

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

HIMMATLA'L, MANAGER OF THE FIRM OF PARBHU KA'SHI AT BARODA (ORIGINAL PLAINTIFF), APPELLANT, v. SHIVA'JIRA'V (ORIGINAL DEFENDANT), RESPONDENT.*

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July 16

Jurisdiction—Judgment—Decree of Native Court—Foreign judgment—The Code of Civil Procedure (Act X of 1882), Sec. 434.

A suit cannot generally be maintained in any British Court upon the judgment of a Native Court.

Quere—whether it could where there had been a notification by the Governor General of India under section 434 of the Civil Procedure Act X of 1882.

Bhavánishankar Shevakráam v. Púrsádri Kálidás⁽¹⁾ followed.

THIS was an appeal from the decision of L. G. Fernandez, Subordinate Judge (First Class) at Ratnágiri.

The plaintiff sued to recover Rs. 7,290-14-3 in respect of two judgments obtained by him against the defendant on the 8th and the 18th February, 1876, respectively, in the Court of the City Judge of Baroda, in the territory of His Highness the Máhárája Gáekwád. The defendant (among other things) contended that the suit would not lie.

The Subordinate Judge, having regard to the ruling in *Bhavánishankar Shevakráam v. Púrsádri Kálidás*⁽¹⁾, dismissed the suit.

The plaintiff appealed to the High Court.

Branson (with him Hon. RáV Sáheb V. N. *Mandlik*) for the appellant.—The question is, whether a suit will lie in a British Court on a judgment of a foreign Court, or a Court in a Native State not notified by the Governor General under section 434 of the Code of Civil Procedure (Act XIV of 1882). The question has not arisen in either the Calcutta or the Allahabad High Court, and has been decided by this Court in the negative in the case relied on by the lower Court. The Madras High Court in three different Benches has dissented from the Bombay ruling.

The Code of Civil Procedure in section 11 provides that the Courts have jurisdiction to try all suits of a civil nature, except

* Regular Appeal, No. 1 of 1883.

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those of which their cognizance is barred by any enactment; and no enactment seems to have deprived the Civil Court of the cognizance of suits on judgments of foreign Courts. On the contrary, section 13, explanation VI, and section 14 allow the use, under certain conditions, of such judgments as a means of defence to suits brought in British Courts. Article 117 of the Limitation Act XV of 1877 provides a limitation for a suit upon a foreign judgment, which in absence of fraud or want of jurisdiction is conclusive between the parties—*Bolorám Gooy v. Kameedasee*⁽¹⁾.

Section 391 shows to a certain extent that the Legislature had no want of confidence in Native Courts.

In *M. Chetti v. C. Chetti*⁽²⁾ the Court did not decide whether a suit on a judgment of a foreign Court would lie, but proceeded to dispose of a question of jurisdiction on the assumption that such a suit would lie. In *Anakatil N. K. Karthavu v. Kochevi P. Pilo*⁽³⁾, where the Bombay case was referred to, it was held that the obligation arising out of the duty to obey the judgment of a foreign Court was not one of the obligations upon which a suit could be entertained in the Small Cause Court. This implies that a suit could be entertained in the ordinary Civil Court. But the strongest case is that of *Kaliyugam Chetti v. Choklinga Pitai*⁽⁴⁾ in which also the Bombay case was dwelt on in argument.

Vásudev Gopál Bhándárkar for the respondent.—Not only the Bombay case, but the Madras cases cited are in my favour, and they conclusively show that the present suit cannot be maintained. There is a distinction between suits founded on foreign judgments and foreign judgments as a bar to a suit—Story's Conflict of Laws, sec. 598. The Code of Civil Procedure allows foreign judgments to be used as a means of defence, not as a weapon of attack. To do so would be to place implicit confidence in the ability and integrity of foreign Courts, and especially Courts of Native States; and this Court has declined to do so.

SARGENT, C. J.—This is an action on two judgments obtained by plaintiff against the defendant in the City Judge's Court at Baroda.

(1) 4 Calc. W. R., 107.

(2) 1. L. R., 1 Mad., 196.

(3) 1. L. R., 6 Mad., 191.

(4) 1. L. R., 7 Mad., 105.

The Subordinate Judge held that the action would not lie, on the authority of the decision in *Bhavanishankar v. Pursádrí*⁽¹⁾. In that case it was laid down by Sir M. Westropp, C. J., and Melvill, J., that a suit will not lie upon the judgments of Courts situate in Native States.

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The decision proceeded on three several grounds :—

1. That there is no precedent to be found for such an action in any of the Courts of India.

2. That the administration of justice in the Courts of Native States does not justify that degree of confidence in its intelligence and integrity which are necessary to raise the implied obligation upon which the action on a foreign judgment rests; and that although there may be some Courts whose judgments are entitled to respect, the English Courts are not in a position to draw distinctions which would be necessarily invidious.

3. That it is safe and proper to hold that the Legislature did not intend that the Court of British India should in any way enforce the decrees of any Courts situate in Native States, except such Courts as may have been notified by the Governor General in Council under section 434 of the Civil Procedure Code, and that it was clearly the intention of the Legislature that decrees of such privileged Native States should occupy the same position as decrees of British Courts in India upon which an action will not lie (except in this Court in the special case of a decree of the Small Cause Court, where the object is to obtain execution against immoveable property of the judgment-debtor), and should not carry with them any greater advantage.

Without expressing any opinion as to the last ground of objection, we agree with the learned Judges in that case that the time has not yet arrived for regarding the administration of justice in the Courts of Native States generally with that degree of confidence which is a condition precedent of English Courts entertaining an action on one of their judgments. We must, therefore, confirm the decree, with costs of appeal on the plaintiff.

Decree confirmed.

(1) I. L. R., 6 Bom., 292.