

PRIVY COUNCIL.

P.C.*
1904.
November 16.
December 19.

MAHARAJA OF JEYPORE, PLAINTIFF,

v.

GUNUPURAM DEENABANDHU PATNAICK AND OTHERS,
DEFENDANTS.

[On appeal from the Governor of Madras in Council.]

Res judicata—Suit transferred from Agency Court to District Court without jurisdiction—Subsequent suit in Agency Court on same cause of action—Governor of Madras in Council, obligation of to decide appeal from Agency Court on judicial principles and not on grounds of political expediency.

The High Court by consent of parties transferred a suit brought by the appellant from the Agency Court at Vizagapatam to the District Court, and afterwards decided that notwithstanding the consent they had no jurisdiction so to transfer a suit :

Held, that the decision of the District Court dismissing the suit, having been adjudged by the High Court to be without jurisdiction, could not be treated as being *res judicata* in a subsequent suit by the appellant in the Agency Court on the same cause of action.

Held also, (reversing the decision of the Governor of Madras in Council), that the legal right to bring a suit, and to have it determined by the proper Court, could not be barred by considerations of political expediency.

APPEAL from an order (2nd May 1902) of the Governor of Madras in Council upholding an order (8th December 1900) of the Court of the Agent to the Governor at Vizagapatam, whereby the plaint in a suit brought by the appellant in that Court was rejected.

The plaintiff was the Zamindar of Jeypore which was situated within the "Agency Tract" of the district of Vizagapatam, and his zamindari was a scheduled district under the Scheduled Districts Act (XIV of 1874). Previously to the passing of Act XXIV of 1839 the ordinary regulations for the administration of civil and criminal justice were in force in the Agency tract. By section 2 of that Act it was enacted that after 1st December 1839 "the operation of the rules for the administration of civil and criminal justice, as well as those for the collection of revenue, shall cease to have

* Present: The Lord Chancellor (HALSBURY), Lord MACNAGHTEN, Lord LINDLEY, Sir ANDREW SCOBLE, and Sir ARTHUR WILSON.

effect, except as hereinafter mentioned" within contracts included in the districts of Ganjam and Vizagapatam. Section 3 enacted that the administration of civil and criminal justice should within those districts be vested in the Collector of Ganjam and the Collector of Vizagapatam "and shall be exercised by them respectively as Agents to the Governor of Fort St. George": and section 4 enacted "that it shall be competent to the Governor in Council of Fort St. George to prescribe such rules as he may deem proper for the guidance of such Agents, and of all the officers subordinate to their control and authority, and to determine to what extent the decision of the Agents in civil suits shall be final, and in what suits an appeal shall lie to the Sadr Adalat, and to define the authority to be exercised by the Agents in criminal trials, and what cases he shall submit to the decision of the Fouzdary Adalat."

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In pursuance of the authority so vested in him the Governor of Madras framed rules, of which the following are material to this report:—

Rule X, clause 2—

"Suits exceeding Rs. 5,000 in value shall be instituted in the Court of the Agent who may, however, when he thinks proper, refer any such suit for the decision of the Divisional Assistant."

Rule XII laid down the procedure to be adopted on the trial of civil suits, which was substantially the same as that provided by the Civil Procedure Code then in force. Rules XX and XXI provided for appeals from original decrees in certain cases, and Rule XXII was as follows:—

"From decrees of the Agent in suits wherein the landed possession of a zamindar, bissoye, or other feudal hill chief may have formed the subject of litigation, an appeal will lie to the Governor in Council alone, who may refer any such appeal for the decision of the Sadr Court, provided that the decree of the latter Court shall not be carried into execution without the permission of the Governor in Council."

The plaintiff succeeded to the zamindari in 1889, but until he attained majority in 1895 he was placed under the guardianship of the Agent to the Governor. On 2nd July 1892 a suit, 1 of 1892, was instituted on his behalf in the Court of the Agent to the Governor in Vizagapatam for the resumption of three villages forming part of the zamindari which had been given to the defendants' ancestors by the plaintiff's ancestors on service tenure, it

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being alleged that the defendants had discontinued and refused to perform the services. It was stated in the plaint that the cause of action arose on 30th June 1891. The defendants in that suit were the present first and third defendants and the husband of the second defendant, and they applied to the High Court at Madras to transfer the case from the Court of the Agent to the Governor at Vizagapatam to some other court: and on 23rd March 1893, with the consent of both parties, the High Court under section 15 of 24 and 25 Vict., chapter 104, transferred the case to the District Court of Vizagapatam, where it was numbered 4 of 1893. That suit was heard by the District Judge who, on 1st December 1893, holding that the plaintiff had failed to prove his case, dismissed the suit with costs. No appeal was preferred against that decree.

