

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No.688 of 2016

Geeta Bai D/o. Fulchand Satnami, aged about 63 years, R/o. Village Suhela, P.H.No.28, Tahsil Simga, District Raipur (Balodabazar-Bhatapara) (CG)

----Petitioner

Versus

1. Fekan Singh @ Heera Lal son of Fulchand Satanami, aged about 48 years,
2. Kulwantin Bai widow of Fulchand Satnami, aged about 73 years,

Both R/o. Village Suhela, P.H.No.28, Tahsil Simga, District Raipur (Balodabazar-Bhatapara) (CG) at present R/o Village Banbagoud, Post Office Sonardevari, Tahsil Palari, District Balodabazar-Bhatapara (CG)

---- Respondents

For Petitioner : Mr.A.D. Kuldeep, Advocate
For Respondents : Mr.A.P.Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

15/5/2017

1. In the suit filed by the plaintiff/decreed holder in the Court of Second Additional District Judge, Balodabazar, decree was granted in favour of the petitioner/plaintiff on 10.2.2011. When decree was put to execution, the defendants/judgment debtor raised an objection that Balodabazar Court was not having territorial jurisdiction to hear the suit as on that day the Court of Additional District Judge, Bhatapara had the jurisdiction to hear the suit, therefore, the Court of

Balodabazar has no jurisdiction to execute the decree and the Executing Court accepted preliminary objection of the dependents/judgment debtor and rejected the execution holding that Balodabazar Court had no territorial jurisdiction to hear the suit and grant decree, feeling aggrieved against that order, this writ petition under Article 227 of the Constitution of India has been filed.

2. Mr.A.D.Kuldeep, learned counsel appearing for the petitioner, would submit that the order passed by the Executing Court is absolutely unjustified. The respondents/defendants have failed to demonstrate the failure of justice.
3. On the other hand, Mr.A.P.Sharma, learned counsel appearing for the respondents/defendants, would support the impugned order.
4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
5. Suit was instituted on 3.12.2008. The respondents remained ex-parte before the trial Court, they did not participate in the trial, they have not raised any objection and even decree was passed on 10.2.2011, they kept mum and when the decree was put to execution, in order to see that the decree is not executed, objection of territorial jurisdiction has been raised in execution proceeding and that objection has been sustained by learned Executing Court.

6. In order to consider the plea raised at the Bar, it would be appropriate to notice the provisions contained in Section 21

(1) and (3) of the CPC which states as under:-

“21 (1). Objections to jurisdiction.- (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.”

7. A focused glance of Section 21 (1) of the CPC would show that an objection to the place of suing may be entertained by an Appellate or revisional Court, the fulfilment of following three conditions is essential:-

(i) The objection was taken in the court of first instance.

(ii) It was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement.

(iii) There has been a consequent failure of justice. All these three conditions must co-exist (See **Kooplian Uneen's daughter Pathumma and others Vs. Kooplian Uneen's Son Kuntalan Kutty dead by Lrs, and others**¹).

8. The rule of waiver embodied in Section 21(1) extends to execution proceedings. If a defendant has not raised during the trial any objection as to the place of suing, he will not be

¹ AIR 1981 SC 1683

permitted to do so during execution proceedings. The extension was formulated by WALLIS C.J. in **Zamindar of Ettiyapuram Vs. Chidambaram**². It was observed as under:-

“The effect of the section in my opinion is that objections which the appellate or revisional court is hereby precluded from allowing, must be considered cured for all purposes, unless taken before the passing of the decree of the original court. The ordinary way of questioning a decree passed without jurisdiction is on appeal or revision and if this is forbidden, a court of first instance cannot by execution do that which the appellate or provisional court is precluded from doing.”

9. The Supreme Court in the matter of **Hira Lal Patni Vs. Sri Kali Nath**³ has clearly held that objection regarding territorial jurisdiction does not go to root of jurisdiction. It was observed as under:-

“4.....The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seized of the case because subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit in over the parties to it.....”

“..... It is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the competence of a court to try case. Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a 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 S. 21 of the Code of Civil Procedure. Having consented to have the

² (1920) ILR 43 Mad 675, 786 (FB)

³ AIR 1962 SC 199

controversy between the parties resolved by reference to arbitration through court, the defendant deprived himself of the right to question the authority of the Court to refer the matter to arbitration or of the arbitrator to render the award. It is clear, therefore, that the defendant is estopped from challenging the jurisdiction of the Bombay High Court to entertain the suit and to make the reference to the arbitrator. He is equally estopped from challenging the authority of the arbitrator to render the award.....”

10. Similar is the proposition of law laid down by the Division Bench of the High Court of Madhya Pradesh in **Indermal Tekaji Mahajan Vs. Ramprasad Gopilal and another**⁴ holding that prejudice has to be established by the party raising a plea that on account of trying the suit at wrong place he has suffered prejudice.
11. Applying the principle of law laid down in the aforesaid judgments (supra), it is clear that no such objection as to the want of territorial jurisdiction of the trial Court (Balodabazar Court) was raised on behalf of the defendants/judgment debtor at the earlier possible opportunity before trial court. The defendants/judgment debtor have also failed to establish that the trial has attended with consequent failure of justice and as such, there is no material on record to establish that there is consequent failure of justice, which is *sine-qua-non* for entertaining the plea of territorial jurisdiction in execution.
12. Accordingly, the impugned order is set aside. The execution filed by the petitioner is restored to its original number for

⁴ AIR 1970 Madhya Pradesh 40

hearing and disposal in accordance with law to the file of
Second Additional District Judge, Balodabazar expeditiously.

13. The writ petition is allowed to the extent indicated
hereinabove. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-