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Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.
MAQBUL FATIMA AND OTHERS (PLAINTIFFS) v. AMIR HASAN KHAN AND
OTHERS (DEFENDANTS).*

*Civil Procedure Code (1908), sections 11 and 13—Res judicata—Foreign judgement—
Effect of decision in British India as to the title to part of an estate on
a suit filed in Rampur for possession of another portion of the same estate
situated there.*

Certain claimants of the estate of a deceased person, which was situated partly in the Bareilly district and partly in the state of Rampur, sued in Bareilly to recover the portion situated there, and obtained a decree. Other claimants filed a similar suit in Rampur in respect of the portion situated there.

Held, on suit by the plaintiffs in the Bareilly court for a declaration that the judgement of that court operated as *res judicata* in respect of the suit in Rampur and for an injunction restraining further proceedings in the Rampur Court, that neither relief could be granted.

THE facts of this case were as follows :—

One Nawab Altaf Ali Khan died, leaving a considerable estate, situate partly in Bareilly and partly in the native state of Rampur. He left him surviving Mohamdi Jan, his widow, and Maqbul Fatima, his daughter. Before the death of the Nawab a dispute arose as to the future succession to his property, which was referred to arbitration, and it was decided as between himself, his wife and his daughter, by an award, dated the 31st of December, 1893, that the Nawab's zamindari was to be transferred to his daughter. The defendants as *asbas* of the Nawab claimed their share in the property. Previous to the present suit the plaintiffs brought a suit against the defendants with respect to the portion of the property situate in Bareilly for a declaration that the Nawab was a *Shiakh* at the time of death and the defendants as *asbas* had no right to the property. That suit was decreed by the first court and

* First Appeal No. 361 of 1913 from a decree of Baijnath Das, Subordinate Judge of Bareilly, dated the 8rd of November, 1913.

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the decree was upheld by the High Court in F. A. 149 of 1911, on the 6th of November, 1912.

While that suit was pending in Bareilly, the present defendants brought a suit against the present plaintiffs in the Rampur court claiming half the estate situate in Rampur as *asbas* of the Nawab. They were met with the plea that the entire property of the Nawab had been transferred *inter vivos* to his daughter, and the defendants had no right to the property, as the *asbas* were excluded under the *Shiah* Law. The preliminary issue in the Rampur court was:—"Whether the High Court decree operated as *res judicata*?"

The plaintiff, thereupon, brought this suit for a declaration that the judgement of the British court operated as *res judicata* in all subsequent proceedings between the parties, even in the Rampur court, and for an injunction restraining the defendants from continuing their suit in the Rampur court.

The court of first instance dismissed the suit. The plaintiffs appealed.

Mr. B. E. O'Connor (with him Dr. Satish Chandra Banerji, Mr. Ibn Ahmad, Babu Preonath Banerji, and Babu Lalit Mohan Banerji), for the appellants:—

This was a suit for a declaration that the decision in the previous suit between the parties at Bareilly was *res judicata*. In the Rampur suit no question arose which did not arise in the first suit. The plaintiff did not seek to tie the hands of the Rampur court. The defendants resided in British India and relief was asked for against them personally. The Civil Procedure Code in Rampur was the same as in British India. In a case for annuity chargeable on both English and Irish properties the party that had been defeated in the English Court went to the Irish Court for the same relief and the suit in the Irish Court was restrained by injunction and in the same way it was asked to grant an injunction in the present case. In cases where foreign courts were concerned, for the purpose of *res judicata*, section 13, and not section 11, of the present Code was applicable. The case of *Lachmi Narain v. Raja Pratab Singh* (1) described the relations between Rampur and British India and a history of Rampur was given showing

(1) (1873) I. L. R., 2 All., 1.

how the districts (within which the property is situate) were ceded as *Ilaga Jadid* to Rampur after the Mutiny. On representation by the residents of *Ilaga Jadid* the Nawab of Rampur by a *rubkar*, dated the 6th of October, 1864, made the British Law as it then existed applicable to the ceded districts. The legal rights those men had before the territory went over to Rampur were given to them by the Nawab of Rampur. The provisions of section 13 of the present Code were different from the provisions as to foreign judgements in the previous Code. The change in the law had been progressive. The Code of 1859 was silent as to foreign judgements. The provisions as to foreign judgements were introduced in the later Codes, but section 13 of the present Code was a step forward. It was made wider and was more comprehensive. By the present Code a foreign judgement was made conclusive not only as to matter in issue in the suit but also as to any matter directly adjudicated upon between the parties. In the Rampur suit all the grounds of attack and defence were the same as in the Bareilly suit, the only difference was that the two suits claimed reliefs as to different parcels of land.