On 20th March 1900 the High Court of Madras, in the case of *Maharajah of Jeypore v. Papayamma* (1) held that that Court had no jurisdiction to transfer a suit pending in the Court of the Agent to the Governor, Vizagapatam, to the District Court of Vizagapatam; that consent of parties made no difference; and that rule XXII of the rules made under Act XXIV of 1839 was a valid rule.

In August 1900 the plaintiff applied to the Court of the District Judge at Vizagapatam for a review of the judgment of that Court of 1st December 1893 in suit 4 of 1893. In his petition he stated that as the High Court had had no jurisdiction to transfer the suit to the District Court as it had done, the proceedings subsequent to the transfer were wholly without jurisdiction and the decree passed against him was of no effect. He further stated that his guardian in that suit had failed to produce material documents, amongst others, original documents in which the then defendants admitted that the three villages then in suit were held by them on service tenure. He prayed that the judgment of 1st December 1893 might be cancelled, and the suit re-transferred to the Court of the Agent to the Governor, so that that Court might proceed with the trial of the suit, or if that could not be done, then that the judgment of 1st December 1893 might be reviewed, the evidence above referred to might be admitted, and the suit re-tried on the merits. He also claimed the benefit of section 5 of the Limitation Act. The application was heard by the

(1) I.L.R., 23 Mad., 320.

District Judge who, on 28th August 1900, dismissed it with the following order:—

“The suit to which this petition relates was transferred to this Court by the High Court and disposed of so far back as 1893. It is contended that the High Court’s order was illegal and that this Court therefore had no jurisdiction. This is a matter into which this Court has no power to go. Apart from this the present petition is very much out of time. It cannot, therefore, be entertained.”

Thereupon the plaintiff presented the plaint in the present suit in the Court of the Agent to the Governor at Vizagapatam. In the plaint, after setting out the above facts, he asserted that as the High Court had not had jurisdiction to transfer suit 1 of 1892 to the District Court, that Court had no jurisdiction to try it, and its decree could not therefore be *res judicata* in the present suit; and that his suit was not barred by limitation, the cause of action having arisen on 30th June 1891. He claimed to be entitled to have his right to resume the three villages tried on its merits, and prayed that it might be declared that the defendants held them on reasonable service tenure, and for a decree for possession mesne profits and costs.

On 27th November 1900 the plaintiff’s pleader received a notice calling on him to appear before the Court of the Agent to show cause why the plaint should not be rejected under section 54, clause (c) of the Code of Civil Procedure, it appearing therefrom that the suit “was barred by a positive rule of law.” On 8th December the Agent to the Governor, after hearing the pleader in support of the plaint, made the following order:—

“This same suit was brought in the Court in 1892, and this High Court transferred it to the District Judge’s Court, which Court duly decided it. It is now claimed that the High Court had no power to transfer the suit, and no doubt it had not—*vide* its ruling in *Maharajah of Jeypore v. Papayamma*(1). But that does not authorise me to ignore the High Court’s order of transfer and the District Judge’s decision. The plaintiff should take measures to get the High Court to rescind its own order.

“So far as I am concerned this suit has already been decided by a Court, which, if not competent, the High Court held to be

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competent and it is therefore *res judicata*. Further it would be a gross injustice if, on a mere technical quibble of this sort, the plaintiff were able to have the considerable number of suits which he has brought in this Court at various times, and which the High Court has transferred to the District Court, re-tried to the loss and annoyance of the defendants. Plaintiff has had a fair trial of his case and I refuse to give him another. The plaint is rejected."

From this order the plaintiff appealed to the Governor of Madras in Council on the grounds that the Agent to the Governor had no jurisdiction to reject the plaint, as the judgment of the District Court of Vizagapatam in suit 4 of 1893 could not operate as a bar to the present suit; that the decree in suit 4 of 1893 had not yet been pleaded by the defendants as *res judicata*, and if they should advance such plea it could not avail them and would have to be overruled, because suit 4 of 1893 was not tried and decided by a competent Court having jurisdiction to decide it; and that the decree in suit 4 of 1893 could not operate as *res judicata* in the present suit, inasmuch as the plaintiff alleges and seeks to establish in the present suit that it was owing to the gross negligence of his next friend and guardian in the former suit that the decision therein was adverse to the plaintiff.

