

PRIVY COUNCIL

Gajambal Ramalingam

Vs.

Ruknul Mulk Syed Abdul Wajic

P.C.A.No.53 of 1948

(Lords Simonds, Morton of Henryton Reid, Sir John Beaumont and Sir Malcolm Macnaghten JJ.)

12.12.1949

JUDGMENT

LORD SIMONDS J.

1. This appeal is from a judgment dated 5th July 1944, of the Court of the British Resident in Mysore affirming a judgment dated 22nd November 1943, of the Court of the District Judge, Civil and Military Station of Bangalore, by which it was ordered that probate of the will dated 10th September 1942, with a codicil dated 24th September 1942, of one V. Ramalingam Mudaliar should issue to certain persons who are respondents to this appeal.

2. At the original hearing of the appeal counsel for the respondents took the preliminary point that His Majesty no longer has jurisdiction to entertain an appeal from the Court of the British Resident in Mysore. Their Lordships having heard this point twice argued, first at the original hearing and then a second time at the request of the appellants, who asked for that indulgence on the ground that there was further matter to put before the Board, are of opinion that the objection is well founded for the reasons which they will now give.

3. It will be convenient first to give the dates of the relevant steps in the proceedings out of which this appeal arises.

4. As already stated, the orders of the District Judge and of the Court of the British Resident were dated respectively 22nd November 1943, and 5th July 1944. On 25th October 1944, the appellants presented a petition to the Court of the British Resident for leave to appeal to His Majesty in Council. Leave was given by that Court on 17th

January 1945, and an order admitting the appeal was made on 28th February 1945. Service of notice of admission of the appeal was accepted on behalf of the respondents on 1st February 1947. In the month of October 1948, the Registrar of the High Court of Mysore (the Court of the British Resident having then ceased to exist) forwarded the record of the proceedings to the Registrar of the Judicial Committee of the Privy Council by whom it was received in the following month. The appellants lodged their petition of appeal to His Majesty in Council on 28th January 1949.

5. The position of the Court of the District Judge and of the British Resident in Mysore must now be briefly stated. In the year 1881 the rendition of the state of Mysore to its hereditary ruler, was effected by the installation of the Maharaja under a Proclamation of the Viceroy and Governor-General of India and at the same time an Instrument of Transfer was executed whereby it was (inter alia), by Article 9, provided that the Maharaja would not object to the maintenance and establishment of British cantonments in the said territory whenever and wherever the Governor-General in Council might consider such cantonments necessary and would grant free of all charge such land as might be required for such cantonments and would renounce all jurisdiction within the lands so granted. Shortly thereafter the Maharaja, pursuant to the said 9th article, assigned free of charge to the exclusive management of the British Government for the purposes stated in that article the lands described therein which were in effect the area forming the Bangalore Civil and Military Station and renounced all jurisdiction in the lands so assigned. The Instrument of Transfer of 1881 was superseded by a Treaty concluded between the British Government and the Maharaja on 26th November 1913, but no material change was effected so far as the exercise of jurisdiction was concerned. The area comprised in the Civil and Military Station of Bangalore remained part of the territory of Mysore : see *In re Hayes*, 12 *Mad.* 39.

6. It is unnecessary to refer to the manner in which His Majesty exercised the rights of jurisdiction so ceded to him before the year 1920. In that year in exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council, 1902, which was made under the Foreign Jurisdiction Act, 1890, the Governor-General in Council was pleased to provide for the administration of civil justice within the Civil and Military Station of Bangalore by establishing (by Section 1) a District Court within the meaning of the Code of the Civil Procedure, 1908 (V of 1908) as applied to the said Civil and Military Station, to be presided over by a District Judge appointed by the Governor-General in Council, with jurisdiction extending (subject as therein

mentioned) to all original suits and proceedings of a civil nature, and (S. 4) by providing that appeals from the decrees and orders of the District Court should, when such appeals were allowed by law, lie to the Residents in Mysore who should exercise the powers of a High Court for all purposes whatsoever connected with the administration of civil justice within the said Civil and Military Station.

