

maintained right up to the end of the Sessions trial. The case of Bhimappa proceeded on its own number and although evidence was led in both the cases together, the acquittal was recorded in each of the two cases. The police did not present a charge-sheet against Mallappa and the trial of Mallappa can be said to be in the other case and not in the case filed by the police. In this view of the matter it is quite plain that Bhimappa was entitled to move the High Court for special leave in his own case. The order saying that he had no standing cannot, therefore, be sustained.

19. Bhimappa had also applied for revision and his application was rejected. He applied for special leave against that order but leave was refused by this Court. It was argued that that must conclude the matter. We do not agree. Bhimappa's statutory right to move the High Court could not be lost by reason of the revision. The result of the revision, therefore, had no bearing upon the matter.

20. Bhimappa was thus entitled to have a hearing of his petition for special leave under Section 417(3) of the Code. Whether he could ask for leave against Mallappa alone or against the other two because the charge under Section 120-B, I. P. C. was framed against all the three respondents on his complaint is a point which we do not decide because it will be for the High Court to consider the matter when his petition is considered and only if it is allowed.

21. We accordingly set aside the order of the High Court and remit the case for consideration of the petition under Section 417(3) filed by Bhimappa.

1970(1) Supreme Court Cases 670

(From Gujarat)

[BEFORE J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

VASUDEV DHANJIBHAI MODI .. Appellant ;
Versus
RAJABHAI ABDUL REHMAN AND OTHERS† .. Respondents.

Civil Appeal No. 406 of 1967, decided on 18th March, 1970

Execution—Executing Court—Powers of petition for execution of decree in ejectment—Objection to validity of decree—Maintainability—Such objection when entertainable before executing Court.

The appellant applied for execution of the decree in ejectment which he had obtained against the respondent who raised the objection that the decree was a nullity as the Court of Small Causes had no jurisdiction to entertain the suit. This contention was negatived by the Executing Court. An appeal to a Bench of the Court of Small Causes was dismissed. The High Court allowed

the petition filed by the respondent under Article 227 of the Constitution and dismissed the Execution Petition on appeal to the Supreme Court,

Held :

(i) A Court executing a decree cannot go behind the decree : between the parties or their representatives it must take the decree according to its tenor, and cannot entertain

†Appeal by special leave from the Judgment and Order, dated 22nd/23rd August, 10 September, 1966 of the Gujarat High Court in Special Civil Application No. 371 of 1965.

(1)s.c.c.] V. D. MODI v. R. ABDUL REHMAN AND ORS. (*Shah, J.*)

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any objection that the decree was incorrect in law or in facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties. (Para 6)

(ii) When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a Court which has no inherent jurisdiction to make it, 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 examination of the questions raised and decided at the trial or which could 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 even on the ground of absence of jurisdiction. (Para 7)

(iii) In the present case the question whether the Court of Small Causes had jurisdiction to entertain the suit against Munshi depended upon the interpretation of the terms of the agreement of lease, and the user to which the land was put at the

date of the grant of the lease. These questions cannot be permitted to be raised in an execution proceeding so as to displace the jurisdiction of the Court which passed the decree. If the decree is on the face of the record without jurisdiction and the question does not relate to the territorial jurisdiction or under Section 11 of the Suits Valuation Act, objection to the jurisdiction of the Court to make the decree may be raised ; where it is necessary to investigate 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. (Para 8)

(iv) For the purpose of determining whether the Court which passed the decree had jurisdiction to try the suit, it is necessary to determine facts on the decision of which the question depends, and the objections does not appear on the face of the record, the executing Court cannot enter upon an enquiry into those facts. The view taken by the High Court cannot be sustained.

(Para 9)

Jananendra Mohan Bhaduri and Another v. Rabindra Nath Chakravarti, LR 60 IA 71, referred to.

Appeal allowed.

Advocates who appeared in this case :

I. N. Shreff, Advocate, for Appellant.

R. Gopalakrishnan and J. M. Thacker, Advocates, for Respondent No. 1.

The Judgment of the Court was delivered by

SHAH, J.—Vasudev Dhanjibhai Modi is the owner of Plot No. 15/3 of Jamalpur Town Planning Scheme, Ahmedabad. Since 1948 Rajabhai Munshi was a tenant of the land at an annual rental of Rs. 411. Alleging that Munshi committed default in payment of rent, Modi instituted a suit in the Court of Small Causes, Ahmedabad, for an order in ejectment and for payment of rent in arrears. Munshi deposited in Court an amount which he claimed satisfied the liability to pay the rent in arrears. The Court of First Instance dismissed the suit. In appeal to the District Court at Ahmedabad the order of the Court of First Instance was reversed and a decree in ejectment was passed in favour of Modi. The order was confirmed in a revision application filed before the High Court of Bombay. A petition for special leave to appeal against that order was granted by this Court but was later vacated when it was found that Munshi had made false statements in his petition.

