Before Mr. Justice Mookerjee and Mr. Justice Holmwood.

PRABHU NARAIN SINGH
v.
SALIGRAM SINGH.*

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March 27.

Execution of decree—Transfer of decree for execution—Decree of Court in British India—Benares, Family Domains of Maharaja of—Foreign Court—Court established by Authority of Governor-General—Kondh, Court of Native Commissioner of—Benares Family Domains Regulation (VII of 1828)—Benares Family Domains Act (XIV of 1881)—Civil Procedure Code (Act XIV of 1882), ss. 223, 229, 229B.]

The family domains of the Maharaja of Benares are situated within British India as defined in Act X of 1897, s. 3, cl. 7, and s. 4, cl. 1; and the Court of the Native Commissioner or Subordinate Judge of Kondh within those domains, established under Regulation VII of 1828 amended by Act XIV of 1881, is a Court established by the authority of the Governor-General in Council; consequently neither s. 229 nor s. 229B of the Code of Civil Procedure applies to the execution of decrees passed by it.

To make section 223 of the Code of Civil Procedure relating to the transmission of decrees of one Court to another for execution applicable, it is necessary that the provisions of the Code should regulate the procedure of both the Courts. The Code having become applicable to the Court of the Subordinate Judge of Kondh by virtue of Rules made by the Lieutenant-Governor of the North-Western Provinces on 2nd April 1888 under section 22, Regulation VII of 1828 and the notification by the Governor-General in Council, dated 1st June 1882, a decree of that Court may be transferred to, and executed by, the Civil Court in the district of Saran.

The Scheduled Districts Act (XIV of 1874) and the Laws Local Extent Act (XV of 1874) referred to.

Kashi Mohun Borua v. *Bishnoo Pria*(1) and *Kasturchand Gujar* v. *Parsha Mahar*(2) referred to.

APPEAL by the decree-holder, Maharaja Prabhu Narain Singh Bahadur of Benares.

* Appeal from Order, No. 350 of 1906, against the order passed by A. Miller, District Judge of Saran, dated May 28, 1906, reversing the decree of Rajendra Nath Dutt, Subordinate Judge of Saran, dated March 14, 1906.

(1) (1888) I. L. R. 15 Calc. 365. (2) (1887) I. L. R. 12 Bom. 230.

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The appellant obtained a decree for arrears of rent against the respondent in the Court of the Subordinate Judge of Kondh situated within his family domains. The decree was sent for execution to the Court of Saran where the judgment-debtor raised the objection that the Court had no jurisdiction to execute the decree; the Court overruled the objection.

On appeal by the judgment-debtor, the District Judge of Saran allowed the objection and held that a British Court would not be justified in executing a decree of the Court of the Subordinate Judge of Kondh.

The decree-holder, the Maharaja of Benares, appealed to the High Court.

Babu Lal Mohan Dass (*Babu Chandra Sekhar Prasad Singh* with him), for the appellant. The Court of the Subordinate Judge of Kondh is not a foreign Court; the family domains of the Maharaja of Benares are included in the scheduled portion of the Mirzapore district, and the Code of Civil Procedure has been extended to those domains: see notification in *Gazette of India* dated 3rd June 1882. Section 229B relied on by the District Judge does not apply, and even if s. 229 did not apply s. 223 would, and the Court of Saran is authorized and bound to execute this decree.

Babu Dwarka Nath Chakravarti (*Babu Akshay Kumar Banerjee* with him), for the respondent. Section 229 of the Code on which reliance was placed by the first Court can apply only if (i) the Court of Kondh is in a foreign State, and (ii) if the Court is established or continued by the authority of the Governor-General in Council; both these conditions must be satisfied; it cannot be denied that the Maharaja's family domains are within British territory, and not a foreign State; section 229 therefore cannot apply. Section 223 of the Code can only apply if the decree is passed by a Court established under one or other of the Civil Court Acts for the various parts of British India; the Court at Kondh is not such a Court. Regulation VII of 1828 merely made certain arrangements for revenue administration. There is no material to show what is the status of the Maharaja of Benares in respect of family domains. The paper which is

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produced as a copy of the decree of the Court of Kondh does not bear any certificate and is not admissible in evidence under section 86 of the Evidence Act.

Babu Lal Mohan Dass, in reply, referred to section 22, Regulation VII of 1828 and Act XIV of 1881. He also cited *Raghunath Das* v. *Kakkan Mal*(1). *Kashi Mohun Borua* v. *Bishnoo Pria*(2) was also referred to in the course of argument.

