

PRIVY COUNCIL

Mt. Maqbul Fatima and others

Vs.

Amir Hasan Khan and others

(Lords Atkinson, CJ, Parker Of Waddington, Sir John Edge and Mr. Ameer Ali. JJ)

2.6.1916

JUDGMENT

Lords Parker J.

1. The judgment of the High Court from which the above appeal was taken to the Privy Council was as follows:-

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 judgment, dated the 2nd February, 1911, by the Subordinate Judge of Barielly between the parties and upheld by the Hon'ble High Court on the 6th 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 " * * * *".

2. 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 Barielly and partly in 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 Barielly for a declaration of their title in respect of so much of the property as was situate in the District of Barielly. 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 relief set forth above.

3. There can be no doubt that if all the property was situated in British India, the decision of the Subordinate Judge of Barielly, 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.

4. 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 Barielly property is absolutely conclusive, and that, therefore, the defendants ought not to be allowed to re-open the matter in Rampur and put the plaintiffs to the expense and inconvenience of defending the suit in that State.

5. 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 judgment of the Subordinate Judge of Barielly operates as *res judicata* in the Rampur State." It is said that in the District of 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 *ilaqa* was granted to the State in recognition of the 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 *ilaqa* shall be decided in accordance with the laws in force in British India." It was also stated at the Bar that the Code of Criminal Procedure has been printed in Rampur for the use of the *ilaqa*. 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 the future laws, including adjective law like the Code of Civil Procedure, were to apply to the *ilaqa*. 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 *ilaqa* is concerned. Section 11 of the Civil Procedure Code is as follows:

"No Court shall try any suit or issue in which the matter 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 heard and finally decided by such Court."

6. 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 Barielly, but the Subordinate Judge in Barielly 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 judgment of the Subordinate Judge of Barielly does not operate as *res judicata* in Rampur.

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

"A foreign judgment 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."

8. The word "judgment" in the expression "foreign judgment" is evidently used in the sense in which the word 'judgment' is used in England.

9. It is contended that if in the Rampur court the judgment of the learned Subordinate Judge of Barielly was produced, that Court would be at once bound to pronounce judgment against the defendants in the Rampur State and in favor of the plaintiffs 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 judgment in favor 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 judgment of the Rampur court was produced nothing more could be said, and the Court in British India (no matter how big its jurisdiction) would be absolutely bound. This would mean that it was the intention of the legislature to give greater effect to judgments of a Foreign Court, no matter how petty, than to judgments 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.

10. It is contended that no matter how absurd the result, the words of section 13 are quite plain. A "foreign judgment" is defined in our Code of Civil Procedure to be the judgment of a "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 judgment" has no force or authority as such in British India. It is, of course, true that a "foreign judgment" may give a cause of action and a suit may be

brought based upon it to obtain the same relief as was given by a "foreign judgment." If we read the words of section 13 as meaning that the "foreign judgment" shall be conclusive as to any matters thereby directly adjudicated upon in any proceedings based upon such judgment, the meaning of the section becomes perfectly clear. In our judgment it is only in proceedings based upon "foreign judgments" that the question of the effect of the "foreign judgment" 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 judgment" 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 declarations they ask for. If they are not so entitled they clearly are not entitled to the injunction claimed.

11. 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.

12. The result is that the appeal fails and is dismissed with costs, including in this Court fees on the higher scale.

13. Let the office report as to the correct valuation of the appeal having regard to the additional Court fee paid by the appellants and the correct amount of Counsel's fee payable thereon.

14. Robert Finlay and E.B. Raikes, for Appellants.

15. Solicitors for Appellants; T.L. Wilson and Co.

Lord Atkinson :- Their Lordships do not see their way to reverse the decision appealed from, and will humbly advise His Majesty to dismiss the appeal. As the respondents have not appeared, there will be no order as to costs.

Appeal dismissed.