Without giving the plaintiff an opportunity of being heard this appeal was rejected.

The plaintiff then applied to His Majesty in Council for special leave to appeal against the order of the Governor of Madras in Council, and during the hearing of that application it was suggested to the plaintiff's counsel by the Judicial Committee of the Privy Council that he should communicate with the Secretary of State for India on the subject and request him to represent to the Governor of Madras that he had not complied with rule XXII of the rules made under Act XXIV of 1839 which required him to dispose of the appeal by judicial process. On this being done the Governor in Council heard the plaintiff's pleader in support of the appeal, and on 2nd May 1902 made an order rejecting it. The material part of the order was as follows:—

"The allegation of gross negligence on the part of the guardian can, in the circumstances of the case, carry little weight, seeing that for five years after the Maharajah came into charge of his estate no attempt was made on the ground of this negligence to obtain a rehearing of the case. With this exception the

arguments now put forward on behalf of the appellant are purely legal in character; in putting them forward the Maharajah relies on the view that the discretion which the Governor in Council exercises under section 4 of Act XXIV of 1839 is a judicial discretion, that is to say, that the present appeal should be treated in the same manner and decided upon the same principles as if it were heard in an ordinary Court of Justice.

“The Governor in Council is, however, unable to accept this view as to the manner of disposal of appeals from the Agency Courts. It is competent for the Governor in Council, under section 4 of Act XXIV of 1839, to prescribe rules for the guidance of his Agents and of their subordinates, and these rules have been prescribed. When, under rule XXI, an appeal to the Sadr or High Court is open that Court deals with it in the same manner as with appeals from other Courts subordinate to it, and it would, no doubt, similarly deal with appeals transferred to it by the Governor in Council under rule XXII. But so far as the Governor in Council retains appellate jurisdiction there is nothing to show that he is in any way fettered in the discharge thereof: the whole scope and purpose of the legislation governing the scheduled districts is to declare them as not included in or as removed from the operation of the general Acts and Regulations and the jurisdiction of the ordinary Courts of Judicature, and to place control in all matters in the hands of the executive authorities, subject to the provisions of 33 & 34 Viet., cap. 3. The obvious conclusion, therefore, is that in respect of the class of cases of which the present is one, the Governor in Council shall apply to each the principles of equitable jurisprudence, and these only so far as political expediency permits. In these wild tracts the absolute rights of the individual—as evolved by civilized communities—are of small consequence compared with the maintenance of the peace and order that make for social progress.

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“The question then is, is it equitable or expedient that the decision of the District Judge in 1893, passed after a thorough trial of the case, should by reason of a legal defect imported into the whole proceedings by the High Court's order of 1900 now be permitted to come again before the Courts. The Governor in Council is clearly of opinion that to the unsophisticated minds of the uncivilized tribes of the Vizagapatam Agency the idea that a cause, tried and determined so long ago, could or should now be

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reopened at the instance of the Maharajah of Jeypore would be regarded as a gross infraction of the natural justice which they do understand and as truckling to the authority and resources which the Maharajah possesses. The result of compliance with the appellant's request would be to diminish the confidence of these hill tribes in the power and desire of Government to protect them and to do justice, and thus to create a political danger which there is absolutely no reason to incur.

"For these reasons the Governor in Council must decline to accede to the appellant's prayer. The order of the Agent rejecting the plaint will accordingly be upheld and the appeal dismissed."

From this order special leave to appeal to His Majesty in Council was granted.

On the appeal, which was heard *ex parte*.

Mr. *W. C. Bonnerjee* and Mr. *K. W. Bonnerjee*, for the appellant, contended that the Governor of Madras in Council had taken an erroneous view of Act XXIV of 1839 and the rules made under that Act in giving consideration to grounds of political expediency, and in deciding the case arbitrarily and not, as he should have done, on judicial and legal principles: in so doing he had wrongly exercised his discretion, and his decision should therefore be set aside on this appeal. Reference was made to rules 21 and 22 of the rules made under Act XXIV of 1839; statute 3 & 4 Will. IV., cap. 41, section 3; Safford and Wheeler's 'Privy Council Practice,' pages 32 and 769; *Reg v. Bertrand*(1); and *Pakala Balakrishnama Patulu v. Sree Naraina Mardaraz Devu*(2).