The Hon'ble Dr. *Tej Bahadur Sapru*, (with whom Mr. *Jawahar Lal Nehru* for the Hon'ble Pandit *Moti Lal Nehru*) for the respondents, was not called upon.

RICHARDS, C. J., and TUDBALL, J.—This appeal arises out of a suit brought by the plaintiffs against the defendants for reliefs set forth in the following words :—

“(a) That it be declared that the ‘judgement’, dated the 2nd of February, 1911, by the Subordinate Judge of Bareilly, between the parties, and upheld by the Honourable High Court on the 6th of November, 1912, is binding between the parties, and operates as *res judicata* against the defendants on the points heard and decided between them in all subsequent proceedings *even in the Rampur court*.

“(b) That the defendants be restrained by a perpetual injunction from continuing their suit in the court of the District Judge of the Rampur State against the plaintiffs, which they have instituted there for the recovery of a moiety of the estate situated in the ceded district of Rampur * * * * *

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It will be convenient very shortly to state here the facts which led to the institution of the present suit. At one time one Nawab Muhammad Altaf Ali Khan was the owner of considerable property situated partly in Bareilly and partly in the Rampur State. Upon the death of Nawab Muhammad Altaf Ali Khan disputes arose between the plaintiffs and the defendants as to the title to the property situated in both places. The plaintiffs instituted a suit before the Subordinate Judge of Bareilly for a declaration of their title in respect of so much of the property as was situate in the district of Bareilly. That suit resulted in favour of the plaintiffs. While it was pending the defendants instituted another suit in Rampur, claiming possession against the defendants in that suit (the plaintiffs in the present suit) of the property situate in Rampur. Thereupon the plaintiffs instituted the present suit claiming the reliefs set forth above.

There can be no doubt that if all the property was situated in British India, the decision of the Subordinate Judge of Bareilly, confirmed by the High Court, would operate as *res judicata* against the defendants. The difficulty is that part of the property is situated in Rampur, outside British India.

It is pointed out on behalf of the plaintiffs that they do not ask the court to issue any injunction to the court in Rampur and that the relief that they claim is against the defendants personally. It is strongly urged that even in Rampur the decision that was given in British India in respect of the Bareilly property is absolutely conclusive, and that therefore, the defendants ought not to be allowed to reopen the matter in Rampur, and put the plaintiffs to the expense and inconvenience of defending the suit in that State.

Assuming for a moment that this Court has power to grant an injunction which in effect would restrain proceedings in the Rampur State (even though the injunction is not directed to the Rampur court) it is necessary to consider whether or not the plaintiffs are entitled to a declaration "that the judgement of the Subordinate Judge of Bareilly operates as *res judicata* in the Rampur State." It is said that in the district in Rampur, in which the property is situate, the laws in force in British India are observed and that this condition has been observed by the

Ruler of the Rampur State ever since the *ilaga* was granted to the State in recognition of services in the Mutiny. A document is on the record called "Dastur-ul-Amal" in which it is stated that "the affairs and cases of the new *ilaga* shall be decided in accordance with the laws in force in British India." It was also stated at the Bar that the Code of Civil Procedure has been printed in Rampur for the use of the *ilaga*. No copy of this Code was produced. It might be difficult to decide, were it necessary to do so, that the meaning of the Dastur-ul-Amal was that not only existing laws but all future laws, including adjective law like the Code of Civil Procedure, were to apply to the *ilaga*. We will, however, assume that a Code of Civil Procedure in all respects the same (with the necessary modifications to make it applicable to the State) is in force in Rampur so far as this *ilaga* is concerned. Section 11 of the Code of Civil Procedure is as follows :—

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title in a court competent to try such subsequent suit, or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."

The issues in the suit in Rampur are said to be, and probably are, identical with the issues in the suit that was tried in Bareilly, but the Subordinate Judge in Bareilly was not competent to try the suit in respect of the property which is situated in Rampur. It seems, therefore, that so far as section 11 of the Code of Civil Procedure is concerned the judgement of the Subordinate Judge of Bareilly does not operate as *res judicata* in Rampur.

