

Whether Executing Court can go behind the decree :-

Section 38 lays down the general rule that, a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. The executing Court has no power to entertain any objection as to the validity of the decree or as to the legality or correctness of the decree. The reason underline the above rule is that, although a decree may not be according to law, it is binding and conclusive as between the parties to the suit, unless it is set aside in appeal or revision. It is for the same reason that, the Court executing a decree cannot alter, vary or add to the terms of the decree even with the consent of the parties. In the case of **V. Ramswami Vs T.N.V.Kailash Theyar reported in AIR 1951 S.C,189 (192)**, it was observed that, "the duty of an executing Court is to give effect to the terms of the decree. It has no power to go beyond its terms. Though, it has power to interpret the decree, it cannot make a new decree for the parties under the guise of interpretation".

It has been held by the Supreme Court in **Karansing v. Chaman Pawan reported in (1955) 1 SCR 117**, that a decree passed by a Court without jurisdiction is a nullity, and its validity can be set up whenever and wherever, it is sought to be enforced or relied upon, including the stage of its execution. In **Topanmal Vs M/s Kundomal Gangaram reported in AIR 1960, SC 388**, it was held by the Supreme Court that, an executing Court must take the decree as it stands. An executing Court cannot go behind the decree. It can neither add something in the decree already passed, nor alter the decree. It cannot grant relief which is not contemplated by the decree.