranchi did not belong to common ancestor and in which event, Civil Court at Ranchi had no jurisdiction to entertain the suit for partition.
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## Observation of Hon'ble Supreme Court

Legislature has designedly adopted the provision of Section 21 of CPC with having two pre-conditions

1. The objection must be taken in the court of first instance at the earliest possible opportunity and in all cases on or before the settlement of issues; and
2. There has been a consequent failure of justice.

This makes abundantly clear that an objection to the want of territorial jurisdiction does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suite.

Moreover, no such objection can be allowed to be raised even by an appellate or revisional jurisdiction unless both sets of conditions are fulfilled.

Respondent has submitted that the objection as to the lack of jurisdiction was raised in the written statement before the trial Court. But the suit was decree ex-parte after respondent failed to participate in the proceeding.

Ld. Counsel of Respondent also placed reliance on Kiran Singh case (supra). Dispute in that case was regarding the valuation of the suit which would ultimately determine the forum to which appeal from the judgment from trial court would lie. Court in that case held that as a fundamental principle, a decree passed by a court without jurisdiction is a nullity and that its validity could be set up wherever it is sought to be enforce or relied upon, even at the stage of execution in a collateral proceeding. Court observed that

"The policy underlying Section 21 and Section 99 CPC is that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice"

Objection to jurisdiction, both territorial and pecuniary, are technical in nature and are not open to consideration by an appellate court, unless there has been a prejudice on the merits. Far from helping the case of the respondent, the judgement in Kiran Singh (supra) holds that objection to

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territorial jurisdiction and pecuniary jurisdiction is different from an objection to jurisdiction over the subject matter,

In *Hiralal v. Kalinath* (1962 SC) a suit filed on original side of Bombay High Court, which was referred to arbitration and the award so caused was eventually incorporated in a decree of the High Court. In execution, the judgement debtor resisted on the ground that no part of cause of action arisen in Bombay, therefore the High had no jurisdiction to try the cause.

Rejecting this contention the + judge bench of Hon'ble Supreme Court held

"It is well settled that the competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is case of inherent lack of jurisdiction on the other hand an objection as to the local jurisdiction of a court can be waived and this principle has been given a statutory recognition by enactments like Section 21 of CPC."

In *Harshad Chaimn Lal Modi v. DLF universal Lid.* (2005 SC) apex Court held that territorial and pecuniary jurisdiction stands at different footing than to jurisdiction as to subject matter. In former the objection has to be taken at the earliest possible opportunity and before the settlement of issues and the decree so passed is valid whereas, in the latter case decree passed in want of subject matter jurisdiction is nullity.

In *Vasudev Dhanji Bhat Modi v. Rajabhai Abdul Rehman* (1970 SC) three judge bench reversed the decision of Gujarat High Court which held that a decree passed by Court of small causes is invalid for want of jurisdiction and executing court shall not execute it. Hon'ble Supreme Court held that executing court cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if erroneous is still binding between parties. If the decree is on the face of the record without jurisdiction and the question does not relates to the territorial jurisdiction, objection to the jurisdiction of the Court to make the decree may be raised.

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Where it is necessary to investigate the facts in order to determine whether the court which had passed the decree had no jurisdiction to entertain and try the suit the objection cannot be raised in the execution proceeding.

## **Conclusion**

In the view of given facts and circumstances of the case and for the rationale above discussed, Hon'ble Supreme Court concluded as following.

- \* The High Court was manifestly in error in coming to the conclusion that it was within the jurisdiction of the executing court to decide whether the decree, in the suit for partition was passed in the absence of territorial jurisdiction. High Court acted in excess of jurisdiction in reversing the judgment of the executing court which had correctly declined to entertain the objection.
- \* Objection raised in the execution in the present case did not relate to the subject matter of the suit. It was an objection to territorial jurisdiction which does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the court. An executing court cannot go behind the decree and must execute it as it stands.

## **Decision of Hon'ble Supreme Court**

For the above reason, appeal was allowed and set aside the impugned judgment and order of the High Court.

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## **'Restitution' Under Section 144 CPC Attracts Only When There Is Variation Or Reversal Of Decree/Order.**

**Maruti bhawani mata mandir rep. Through pujari ganeshi lal (dead)**

Through Irs. Kailash  
Versus  
Ramesh and ors.

Hon'ble J. Dr. Dhananjaya Y. Chandrachud, Hon'ble J. Hemant Gupta, J.

**Pronounced by:** Hon'ble R. Subhash Reddy J.

**Date:** 21 Jan, 2019

### **Facts**

Plaintiff had filed suit for a permanent injunction restraining the respondents from interfering with the possession of the property over the agriculture land in dispute. The suit was dismissed by trial court on the ground that plaintiff had failed to prove possession over the land in dispute. Plaintiff filed first and second appeal and both were dismissed by the first appellate court and High Court respectively.

After the disposal of second appeal, the Respondent filed an application under Section 144 CPC, for the restoration of possession of dispute land and mesne profit. It was dismissed by the executing court. Thereafter, respondent filed an appeal before the Add. District judge against above order. It was allowed by the Add. District Judge and the case was remand back to the executing court. The appellant (original plaintiff) filed an appeal before High Court (24 appeal) but the same was dismissed on the ground that no substantial question of law arose. Therefore, aggrieved by the Judgment of High Court, the appellant (original plaintiff) filed an appeal before Supreme Court.

The Supreme Court observed that Section 144 CPC applies to a situation where a decree or an order is -

1. Varied or reversed in appeal, revision or any other proceeding or;
  2. Set aside or modified in any suit instituted for the purpose, and, in that situation, the court may grant an application for restitution.
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Whereas in present case, trial court did not made any decree or order which shows that procession of property was handed over to appellant nor that possession was given to him by any order or decree of court.

### **Decision of Supreme Court**

Therefore, in light of the provisions of Section 144 CPC, the order passed by executing Court by rejecting the application was justified. Hence, appeal allowed.