7. These Courts which were thus established continued to exercise their prescribed jurisdiction on behalf of His Majesty until the events which will shortly be narrated. The law that they administered included divers enactments which by notifications given under the Indian (Foreign Jurisdiction) Order in Council, 1902, were made applicable to the Station. These enactments included the Indian Code of Civil Procedure, which prescribed the conditions under which an appeal might be brought to His Majesty in Council.

8. After the Government of India Act, 1935, came into force, a further Order in Council was made, by which in effect the existing system was preserved and continued. It is unnecessary to refer to its terms.

9. On 18th July 1947, the Indian Independence Act 1947, received the Royal Assent. By that Act it was provided that as from 15th August 1947, which was called "the appointed day," two independent Dominions should be set up in India, to be known respectively as India and Pakistan and by Section 7(1) it was enacted that as from the appointed day (a) His Majesty's Government in the United Kingdom had no responsibility as respects the Government of any of the territories which immediately before that day were included in British India and (b) (more relevant to the present appeal) the suzerainty of His Majesty over the Indian States (which include the State of Mysore) should lapse and with it all treaties and agreements in force at the date of the passing of that Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof and all powers rights authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty grant usage sufferance or otherwise. By Section 9(1) the Governor-General was required by order to make such provisions as appeared to him necessary or expedient (inter alia) (a) for bringing the provisions of the Act into effective operation.

10. On 26th July 1947, a notification was issued by the Crown Representative under the authority of the Indian (Foreign Jurisdiction) Order in Council, 1937. By this

notification which recited that the jurisdiction theretofore exercised by the Crown Representative in the area known as the Civil and Military Station, Bangalore, would with effect from 26th day of July 1947, be restored to His Highness the Maharaja of Mysore save for that portion thereafter described as the Military and Railway areas contained in the boundaries set out in Schedules thereto annexed the Crown Representative was pleased to direct that with effect from the said 26th July 1947, all notifications issued under the Indian (Foreign Jurisdiction) Order in Council, 1902, or under the Indian (Foreign Jurisdiction) Order in Council, 1937, whereby specific provision was made for the said area whether for the making of laws for or administration of laws for or the application of laws to the said area or for the administration of justice therein or otherwise should be cancelled save in so far as the said military and railway areas were concerned.

11. It appears to their Lordships that, in view of the provisions Indian Independence Act, 1947, and of the notification to which they have last referred, the jurisdiction formerly exercised by His Majesty in or in relation to that part of the territory of the State of Mysore which was known as the Civil and Military Station, Bangalore, came to an end. The Courts of the District Judge and of the Resident ceased to exist. His Majesty was neither the fountain of justice nor had any executive authority in the former Civil and Military Station of Bangalore. In that area, as in the rest of the State of Mysore, the Maharajah alone had sovereign powers and it was for him to make such laws as he thought fit for the administration of justice in his territory. Reference will be made to the laws that he in fact made, but they cannot be regarded as conferring upon His Majesty in Council any jurisdiction.

12. It was urged on behalf of the appellants that His Majesty had at least the power to hear an appeal from an Order made by His Court before retrocession. But the hearing of an appeal by this Board, whose duty is to advise His Majesty, is no more than the preliminary which justice demands to the exercise of jurisdiction. Their Lordships humbly report to His Majesty what order should in their opinion be made and His Majesty is in the familiar language of an Order in Council pleased to approve thereof and to order that the same be punctually observed obeyed and carried into execution and the Judges of the Court from which the appeal is brought and all other persons whom it may concern are required to take notice thereof and to govern themselves accordingly. It is with a view to such an Order in Council being made and upon the footing that when made His Majesty has executive authority to order its enforcement, that an appeal is entertained. His Majesty having renounced and surrendered his

jurisdiction, their Lordships do not think it proper to hear an appeal and report to His Majesty what order it might in other circumstances have been proper to make.

13. It has been said that after the retrocession the Maharaja of Mysore made laws in regard to the administration of justice in his territory. The appellants relied on certain of them and reference will accordingly be made to them.