MOOKERJEE AND HOLMWOOD JJ. On the 17th March 1902, the Maharaja of Benares, who is the appellant before us, instituted a suit for arrears of rent against the defendant respondent in the Court of the Native Commissioner or Subordinate Judge of Kondh, a place situated within what is known as his family domains. On the 12th July 1902 the Subordinate Judge, according to the statement of the pleader for the defendant, made a decree in full in favour of the plaintiff. On the 12th July 1905 the decree was transferred for execution to the Court of the Subordinate Judge at Saran. The judgment-debtor resisted execution on the ground that the Court had no jurisdiction to execute the decree. The Subordinate Judge held that the decree in question might be treated as a decree of a Court established by the authority of the Governor-General in Council in the territories of a Foreign Prince or State and might be executed under section 229 of the Civil Procedure Code within the jurisdiction of his Court. Upon appeal, the District Judge held that section 229 had no application, that section 229B governed the matter, and that inasmuch as no notification had been published by the Governor-General in Council under that section declaring that the decrees of the Court of the Subordinate Judge of Kondh might be executed in British India, as if they had been made by the Courts of British India, the Subordinate Judge had no jurisdiction to execute the decree. The decree-holder has now appealed to this Court, and the question which we are invited to decide is, whether or not the Court of the Subordinate Judge at Saran has jurisdiction to execute the decree. In order to determine this question, it is necessary to examine the status of the

(1) (1881) I. L. R. 3 All. 568. (2) (1888) I. L. R. 15 Calc. 365.

Court by which the decree was made and the source from which it derives its authority.

Regulation XV of 1795, after reciting in the Preamble the mode of adjustment of disputes prevalent in the province of Benares, made provision for reference of certain classes of cases to the decision of the Raja of Benares. Regulation VII of 1828, which was subsequently modified by Act XIV of 1881, sets out in the Preamble that the provisions of Regulation XV of 1795 had not worked satisfactorily, and that it was consequently necessary to define the authority of the Raja of Benares in the mehals specified in that Regulation which included what is known as the family domains of the Maharaja of Benares. Section 3 vests the superintendence of the mehals in the Commissioner of the Benares Division. Section 16 next provides that in order to secure for the inhabitants of these mehals the administration of civil justice on the principles in force throughout the rest of the province, a native Commissioner or two or three native Commissioners as the Lieutenant-Governor may from time to time direct, shall be maintained by the Maharaja for the purpose of taking cognizance in the first instance of the revenue cases specified in subsequent sections. The local limits of the jurisdiction of the Native Commissioners are left to be determined by the Maharaja, and may be altered from time to time. Section 17 treats of the appointment of individuals to fill the offices of native Commissioners, and provides that the nominations are to be made by the Raja, but the confirmation is to rest with the Superintendent. Section 20 defines the power and authority of the Native Commissioners, and lays down that persons invested with the powers of Native Commissioners are authorised to receive, try and determine all suits preferred to them against any inhabitant of their respective jurisdiction relative to land of every description, or rent, revenue, or produce thereof situated therein. It is clear, therefore, that the Court of the native Commissioner is a Court established by the authority of the Governor-General in Council. It follows consequently that section 229B of the Civil Procedure Code can have no possible application, as it relates to the execution in British India of decrees of such Courts situated in the territories of any native Prince or State as have not been established or

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continued by the authority of the Governor-General in Council. As the Court of the Native Commissioner has been established by the authority of the Governor-General in Council, we must take it that section 229B does not govern the matter. The question remains, however, whether section 229 has any application. In our opinion, that section does not apply because the territory within which the Court of the Native Commissioner is situated is not the territory of a foreign Prince or State. It cannot be disputed that the family domains of the Maharaja of Benares are situated within and form part of British India and are held under the British Government. The family domains consist of pergunnah Bhaddlu and Kairu Mandul in the district of Mirzapur and Kaswaruff in the district of Benares. They are situated within British India which, as defined in Act X of 1897, section 3, clause (7), and section 4, clause (1), means all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India in Council or through any Governor or other officer subordinate to the Governor-General of India. It follows consequently that the Court of the Subordinate Judge of Kondh is not a Court established in the territory of a foreign Prince or State within the meaning of section 229 of the Code of Civil Procedure. We must hold accordingly that the view taken by the Subordinate Judge as also that expressed by the District Judge is erroneous. This does not, however, necessarily conclude the matter, and the question arises whether there is any other provision of the Code which has a bearing on the point in controversy between the parties. We are of opinion that section 223, which provides that a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution under the provisions contained in the Code, is applicable. The most important circumstance upon which this conclusion is founded is that the section is applicable not only to the Court in which the execution of the decree is now sought, but also to the Court in which the decree was originally obtained.

