

Before Mr. Justice Knox and Mr. Justice Banerji.

THE COLLECTOR OF MORADABAD (DEBENDANT) v. HARBANS SINGH
AND ANOTHER (PLAINTIFFS).*

1898
August 3.

Civil Procedure Code, section 14—Suit on a foreign judgment—Power of Court to inquire into the merits—Muhammadian Law—Dower.

Where a suit was brought in a Court in British India upon the basis of a decree of the Council of Regency of the State of Rampur, it was held that the Court was empowered by section 14 of the Code of Civil Procedure, as amended by section 5 of Act No. VII of 1888, to consider the merits of the case in which the decree of the Council of Regency had been passed.

THE facts of this case sufficiently appear from the judgment of the Court.

The Hon'ble Mr. Conlan and Mr. A. E. Ryves for the appellant.

Mr. W. M. Colwin and Maulvi Ghulam Mujtaba for the respondents.

KNOX and BANERJI, JJ.—This was a suit instituted in the Court of the Subordinate Judge of Moradabad on the basis of the judgment of a foreign Court, namely, the Council of Regency of the native State of Rampur. The suit in which that judgment was passed was brought by Musammat Humai Tajdar Begam against her husband Nawab Mohib Ali Khan, also called Nabba Sahib, to recover her dower, the amount of which was admittedly one crore of rupees and 25,000 Murshidabad gold mohurs. Both the lady and her husband belonged to the family of the Nawab of Rampur, the former being the daughter of a sister of the last reigning Nawab. Differences having arisen between Nawab Mohib Ali Khan and the ruler of Rampur, the former removed to Moradabad in the early part of 1887. His wife, however, continued to live in Rampur, and in the year 1888 brought against her husband the claim for her dower referred to above. Nawab Mohib Ali Khan having died in October 1889, during the pendency of the suit, it was continued against Sahibzada Sajjad Ali Khan, his minor son by another wife, whose estate in the district of Moradabad is under the management of the Court of Wards. On the 26th of January 1891 the

* First Appeal No. 198 of 1896 from a decree of Pandit Rajnath Sahib, Subordinate Judge of Moradabad, dated the 29th June 1896.

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Council of Regency, the highest Court of appeal in Rampur, made a decree in favour of the lady. In execution of that decree a sum of nearly 22,000 rupees was realized in Rampur territory, and the amount now due is Rs. 1,07,53,088-7-0. The assets of Nawab Mohib Ali Khan in Rampur having been exhausted, the suit out of which this appeal has arisen was brought to recover the aforesaid amount from the property of the deceased in the district of Moradabad. It was instituted on the basis of the decree of the Rampur Court, dated the 26th January 1891, by Humai Tajdar Begam and the respondent Kunwar Harbans Singh, who has taken from her an assignment of a half of her rights under the said decree. Upon a plea of misjoinder of plaintiffs and causes of action being raised, the lady withdrew from the claim, which was continued by the other plaintiff alone, and she was made a formal defendant. The lower Court considered the case on the merits, and made a decree in favour of the respondent Kunwar Harbans Singh. From this decree the present appeal has been preferred. Mr. *Colvin* on behalf of the respondents urged before us *in limine* that as the suit is founded upon a foreign judgment and the object of it is to enforce that judgment, that judgment should be accepted as final between the parties, provided that it is not opposed to natural justice and was not obtained by fraud; that the Court below acted improperly in going into the merits of the case, and that we also in deciding the appeal should not consider the merits of the case. He cited to us several English and Indian rulings on the subject, which are well summarised in Chapter VIII of part II of Mr. Caspersz's work on the Law of Estoppel. It is not necessary for us to consider those rulings, as we are of opinion that the amendment of section 14 of Act No. XIV of 1882 by section 5 of Act No. VII of 1888 has introduced an important departure in this respect.

