APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1899. *July* 31.

MAYARAM AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* RAVJI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Foreign judgment—Suit on a foreign judgment—Civil Procedure Code (Act XIV of 1882), Sec. 14, as amended by Act VII of 1888.

A suit will lie on a judgment of a Court in a Native State.

SECOND appeal from the decision of C. H. Jopp, District Judge of Ahmednagar.

Plaintiffs sued to recover Rs. 550 from the defendants on a judgment obtained by them in a Court in the territory of His Highness the Nizám.

The Subordinate Judge dismissed the suit, holding, on the authority of *Bhavanishanker* v. *Pursadri*(1) and *Himmatlal* v. *Shivajirav*(2), that a suit would not lie on the judgment of a foreign Court.

This decision was confirmed, on appeal, by the District Judge.

Plaintiffs appealed to the High Court.

N. G. Chandavarkar, for appellant, referred to *Gurdyal Singh* v. *Raja of Faridkot*(3); *The Collector of Moradabad* v. *Harbans Singh*(4).

Ghanasham Nilkanth for respondents.

PARSONS, J.:—The lower Court has held that a suit will not lie on the judgment of a Court in the territory of His Highness the Nizám on the authority of the ruling of this Court in *Bhavanishanker* v. *Pursadri*(5) and *Himmatlal* v. *Shivajirav*(6). It is not necessary to determine whether that ruling was correct or not (see *Gurdyal Singh* v. *Raja of Faridkot*(7)), because those cases were decided before the passing of the Civil Procedure Code Amendment Act, VII of 1888. The addition to section 14, made by that Act, clearly contemplates the institution of suits on the

* Second Appeal, No. 195 of 1899.

(1) (1882) 6 Bom., 292.
(2) (1884) 8 Bom., 593.
(3) (1894) 22 Calc., 222.
(4) (1898) 21 All., 17.
(5) (1882) 6 Bom., 292.
(6) (1884) 8 Bom., 593.
(7) (1894) 22 Cal., 222.

judgment of a foreign Court in Asia, providing only that the Court in which the suit is instituted shall not be precluded from inquiry into the merits of the case in which the judgment was passed. This is the view taken by the Allahabad High Court in *The Collector of Moradabad* v. *Harbans Singh*[1], and we have no doubt that it is correct.

We reverse the decrees of both the lower Courts and remand the case to the Court of first instance for trial on the merits. We make all costs costs in the cause.

RANADE, J.:—This was a suit brought on a foreign judgment obtained by the appellants-plaintiffs in a Court in the Nizám's Dominions, and both the Courts below have held, chiefly on the authority of the rulings of this Court in *Bhavanishanker* v. *Pursadri*[2] and *Himmatlal* v. *Shivajirav*[3], that no such suit could be maintained. These decisions were passed in 1882 and 1884, but since then the old section 14, Civil Procedure Code, has been amended by Act VII of 1888. As the section first stood, it only provided that no foreign judgment shall operate as a bar to a suit in British India, under certain circumstances. It thus only permitted such judgments to be pleaded as *res judicata* in the particular circumstances noted therein. It did not provide for a suit being brought on such a judgment. The addition made by Act VII of 1888, however, expressly enacted that "where a suit is instituted in British India on the judgment of any foreign Court in Asia or Africa * * * the Court in which the suit is instituted shall not be precluded from inquiry into the merits of the case in which judgment was passed." The effect of this addition to section 14 has not been precisely considered by this Court, but in *Bababhat* v. *Narharbhat*[4] it was held that, reading the earlier part of section 13 with Explanation VI, the term 'Court of competent jurisdiction' includes a foreign competent Court. The foreign Court whose decision was under consideration in that case was the Kurandvád Court. The judgment refers to Mr. Justice Field's note on sections 13 and 14, and his opinion is quoted with approval to the effect that the judgment of a foreign Court cannot, when sued upon in

(1) (1898) 21 All., 17.
(2) (1882) 6 Bom., 292.
(3) (1884) 8 Bom., 593.
(4) (1888) 13 Bom., 224.