14. On 4th August 1947, he promulgated Act No. 23 of 1947, entitled "The Retrocession (Application of Laws) Act, 1947", by which, after reciting that the jurisdiction theretofore exercised by the Crown Representative in the Bangalore Civil Station, the Railway Lands and the Indian Institute of Science Area, Bangalore, had been restored to His Highness the Maharaja and it was necessary to provide for the application of laws to the retroceded area, it was (inter alia) enacted by section 3, that except as hereinafter provided in that Act (a) all laws in force in the Civil and Military Station immediately prior to the date of retrocession should from that date continue to have effect and be operative in the retroceded area and (b) that the laws in force in Mysore on 2nd August 1947, should not apply to the retroceded area, and by Section 4 that any enactment in force in the Civil and Military Station which was applied to the retroceded area under Section 3 should apply as if (inter alia) references therein to the Court of the Resident were to the High Court of Mysore.

15. By Act 24 of 1947 entitled "The Retrocession (Transitional Provisions) Act 1947", and promulgated on the same day, after reciting that the jurisdiction theretofore exercised by the Crown Representative as mentioned in Act 23 had been restored to His Highness the Maharaja and it was necessary to provide for transitional arrangements in respect of proceedings in Courts and other matters hereinafter appearing, provision was made in regard to all proceedings then pending in civil or criminal Courts in the Civil and Military Station including appeals and by Section 8 it was enacted as follows :

"Any decision of His Majesty in Council given in an appeal now pending before His Majesty shall be effective in Mysore."

16. Finally after at least three further Acts in 1947, by Act no. 57 of 1948, the Retroceded Area Application of Laws Act 1948, His Highness the Maharaja was pleased to enact by section 1, that that Act should extend to the whole of Mysore and should come into force on 15th August 1948, hereinafter called the appointed day. Section 2, contained divers definitions including that of "Civil and Military Station" as "the area comprised within the boundaries of the Civil and Military Station,

Bangalore, prior to 19th day of July 1947", and of "Retroceded Area" as "the Bangalore Civil Station, the Railway Lands and the Institute of Science Area", and "law" as including 'act and any regulation, rule, bye-law, notification or order having the force of law". Section 3, provided that except as thereafter provided all laws in force in Mysore should apply to the retroceded area and the laws in force in the retroceded area immediately before the appointed day should not from that day have effect or be operative in the retroceded area. Sections 4 and 5 by way of modification of the generality of Section 3 provided what enactments and with what modifications and restrictions should apply and remain in force in the retroceded area. Section 6 and the succeeding sections made further provision for the application and interpretation of such enactments and by section 11, the Act 23 of 1947, already cited was repealed.

17. The precise meaning and effect of those enactments and in particular of Section 8 of Act 24 of 1947 upon which the appellants relied are not in all respects easy to determine nor would it be proper for their Lordships to attempt to do so. It is sufficient for them to say that, however they may be interpreted by the Courts of Mysore, they cannot be effective to create and vest in His Majesty in Council a jurisdiction which he has expressly surrendered and renounced.

18. At the second hearing of the appeal the Board had the assistance of a learned Madras pleader, Mr. Padmanabhan, who on behalf of the appellants urged upon their Lordships that the jurisdiction of His Majesty in Council still subsisted and, without repeating the arguments already referred to founded his plea largely on the proviso to Section 7(1), Indian Independence Act, 1947, the orders made by the Governor-General under the same Act and the Instrument of Accession and the Supplementary Instrument signed by the Maharaja of Mysore and accepted by the Governor-General. He was, however, constrained to admit that, ultimately, the validity of his plea rested on the view that the words in the proviso in question "other like makers" were apt to cover and include the jurisdiction of His Majesty in Council to entertain an appeal from the Court of the British Resident in Mysore. It appears to their Lordships that these words are not remotely susceptible of any such meaning. Accordingly, while they have given careful consideration to the several further matters which have been brought to their notice, they find nothing in them which would justify a change in the view that they had previously formed that this appeal cannot be entertained.

Appeal not entertained.