The authorities to which our attention has been drawn seem to show that it is now established in England that when a suit is based on the judgment of a foreign Court which that Court had jurisdiction to pass and which was not obtained by fraud, such judgment must be presumed to be right, and the Court in which the suit on

that judgment is brought should not enter into a consideration of the merits of the case. The Indian Legislature has, in our opinion, laid down a different rule in the paragraph added to section 14 of the Code of Civil Procedure by section 5 of Act No. VII of 1888. That paragraph declares that when a suit is instituted in a British Indian Court on the basis of a foreign judgment, that Court is not precluded from inquiring into the merits of the case if the judgment is that of certain Asiatic and African Courts specified in the section. In the case of judgments of such Courts the Courts in British India have been given the discretion to regard or not to regard those judgments as conclusive. The exercise of that discretion must depend on the circumstances of each case. But there can be no doubt that by the enactment of section 5 of Act No. VII of 1888 the finality of the judgment of certain foreign Courts in Asia and Africa has been taken away by the Legislature when a suit is brought on the basis of such a judgment. The Court below was not, therefore, precluded from inquiring into the merits of the case. Whenever a discretion is vested in a Court, that discretion should, it is true, be exercised judiciously and not in an unwarrantable manner. But we are unable to hold that in this case the learned Subordinate Judge acted improperly in considering the case on its merits. It may be that, having regard to the constitution of that foreign Court in this instance, no further inquiry was needed than what could be made upon the material afforded by the judgment of that Court—*Fazal Shah Khan v. Gafar Khan* (1). As the learned Subordinate Judge has, however, inquired into the merits of the case, as he was competent to do, we think that we also should hear the appeal on its merits.

(The judgment of the Court, after a discussion of the case on its merits, thus concluded :—)

We are aware that the effect of the decree in this case will be to deprive the appellant—the only son of Nawab Mohib Ali Khan—of the whole of the large property left by the Nawab, and that the said property, or the proceeds of the sale of it, will go to the

(1) I. L. R., 15 Mad., 82.

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plaintiff, who evidently embarked on a speculation in taking an assignment of the decree of the Rampur Court. This has made us examine the decree with all the greater anxiety, and we cannot but regret that the Courts in these Provinces have not been vested by the Legislature with the discretion which has been conferred on the Courts in Oudh by section 5 of Act No. XVIII of 1876, to award to a Muhammadan lady only so much of the stipulated amount of dower as the Court may consider "reasonable with reference to the means of the husband and the status of the wife." We have therefore no alternative but to make a decree for the amount of the dower contracted for, however extravagant that amount may be.

We dismiss this appeal with costs.

Appeal dismissed.

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August 5.

Before Mr. Justice Blair and Mr. Justice Burkitt.

GHUR PRASAD AND OTHERS (PLAINTIFFS) v. RAM LAL AND OTHERS
(DEFENDANTS).*

Execution of decree—Civil Procedure Code, section 244—Representative of a party to the suit—Purchaser of property under attachment in execution of a decree.

Held, that the purchaser of property which is at the time of the purchase under attachment in execution of a decree is a representative of the judgment-debtor vendor within the meaning of section 244 of the Code of Civil Procedure. *Lalji Mal v. Nand Kishore* (1) followed. *Madho Das v. Ramji Patak* (2) explained.

THE plaintiffs in this case came into court alleging that they had purchased from the defendants Mehrban Singh and others a 10-biswa share in a certain village, and out of the sale consideration, viz., Rs. 8,000, had paid Rs. 5,999 in payment of a mortgage on the share held by the defendants Ram Lal and others, and that the mortgagees had previously, in execution of money decrees held by them against the vendors, caused the property purchased

* Second Appeal No. 551 of 1896 from a decree of G. A. Tweedy, Esq., District Judge of Farrukhabad, dated the 6th July 1896, confirming a decree of Maulvi Muhammad Anwar Husain, Subordinate Judge of Farrukhabad, dated the 13th December 1895.

(1) I. L. R., 19 All., 332.

(2) I. L. R., 16 All., 286.