In the Scheduled Districts Act, XIV of 1874, section 1 provides that the Act extends in the first instance to the whole of British India other than the territories mentioned in the first schedule,

and it shall come into force in each of the Scheduled districts on the issue of notification under section 3 relating to such districts. Part IV of the first schedule shows that the family domains of the Maharaja of Benares form a portion of the Scheduled districts comprised within the North-Western Provinces. The operation of the Act was extended to the family domains by a notification dated the 30th May 1879 (*Gazette of India*, 1879, Part I, page 383). From that date, therefore, the provisions of the Act became applicable to the family domains of the Maharaja of Benares. Now section 5 provides that the Local Government may, with the previous sanction of the Governor-General of India in Council, extend, to any of the Scheduled districts or to any part of any such district, any enactment which is in force in any part of British India at the date of such extension. By a notification issued apparently under this provision on the 1st June 1882 (*Gazette of India*, 1882, Part I, page 217) the Code of Civil Procedure was extended to the family domains of the Maharaja of Benares. It follows therefore that from that date the provisions of Chapter XIX of the Code of Civil Procedure which relates to the execution of decrees became applicable to the Court of Native Commissioner or Subordinate Judge of Kondh, precisely in the same manner as they were applicable to the Court of the Subordinate Judge at Saran. The inference is accordingly irresistible that a decree of the Court of Native Commissioner or Subordinate Judge of Kondh may be transferred to and executed by the Court of the Subordinate Judge at Saran. This view is supported by the decision of this Court in the case of *Kachi Mohun Borua* v. *Bishnoo Pria*(1) and is in no way inconsistent with the view expressed in the case of *Kasturchand Gujar* v. *Parsha Mahar*(2).

It was suggested by the learned vakil for the respondent that section 223 of the Civil Procedure Code is limited in its application to Courts established under and governed by the Bengal Civil Courts Act (XII of 1887) and the corresponding Acts for the other Provinces. In our opinion, there is no foundation for this contention, and we are not prepared to adopt this restricted interpretation of the scope of the section. We are

(1) (1888) I. L. R. 15 Calc. 365. (2) (1887) I. L. R. 12 Bom. 230.

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disposed to hold that the necessary and sufficient test of the applicability of the section is whether the provisions of the Code regulate the procedure of the Court which makes the decree, as also of the Court to which it is transferred for execution.

There is another aspect of the matter to which it is necessary that we should make some reference. Before the Civil Procedure Code of 1882 had been passed, Regulation VII of 1828 was amended by the Benares Family Domains Act XIV of 1881, section 14 of which excluded the family domains of the Maharaja of Benares from Part IV of the sixth schedule of the Scheduled Districts Act of 1874. The result of this exclusion would be that the family domains of the Maharaja of Benares would, from the 24th September 1881, on which date Act XIV of 1881 came into force, cease to be a Scheduled district, and would become, as part of British India, subject to the ordinary laws and regulations. In this view of the matter, the Civil Procedure Code of 1882 when it came into operation would extend to the family domains of the Maharaja of Benares, and the notification of the 1st June 1882 would be superfluous. A difficulty, however, might apparently be created by reason of section 15 of Act XIV of 1881 by which a clause was added to section 8 of the Laws Local Extent Act XV of 1874, the effect of which was to provide that notwithstanding anything contained in the Act, no law not in force at the time in the family domains of the Maharaja of Benares would be treated as extended therein. The result therefore would be that the Code of Civil Procedure then in force could be made applicable to the Courts in the family domains of the Maharaja of Benares only by virtue of section 22 of Regulation VII of 1823, which authorised the Lieutenant-Governor to make rules consistent with the Regulation to regulate the procedure and powers of the Native Commissioners. We find that in the exercise of the authority vested in the Lieutenant-Governor, he did make on the 2nd April 1888 a series of rules one of which provides that subject to certain restrictions which do not affect the question now raised before us, the Code of Civil Procedure shall be followed as far as it can be made applicable. There can therefore be no room for doubt that the Code of Civil Procedure governs suits tried by the Court of the

Native Commissioner or Subordinate Judge within the family domains of the Maharaja of Benares. In this view of the matter, section 223 is obviously applicable.

It was faintly suggested by the learned vakil for the respondent that the copy of the decree which has been produced is not certified as required by law, and is not admissible in evidence under section 86 of the Indian Evidence Act. In our opinion, there is no force in this contention. In the first place, the copy which has been produced is duly certified to be a true copy; in the second place, in the view we take of the matter, section 86 of the Indian Evidence Act has no application; and in the third place, if section 86 had applied and if any such question had been raised in the court of first instance, it would have been open to the appellant to prove the accuracy of the copy by independent evidence, as was laid down by their Lordships of the Judicial Committee in the case of *Haranund Chetlangia* v. *Ram Gopal Chetlangia*(1).

On these grounds we must hold that although the reasons given by the Subordinate Judge are erroneous, his conclusion that the decree could be executed in his Court is well founded. The result, therefore, is that this appeal must be allowed, the order of the District Judge discharged, and the order of the Subordinate Judge restored. This order will carry costs in favour of the decree-holder both in this Court and in the Court of the District Judge. We assess the hearing fee at three gold mohurs.

Appeal allowed.

S. CH. B.

(1) (1899) I. L. R. 27 Calc. 639.