

executed an effective transfer deed, he cannot ask for a declaration that the transaction was one of pledge and not of transfer unless he gets the transfer deed cancelled, which transfer deed cannot be treated as void in its inception. The answer is to be found in an earlier part of the judgment where I have already said that the transfer deed was to remain with the defendant as an integral part of the transaction, and, therefore, the question of its cancellation cannot arise.

In the result, this revision petition must be allowed and the decision of the trial Court set aside. The parties will, however, bear their own costs. The matter will now go back to the trial Court for decision on merits. The parties will appear before the trial Court on 18th May, 1966.

R.S.

REVISIONAL CIVIL

Before R. S. Narula, J.

NANAK CHAND AND ANOTHER,—*Petitioners.*

versus

NANGA,—*Respondent.*

Civil Revision No. 85-D of 1960.

May 12, 1966.

Punjab Gram Panchayat Act, 1952 (IV of 1953)—S. 64(3)—Decree by Panchayat transferred to Sub-Judge, Palwal, for execution—Palwal Court sending it to Small Cause Court, Delhi, for execution—Small Cause Court, Delhi—Whether competent to execute the decree.

Held, that the power to transfer a decree and to send it for execution to another Court is given by section 39(1) of the Code of Civil Procedure only to the Court which passed the decree and to no other Court. Section 64(3) of the Punjab Gram Panchayat Act is equivalent to a combination of section 38, 39 and the first part of section 42 of the Code and the middle portion thereof confers power on the Panchayat alone to forward its decree to any civil or revenue Court having jurisdiction for execution. No such power is conferred on the transferee Court. In the absence of an express statutory provision for that purpose no

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Court is authorised to send a decree for execution to another Court. The Court of the Subordinate Judge, Palwal, to whom the decree of the Gram Panchayat, Asaoti, had been transferred under section 64(3) of the Gram Panchayat Act for execution had no jurisdiction to send it for execution to the Court of Small Causes at Delhi. The words "as if it were a decree passed by itself" in the end of sub-section (3) of section 64 of the Punjab Act relate to and are confined to the force of the decree and to the manner in which it could have been executed by the transferee Court if it were its own decree. These words do not outstep the limits of the powers of the transferee Court merely to execute the decree transferred to it. The power to transfer a decree is not inherent in the power to execute it. Such power must be conferred by some statutory provision. The Court of Small Causes at Delhi, therefore, had no jurisdiction to execute the decree.

Petition under Section 115 of the Code of Civil Procedure, for revision of the order of Shri Diali Ram Puri, Judge, Small Cause Court, Delhi, dated 24th October, 1959, accepting the objections raised by the judgment-debtor and dismissing the execution petition.

P. C. KHANNA, ADVOCATE, for the Petitioners.

HANS RAJ DHAWAN, ADVOCATE, for the Respondent.

JUDGMENT

NARULA, J.—This judgment will dispose of Civil Revision petitions Nos. 85-D, 86-D, and 87-D, of 1960. Late Dal Chand deceased filed three suits for recovery of different amounts from the three different respondents before the Gram Panchayat, Asaoti, under the Punjab Gram Panchayat Act, 4 of 1953 (hereinafter referred to as the Punjab Act). During the pendency of the actions Dal Chand died. His minor sons, Nanak Chand and Hari Chand, petitioners before me, were brought on record as the legal representatives of the original plaintiff. All the three claims were ultimately decreed in their favour. The decrees were transferred by the Gram Panchayat to the Sub-Judge, Palwal, for execution under section 64 of the Punjab Act. Not having been able to obtain full satisfaction of the decrees in the Palwal Court the petitioners applied for transfer certificates being issued to the Court of Small Causes at Delhi. The applications were granted by the Palwal Court. The petitioner-decree-holders then set the process of the Small Cause Court of Delhi in motion for execution of the decrees. At that stage objections to the executability of the three decrees were raised by the judgment debtor-respondents. We are concerned with only two

out of those objections. The first was that the Small Cause Court of Delhi could not execute the decree as the certificate issued by the Palwal Court was wholly without jurisdiction. The second objection was that the Panchayat had no jurisdiction to decree the claims of the petitioners who were minors as section 55(d) of the Punjab Act deprived the Gram Panchayat of inherent jurisdiction to decide any suit by or against a minor. But its judgment, dated 24th October, 1959, Shri Diali Ram Puri, Judge, Small Cause Court, Delhi, gave way to both the above-said objections and dismissed all the three execution petitions. Not satisfied with the said order the decree-holders have come up to this Court in revision under section 115 of the Code.

It is firstly contended by Mr. P. C. Khanna, the learned counsel for the petitioners that the Court below was in error when it held that the Palwal Court had no jurisdiction to transfer the decree for execution to any other competent Court. He says that power to do so is implicit in the authority vested in the Palwal Court by section 64(3) of the Punjab Act. Section 64 reads as follows:—

- “64. (1) At the conclusion of the trial, the Panchayat shall pass a decree in writing with or without costs of the suits in such form as Government may by rule prescribe and shall enter particulars of the decision in the register of suits.
- (2) If any money is paid over or if any property is transferred in the presence of Panchayat in satisfaction of a decree, it shall enter the payment or the transfer in the register of suits.
- (3) A decree passed by a Panchayat shall be executed by it in such manner as may be prescribed. If the Panchayat finds any difficulty in executing a decree, it may forward the decree to the civil or revenue court having jurisdiction and such court shall thereupon proceed to execute the decree as if it were a decree passed by itself.”