The plaint in the suit was not liable to be rejected as it had been under section 54, clause (c) of the Code of Civil Procedure as being for a cause of action decided in a former suit. The decision of the District Court was without jurisdiction and of no effect as the High Court had no jurisdiction to transfer the suit from the Court of the Agent to the Governor at Vizagapatam to the Court of the District Judge. This had been decided in the case of *Maharajah of Jeypore v. Papayamma*(3). The decision of the District Judge did not therefore create any *res judicata* in the present suit which should be remitted for trial on the merits.

(1) L.R., 1 P.C., 520 at p. 529.

(2) 10 M.L.A., 60 at p. 68.

(3) I.L.R., 23 Mad., 329.

On 12th December 1904 the reasons for their Lordships report were delivered by

THE LORD CHANCELLOR.—This is an appeal by the Maharajah of Jeypore against the decision of the Governor of Madras in Council rejecting the claim of the Maharajah to have his suit determined under circumstances that may be shortly stated.

In the year 1892 a suit was instituted in the Court of the Agent to the Governor at Vizagapatam on behalf of the Maharajah, then a minor, for the purpose of establishing his right to resume possession of certain villages. On the 23rd March 1893 the defendants applied to the High Court of Madras for an order that the said suit should be removed from the Court of the Agent and transferred to some other Court, and no opposition being made to such application by the parties who represented the plaintiff, an order was made transferring the suit to the District Court of Vizagapatam. The suit then became Original Suit No. 4 of 1893 on the file of that Court, and on the 1st December 1893 the said Court gave judgment dismissing the suit, on the ground that no sufficient evidence had been given to establish the plaintiff's case, and that judgment was not appealed from. On the 29th March 1900 the High Court of Madras decided that it had no jurisdiction to order the transfer of a suit from the Court of the Governor's Agent to the District Court of Vizagapatam, and that the consent of the parties to the transfer could not cure that defect of jurisdiction. On the 27th October 1900 the Maharajah presented his plaint to the Court of the Governor's Agent against the present respondents for the same cause of action as was alleged in the former suit, stating the grounds on which he contended that the District Judge had no jurisdiction to decide the suit, and that the decision itself was a nullity. The plaint was rejected on the 8th December 1900, apparently on the ground that the decision upon the former suit precluded any further proceeding upon the same cause of action. From this an appeal was presented to the Governor in Council, who rejected the appeal on the ground that it would be inexpedient, and would set a bad example and encourage a multitude of suits for the same cause of action.

Their Lordships are of opinion that the former decision of a Court adjudged by the High Court to be without jurisdiction cannot be treated as *res judicata* against the claim of the Maharajah

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to have his rights decided by a Court of competent jurisdiction, and that the decision of the Governor in Council, affirming the decision of the District Court, cannot be supported. The legal right to bring a suit, and to have it determined by the proper Court created for the purpose of determining such suits, cannot be barred upon the considerations of policy or expediency which are urged by the judgment under appeal.

Their Lordships have already humbly reported to His Majesty as their opinion that the appeal ought to be allowed and consequential directions given, but their Lordships reserved their reasons, and also the question of the costs, as to which the parties were to be at liberty to apply to their Lordships for directions.

Mr. Bonnerjee, who appears for the appellant, now asks their Lordships to direct that the costs both here and below be costs in the cause, and their Lordships direct accordingly.

In the meantime the money deposited by the appellant in the Privy Council office as security for costs should be repaid to him.

Appeal allowed.

Solicitors for the appellant—Messrs. *Lawford, Waterhouse & Lawford.*

APPELLATE CIVIL—FULL BENCH.

*Before Sir Arnold White, Chief Justice, Mr. Justice Davies
and Mr. Justice Sankaran Nair.*

1904.
July 27, 28.
September 20.

SUPPA REDDIAR (DEPENDANT—COUNTER-PETITIONER), APPELLANT,

v.

AVUDAI AMMAL (ASSIGNEE-PETITIONER), RESPONDENT.*

Limitation Act—XV of 1877, sched. II, art. 178—Obstruction to execution—Removal by decision in favour of decree-holder—Decree-holder's right to move the Court—Application to be regarded as a continuation of previous application.

A mortgage decree was obtained against the counter-petitioner on 28th February 1894. On 16th May 1895, the decree-holder assigned the decree to

* Civil Miscellaneous Second Appeal No. 11 of 1904, presented against the order of W. W. Phillips, Esq., District Judge of Tinnevely, in Appeal Suit No. 118 of 1903, presented against the order of M.R.Ry. S. Raghava Ayyangar, District Munsif of Srivilliputtur, on Execution Petition No. 905 of 1902, in Original Suit No. 798 of 1903.