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British India, be impeached on the ground that it was erroneous on the merits. In respect of foreign Courts in Asia and Africa to which the addition to section 14 refers, it appears that Courts in India are not precluded from inquiry into the merits of the decision passed by these foreign Courts. In other words, the ruling in *Balabhat* v. *Narharbhat* may be said to qualify considerably the effect of the previous rulings of this Court. These rulings, it may be noted, had been dissented from by Sir C. Turner, C. J.—*Kaliyugam* v. *Chokalinga*[1]—and the practice in the Madras Presidency and in Bengal—*Boloram Gooy* v. *Kameence*[2]—had always been to permit suits in British India on foreign judgments. The reasons given by the Judges who decided *Bhavanishankar* v. *Pursadri*[3] and *Himmatlal* v. *Shivajirav*[4] indeed recognized a distinction betwen the Courts attached to the European settlements in British India and the foreign Courts in Native States. These reasons were to some extent extra-legal, and the Madras High Court (Kindersley and Hutchins, JJ.) took exception to the relevancy of such a distinction—*Sama Rayar* v. *Annamalai*[5]. The more recent decisions of the same Court—*Bangarusami* v. *Balasubramanian*[6], *Fazal Shau Khan* v. *Gafar Khan*[7] and *Nalla Karuppa* v. *Mahomed*[8]—have made no such distinctions between the foreign Courts in *Native States and foreign Courts in the †European settlements, but placed both in the same category. In all these cases the suits were brought on foreign judgments, and the new section 14, which permits Courts to inquire into the merits, was brought in force in *Fazal Shau Khan* v. *Gafar Khan*, and the earlier portion of section 14 was given effect to in the other two cases. In *The Collector of Moradabad* v. *Harbans Singh*[9] similar effect was given to the latter part of section 14 in a suit brought on a foreign judgment of the Rampur Court.

The question has now been set at rest by the decision of the Privy Council in an appeal from the Punjab Chief Court—

(1) (1883) 7 Mad., 105.
(2) (1865) 4 Cal. W. R., 108.
(3) (1882) 6 Bom., 292.
(4) (1884) 8 Bom., 593.
(5) (1883) 7 Mad., 164.
(6) (1890) 13 Mad., 496.
(7) (1891) 15 Mad., 82.
(8) (1896) 20 Mad., 112.
* Baster.
† Kandy Karikal.
(9) (1898) 21 All., 17.

Gurdyal Singh v. *Raja of Faridkot*[1]. [Their Lordships held that there was no ground for supposing that no suit will lie upon the judgment of a recognized foreign Indian State. As the amended section permits the Courts in British India to inquire into the merits, if necessary, the dangers of miscarrige of justice referred to in the earlier decisions of this Court have been effectively provided for—*Haji Musa* v. *Purmanand*[2]. If some of these Courts have been privileged to execute their decrees under section 229 in British India, there is no particular reason why the foreign judgments of those Courts, to which section 229 does not apply, should not be sued upon in British Indian Courts of Justice. I would, therefore, reverse the decrees of the Courts below and direct that the suit be disposed of according to law.

Decree reversed.

(1) (1894) 22 Cal., 222. (2) (1891) 15 Bom., 216.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

PANCHAPPA (ORIGINAL PLAINTIFF), APPELLANT, *v.* SANGANBASAWA (ORIGINAL DEFENDANT), RESPONDENT.*

1899. *July* 21.

Hindu law—Adoption—Gift of a son in adoption by a widow after remarriage—Widow Remarriage Act (XV of 1856), Secs. 2 and 3.

A Hindu widow has no power, after her remarriage, to give in adoption her son by her first husband, unless he has expressly authorized her to do so.

SECOND appeal from the decision of F. C. O. Beaman, District Judge of Belgaum.

Suit by an alleged adopted son to recover the property of his adoptive father.

The property in dispute had been the property of one Fakirappa. He had a wife Tippawa, and he married as his second wife a widow Dyamawa, who had by her first husband a son Panchappa (the plaintiff).

After Fakirappa's death, Dyamawa gave Panchappa in adoption to Tippawa.

* Second Appeal, No. 104 of 1899.