

time. I consider that the reasoning in *Saw Hla Pru v. S. S. Halkar* (1) is impeccable. Any other construction of the Article would involve insuperable difficulties in applying it. I, therefore, agree with my Lord the Chief Justice that the appeal fails and must be dismissed.

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S. A. A.
ANAMALAY
CHETTYAR
v.
A FIRM OF
ADVOCATES.
DUNKLEY, J.

APPELLATE CIVIL.

*Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, and
Mr. Justice Braund.*

M.M.K. KUTTAYAN CHETTYAR AND ANOTHER

v.

V.E.R.M.K. KRISHNAN CHETTYAR.*

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June 3.

Execution of decree of Indian State in British Burma—Notification No. 4395 1/A, dated 8th December 1904 of the Government of India—Amendment of s. 44, Civil Procedure Code—Continuance of the notification—Adaptation of Laws Order, paragraph 9—Government of Burma Act, ss. 148, 149.

The law in force in Burma immediately before the commencement of the Government of Burma Act, so far as the power of the Courts to execute a decree of a Native Prince or State in India is concerned, arises from the notification No. 4395 1/A, dated the 8th December 1904 of the Government of India, under s. 44 of the Civil Procedure Code as it existed before separation, and in view of paragraph 9 of the Adaptation of Laws Order and ss. 148 and 149 of the Government of Burma Act continues in force because it has not been altered, repealed or amended by the legislature or other competent authority.

A decree of an Indian State to which the notification applied can therefore be executed after separation in British Burma, notwithstanding that such State may not be a State within the meaning of s. 44 of the Civil Procedure Code as amended and since separation.

Hay for the appellants. It has already been held by a Bench of this Court that a Court in Burma has no jurisdiction, since separation, in the absence of a Notification under section 44A of the Civil Procedure Code, to execute a decree of a British Indian Court.†

(1) (1931) I.L.R. 9 Ran. 575, 582, 583.

* Civil First Appeal No. 68 of 1938 from the order of the District Court of Bassein in Civil Ex. Case No. 7 of 1937.

† See [1938] Ran. 355—*Ed.*

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The question here is whether it has jurisdiction to execute decrees of the Chief Court of Pudukottai. "Native State" in section 44 of the Code must, in relation to Burma, mean a State in Burma which is not British Burma. The Karenni State is such a State. If it had been intended to confer on the Governor power to declare that decrees of Courts of Native States of India may be executed in British Burma the words "State in India or Burma" would have been substituted. See, for instance, the Schedule to the Government of Burma (Adaptation of Laws) Order under head "The Indian States (Protection) Act, 1934." The Indian Acts speak not of Native but Indian States. Section 311 of the Government of India Act defines "Indian State." Paragraph 9 of the Government of Burma (Adaptation of Laws) Order has not the effect of rendering any and every notification in force before the commencement of that Order operative in Burma. Its object is to preserve such notifications as the Governor might since separation issue but which have been issued by a different authority and in a manner different from that now prescribed; otherwise notifications will remain operative though the law under which they had been issued has been altered or repealed. It does not say that every notification in force immediately before separation shall continue to remain in full force, but that a notification shall not be rendered invalid because, by reason of the adaptation or modification of any enactment, it has to be made or issued in a different manner or by a different authority or in accordance with a different law. Take, for example, section 58 (f) of the Transfer of Property Act. The towns of Calcutta, Madras, Bombay and Karachi have been omitted from the sub-section so that mortgages by deposit of title deeds can be created only in Rangoon, Moulmein, Bassein and Akyab, and in any

other town in Burma which may be specified by the Governor by notification in the Burma Gazette. Mandalay was so specified by the Governor-General in Council in 1904 by a notification in the Gazette of India. Paragraph 9 of the Adaptation of Laws Order is intended to preserve such notifications, but what force can the notifications specifying the Indian towns of Bandra, Kurla and Ghatkoper-Kirol have in Burma? S. 45 of the Civil Procedure Code has been repealed in Burma. Can it be argued that all previous notifications thereunder are still valid?

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Horrocks for the respondent. Before separation a decree of a Native State was a foreign decree, that is, foreign both as regards British India and as regards British Burma. After separation a decree of a Native State is still a foreign decree. But, in the nature of things, separation of British India and British Burma did not involve any consequential amendment in the law affecting executability of decrees of Native States. Therefore, by reason of ss. 148 and 149 of the Government of Burma Act the Notification of 1904 continues to operate.

ROBERTS, C.J.—This appeal must be dismissed.

The learned District Judge of Bassein rightly held that a decree of the Chief Court of Pudukottai could be executed in his Court. The respondent obtained a decree in Pudukottai on the 22nd of May, 1937, that is, after the separation of Burma from India, which took place on the 1st of April, 1937.

By section 44 of the Civil Procedure Code as it existed before that date

“The Governor-General-in-Council may, by notification in the *Gazette of India*, declare that the decrees of any Civil or Revenue Courts situate in the territories of any native Prince or State in

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alliance with His Majesty and not established or continued by the authority of the Governor-General in Council, or any class of such decrees, may be executed in British India as if they had been passed by the Courts of British India."

By paragraph 9 of the Burma Adaptation of Laws Order, 1937, any notification duly made or issued before the commencement of this Order was saved from being rendered invalid under its provisions; and provisions were made for the revocation, varying or undoing of any such notification

"in the like manner to the like extent and in the like circumstances as if it had been made, issued or done after the commencement of the Order by the competent authority and under and in accordance with the provisions then applicable to such a case."

By virtue of notification No. 4395 1/A, dated the 8th of December, 1904, and reproduced at page 625 of Volume I, General Statutory Rules and Orders (1907) a right was given to execute decrees (*inter alia*) of the Chief Court of Pudukottai in Burma, and this notification is saved. Moreover, section 148 of the Government of Burma Act runs as follows :

"Notwithstanding the repeal of the Government of India Act, but subject to the provisions of this Act, all the law in force in Burma immediately before the commencement of this Act shall continue in force in Burma until altered or repealed or amended by the Legislature or other competent authority."

And section 149 runs :

"His Majesty may by Order in Council to be made at any time after the passing of this Act provide that as from such date as may be specified in the Order any law in force in Burma shall, until repealed or amended by the Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His Majesty to be consequential on the

separation of India and Burma. In this section the expression 'law' does not include an Act of Parliament, but includes any ordinance, order, byelaw, rule or regulation having in Burma the force of law."

It is true that reading section 44 of the Civil Procedure Code as amended it has become quite different and provides that the Governor may by notification in the Gazette of Burma declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State in alliance with His Majesty or any such class of decrees may be executed in British Burma as if they had been passed by the Courts in British Burma. Pudukottai may well not be a Native Prince or State within the meaning of the section as amended and since separation. But the contention that no notification made prior to separation can have any effect unless it is one which His Excellency the Governor would now have power to make if it did not already exist, is clearly unsound; and would, if given effect to, defeat the provisions of paragraph 9 of the Adaptation of Laws Order, 1937, and of the sections of the Government of Burma Act which I have quoted. The law in force in Burma immediately before the commencement of the Act, so far as the power of the Courts to execute a decree of a Native Prince or State in India is concerned, arises from the notification already quoted, under section 44 of the Civil Procedure Code, and continues in force because it has not been altered, repealed or amended by the Legislature or other competent authority. Advocates' fee ten gold mohurs.

BRAUND, J.—I agree and have nothing to add.

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