But it is contended that section 13 of the Code of Civil Procedure makes the judgement absolutely conclusive, because the issues, though not the cause of action, are the same. Section 13 is as follows :—

"A foreign judgement shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim, litigating under the same title, except" as in the same section provided.

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The word "judgement" in the expression "foreign judgement" is evidently used in the sense in which the word "judgement" is used in England.

It is contended that if in the Rampur court the judgement of the learned Subordinate Judge of Bareilly was produced, that court would be at once bound to pronounce judgement against the defendants in the Rampur State, and in favour of the defendants by reason of the language of section 13. If this argument be sound the result would be somewhat startling. A court in Rampur, which was only competent to try suits where the value of the property was very small might give judgement in favour of a party and in a suit subsequently brought in British India between the same parties, in respect of different property, worth many lakhs, if the judgement of the Rampur court was produced nothing more could be said, and the court in British India (no matter how high its jurisdiction) would be absolutely bound. This would mean that it was the intention of the Legislature to give greater effect to a judgement of a foreign court, no matter how petty, than to judgements of as high, or possibly higher, courts in British India. In British India it is only when the first court is competent to try the second suit that the matter is *res judicata*. Such a result, we think, would be almost absurd.

It is contended that, no matter how absurd the result, the words of section 13 are quite plain. A "foreign judgement" is defined in our Code of Civil Procedure to be the judgement of a "foreign court" and a "foreign court" is defined to be a court which has no authority in British India, and is not established or continued by the Governor General. A "foreign judgement" has no force or authority as such in British India. It is of course true that a foreign judgement may give a cause of action and a suit may be brought based upon it to obtain the same relief as was given by the foreign judgement. If we read the words of section 13 as meaning that the foreign judgement shall be conclusive as to any matters thereby directly adjudicated upon in any proceedings based upon such judgement, the meaning of the section becomes perfectly clear. In our judgement it is only in proceedings, based upon "foreign judgements" that the question of the effect of the "foreign judgement" can properly arise. We may here point out

that if the Code printed in Rampur is simply a copy of our Code and contains the same definition of "foreign judgement" and "foreign court" it is difficult to see how section 13 applies at all. We would be inclined, if such be the case, to infer that the Code was only printed as a guide to judicial officers in Rampur when dealing with cases in the *ilaga*. For these reasons we are of opinion that the plaintiffs are not entitled to the declaration they ask for. If they are not, they clearly are not entitled to the injunction claimed.

It is unnecessary to express any opinion on the other questions raised. In conclusion we wish to say that we have no reason for thinking that the suit will not be fairly and honestly tried out in Rampur on the evidence.

The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

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THAMMAN SINGH (DEFENDANT) v. DAL SINGH AND OTHERS (PLAINTIFFS)*
Act (Local) No. II of 1901 (Agra Tenancy Act), section 22—Occupancy holding—Succession—"Lineal descendant"—Hindu law—Adoption.

Held that, as regards the right of succession to an occupancy holding, a Hindu who has been adopted ceases to be the lineal descendant of his natural father for the purposes of section 22 of the Agra Tenancy Act, 1901. *Lala v. Nahar Singh* (1) followed *Nandan Tiwari v. Raj Kishore Rai* (2) approved. *Ali Balhsh v. Barkat-ullah* (3) distinguished.

THIS was a suit for possession of an occupancy holding on the allegation that Kewal Singh, the plaintiff, was the heir of Hansi, being a brother, and that Thamman Singh, defendant, was no heir, being the illegitimate son of Hansi, the original tenant. The court of first instance dismissed the claim. On appeal the learned District Judge reversed the decree of the court of first instance, holding that an illegitimate son was no heir within the meaning of section 22 of the Tenancy Act, and he further held that Kewal had been adopted in another family, but, as he was a brother, he had a preferential title. The defendants appealed.

* Second Appeal No. 165 of 1913 from a decree of F. S. Tabor, District Judge of Shahjahanpur, dated the 5th of December, 1912, reversing a decree of Gauri Shankar Tiwari, Munsif of Sahaswan, dated the 27th of June, 1912.

(1) (1912) I. L. R., 34 All., 658. (2) Select Decisions, 1904, No. 5.

(3) (1912) I. L. R. 34 All., 419.