The learned counsel states that if sub-section (3) of section 64 had ended with the words “or revenue Court having jurisdiction” the decision of the Court of Small Causes, Delhi, in this respect would have been unassailable. He says that that is the situation under section 38 of the Code of Civil Procedure. According to Mr. Khanna the authority given to the transferee Court is not only

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to execute the decree as an ordinary transferee Court but is to execute it in every possible manner in which it could have executed the decree "if it were a decree passed by itself" and this, it is contended, includes the power to transfer the decree. I regret I am unable to agree with this contention. The words "as if it were a decree passed by itself" qualify the decree which is to be executed by the transferee Court and not the power of the Court "to execute the decree." In any case "to execute a decree" does not appear to me to include the power "to transfer the decree for execution to another Court". Mr. Khanna does not appear to have been properly instructed to state that the situation under the Code of Civil Procedure is in any material manner different. Though section 38 of the Code on which Mr. Khanna laid great emphasis, authorities the execution of a decree either by the Court which passed it or by the Court to which it is sent for execution without saying that the Court to which it is sent for execution will execute it as if it was a decree passed by itself, the opening part of section 42 of the Code provides for the same in the following words:—

"The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself....."

Mr. Khanna contends that the phraseology of the first sentence of section 42 of the Code is materially different from the phraseology of the last part of sub-section (3) of section 64 of the Punjab Act inasmuch as section 24 refers to the powers to execute the decree but section 64(3) does not use the word 'power'. I think, the distinction sought to be drawn between the relevant parts of the two provisions is wholly non-existent in spirit. The meaning and effect of the two provisions is the same. The power to transfer a decree and to send it for execution to another Court is given by section 39 (1) of the Code only to the Court which passed the decree and to no other Court. Section 64 (3) of the Punjab Act is equivalent to a combination of sections 38, 39 and the first part of section 42 of the Code. The middle portion of sub-section (3) of section 64 of the Punjab Act confers power on the Panchayat alone to forward its decree to any civil or revenue Court having jurisdiction for execution. No such power is conferred on the transferee Court. In the absence of an express statutory provision for that purpose no Court is authorised to send a decree for execution to another Court. As stated above, the Palwal Court could not derive such power from any statutory provision.

Reference was made by the learned counsel for both sides to the judgment of the Madras High Court in *Kandoth Sankaran Nai v. Kara-i-Kuzhakeproth Atchuthan and another* (1) wherein it was held that a District Munsif receiving by transfer a decree of a Village Court under section 66 of the Madras Village Courts Act, 1 of 1889 (hereinafter called the Madras Act) or withdrawing execution of a decree to his own file under section 67 of that Act has no jurisdiction to transfer the decree for execution to another District Munsif under section 39 of the Code of Civil Procedure. Sections 66 and 67 of the Madras Act read as follows:—

“66 (1) Any decree passed by a village court may, on the application of the decree-holder, be transmitted for execution to the District Munsif, who may—

- (a) execute the decree as if it were a decree passed by himself; or
- (b) transmit it for execution to the court of any other village within his jurisdiction in which the defendant is represented to have movable property; or
- (c) transmit it to the court of any other District Munsif within whose jurisdiction the defendant is represented to reside or to have property.

(2) The District Munsif to whom a decree has been transmitted under clause (c) of sub-section (1) may execute the decree as if were a decree passed by himself or transmit it for execution to the court of any village within his jurisdiction in which the defendant is represented to have movable property.

(3) The village Court to which the decree is transmitted under clause (b) of sub-section (1) or sub-section (2) shall proceed as if the decree was passed by itself.”

“67 It shall be competent to the District Munsif to withdraw the execution of any decree from any village court, and to execute it himself, as if it were a decree passed by himself.”

The learned counsel for the decree-holders thought that the words to the effect that the transferee Court was to execute the decree as if it had been passed by itself were not there in the

(1) 73 I.C. 793.

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Madras Act. I have reproduced section 66 (1) (a), (2) & (3)/Section 67, above which say so specifically. Still it was held that the power to retransfer the execution vested in the transferee Court only to the extent to which it had been specifically conferred by sub-section (2) of section 66 of the Madras Act and no more. The above said judgement of the Madras Court really reinforces the view which I have taken of the relevant provisions of the Punjab Act. I, therefore, hold that the Court of the Subordinate Judge, Palwal, to whom the decree of the Gram Panchayat, Asaoti, had been transferred under section 64 (3) of the Punjab Act for execution had no jurisdiction to send it for execution to the Court of Small Causes at Delhi. In my opinion the words "as if it were a decree passed by itself" in the sub-section (3) of section 64 of the Punjab Act relate to and are confined to the force of the decree and to the manner in which it could have been executed by the transferee Court if it were its own decree. These words do not outstep the limits of the powers of the transferee Court merely to execute the decree transferred to it. The power to transfer a decree is not inherent in the power to execute it. Such power must be conferred by some statutory provision. Therefore, the decision of the trial Court on the first objection of the respondent is upheld.

In the view I have taken of the decision of the trial Court on the first objection relating to the scope and meaning of section 64 (3) of the Punjab Act it does not appear to be necessary to deal with the arguments addressed before me on the question relating to the effect of section 55 (d) of the Punjab Act on a suit originally commenced by a competent person and continued by his minor legal representatives. Lengthy arguments have been addressed to me by both sides on the point whether the question involved in that objection relates to the inherent jurisdiction of the Panchayat or not and whether such objection could be permitted to be raised in execution proceedings when it was admittedly not raised before the Panchayat as well as on the merits of the proposition. Though arguments addressed on these points by both sides are substantially attractive, I do not think it necessary to deal with them for the purposes of deciding these revision petitions which have to fail in any event on account of the decision on the first objection.

All these three revision petitions, therefore, fail and are accordingly dismissed but without any order as to costs.

R. S.