2. In the meanwhile Modi applied for execution of the decree in ejectment against Munshi. Munshi raised the contention that the Court of Small Causes had no jurisdiction to entertain the suit and its decree was on that account a nullity. According to Munshi the suit premises were not governed by the Bombay Rents Hotel and Lodging House Rates (Control) Act 57 of 1947, and that in any event Parts II and III of that Act did not apply to open land and on that account the decree of the High Court confirming the decree of the District Court was without jurisdiction. The Court executing the decree rejected the contention. An appeal against that order to a Bench of the Court of Small Causes was also unsuccessful.

3. But in a petition under Article 227 of the Constitution moved by Munshi the High Court of Gujarat (that High Court having, by virtue of the provisions of the Bombay Reorganisation Act, 1960, acquired jurisdiction to deal with and dispose of the case) reversed the order of the Court of Small Causes and ordered that the petition for execution be dismissed. With special leave, Modi has appealed to this Court.

4. The expression "premises" in Section 5(8) of the Bombay Rents Hotel and Lodging House Rates (Control) Act 57 of 1947, does not include premises used for agricultural purposes. By Section 6 of that Act the provisions of Part II which relate to conditions in which orders in ejectment may be made against tenants and other related matters apply to premises let for education, business, trade or storage. It is plain that the Court exercising power under the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947, has no jurisdiction to entertain a suit for possession of land used for agricultural purposes. Again in ascertaining whether the land demised is used for agricultural purposes, the crucial date is the date on which the right conferred by the Act is sought to be exercised: *Mst. Subhadra v. Narsaji Chenaji Marwadi*.¹

5. In this case the suit for ejectment against Munshi was instituted by Modi in the Court of Small Causes. No objection was raised that the Court had no jurisdiction to entertain the suit. The objection was not raised even in appeal, nor before the High Court. The Trial Court dismissed the suit on merits: the decree was reversed by the District Court and that decree was confirmed by the High Court. The objection was raised for the first time when the decree was sought to be executed.

6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and 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 it be erroneous is still binding between the parties.

7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representative on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a Court which has no inherent jurisdiction to make 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 examination of the questions raised and decided at the trial or which could have been but

1. (1962) 3 SCR 98.

(1)S.C.C.] SRI B. TEMPLE v. V. V. BHAVANARAYANACHARYULU (*Hegde, J.*) 673

have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction. In *Jnanendra Mohan Bhaduri and Another v. Rabindra Nath Chakravarti*,² the Judicial Committee held that where a decree was passed upon an award made under the provisions of the Indian Arbitration Act, 1899, an objection in the course of the execution proceeding that the decree was made without jurisdiction, since under the Indian Arbitration Act, 1899, there is no provision for making a decree upon an award, was competent. That was a case in which the decree was on the face of the record without jurisdiction.

8. In the present case the question whether the Court of Small Causes had jurisdiction to entertain the suit against Munshi depended upon the interpretation of the terms of the agreement of lease, and the user to which the land was put at the date of the grant of the lease. These questions cannot be permitted to be raised in an execution proceeding so as to displace the jurisdiction of the Court which passed the decree. If the decree is on the face of the record without jurisdiction and the question does not relate to the territorial jurisdiction or under Section 11 of the Suits Valuation Act, objection to the jurisdiction of the Court to make the decree may be raised; where it is necessary to investigate 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.

9. The High Court was of the view that where there is lack of inherent jurisdiction in the Court which passed the decree, the executing Court must refuse to execute it on the ground that the decree is a nullity. But, in our judgment, for the purpose of determining whether the Court which passed the decree had jurisdiction to try the suit, it is necessary to determine facts on the decision of which the question depends, and the objection does not appear on the face of the record, the executing Court cannot enter upon an enquiry into those facts. In the view of the High Court since the land leased was at the date of the lease used for agricultural purposes and that it so appeared on investigation of the terms of the lease and other relevant evidence, it was open to the Court to hold that the decree was without jurisdiction and on that account a nullity. The view taken by the High Court, in our judgment, cannot be sustained.

10. The appeal is allowed and the order passed by the High Court is set aside. The order of the Court of Small Causes is restored. The respondent Munshi will pay the costs of the appellant throughout.

1970(1) Supreme Court Cases 673

(From Andhra Pradesh)

[BEFORE J. C. SHAH AND K. S. HEGDE, JJ.]

SRI BHAVANARAYANASWAMIVARI TEMPLE .. Appellant ;
Versus
VADAPALLI VENKATA BHAVANARAYANA- .. Respondent.
CHARYULU†

2. LR 60 IA 71.

†Appeal by special leave from the Judgment and Decree, dated 1-9-1966 of the Andhra Pradesh High Court in Second Appeal No. 719 of 1912.