

CALCUTTA HIGH COURT

Madangopal Bagla

Vs

Lachmidas

(R.C. Mitter, J.)

13.02.1948

JUDGMENT

R.C. Mitter, J.

1. The two respondents, Ram Kissen Das and Lachmidass, along with two other persons, Narottam Das and Purushottamdas, carried on a business in co-partnership in Calcutta under the name and style of Narottamdas Gujrati. In the course of business transactions the said firm incurred a liability to the appellant, Madan Gopal Bagla, for a certain sum of money. The liability so incurred was for the price of goods supplied in Calcutta. In 1930 Madan Gopal Bagla brought a suit, being No. 481 of 1930, in the Original Side of this Court against the said firm to recover the money so due to him and got a decree on 22-8-1930 for Rs. 5696-15-3 with interest at 6 per cent, and costs. This decree would hereafter be referred to as "the decree passed by this Court." On 4-12-1930 it was transmitted for execution to the District Judge of Benares. There the decree-holder, Madan Gopal Bagla, applied for execution. A sum of Rs. 1108-2-0 was realised by him in 1931 by the sale of some immovable properties situate in Benares. The District Judge, Benares, thereafter sent back the decree to the Court which had passed the decree, namely to the Original Side of this Court. The decree-holder thereafter had it transferred for execution to Howrah. On 16-11-1943 he filed his application for execution for the balance of the decree in the usual tabular form in the Second Court of the Subordinate Judge, Howrah. His prayer was for attachment and sale of a parcel of immovable property situate within the District of Howrah, belonging to two of the partners of the firm of Narottamdas Gujrati, namely Ram Kissentdas and Lachmidas. The application was registered in that Court on 1-12-1943 as Money Execution case No. 2 of 1943, and a notice under Order 21, Rule 22, Civil P.C., was served upon the judgment-debtors. On 12-4-1944, Lachmidas appeared and filed an objection under Section 47 of the Code. This objection was numbered Miscellaneous case No. 12 of 1944. He contended (a) that the decree passed by this Court was no longer in existence as the Special Judge of Benares had already passed a decree in respect of the debt due to Madan Gopal Bagla under the decree passed by this Court under the provisions of the U. P. Encumbered Estates Act (25 [xxv] of 1934 U. P., hereafter

called the Act) and (b) that Madan Gopal Bagla having applied for execution of the decree passed by the Special Judge was precluded from executing the decree which he had obtained from this Court. The learned Subordinate Judge upheld the objections and by his order dated 22-5-1944 has dismissed the execution case. The decree-holder, Madan Gopal Bagla, has filed this appeal. He made the firm Narottamdas Guzrati, and the two partners Ramkissendas and Lachmidas parties-respondents to the appeal.

2. The following facts are either admitted by the parties or established by documentary evidence: (1) That Ramkissandas and Lachmidas are residents of Benares City, a town in the United Provinces of Agra and Oudh, that they have immovable properties in the District of Benares and are the proprietors of a mahal situate in that portions of the United Provinces in which the Encumbered Estates Act (25 [xxv] of 1934 U.P.) is in force; (a) That they are "landlords" within the meaning of that Act; (3) That on 29-3-1936 they applied to the Collector of Benares under Section 4 of the said Act for reliefs under the Act, that their application was admitted by the Collector who by an order passed under Section 6 of the Act transmitted the said application to the First Special Judge, Benares, appointed under the Act; (4) That in the written statement filed by the applicants, Ramkissendas and Lachmidas, before the Special judge under Section 8 of the Act they included the judgment debt due to Madan Gopal Bagla under the decree passed by this Court; (5) That in pursuance of a notice issued by the Special Judge under Section 9 of the Act and served on him, Madan Gopal Bagla appeared before the Special Judge and filed a written statement. This written statement is Ex. 2; (6) That the Special Judge separated the liability in respect of Madan Gopal Bagla's said judgment debt between the applying judgment-debtors Ramkissendas and Lachmidas, on the one hand and the non-applying judgment-debtors, Narottamdas and Purushot-tamdas on the other, in the professed exercise of the powers given to him by Sub-section (5) of Section 9 of the Act. He held that the applying judgment-debtors were liable to pay to Madan Gopal Bagla Rs. 1390-8-9 plus interest up to the date of his order amounting to Rs. 214-4-8 and Rupees 214-12-0 as costs and the non-applying judgment-debtors Rs. 3539-7-9 plus Rs. 390-15-0 as interest up to the date of his order. He further directed payment of future interest at 6 per cent, per annum; and (7) He passed a decree in favour of Madan Gopal Bagla and against the applying judgment-debtors, Ram Kissen Das and Lachmidas, for the said sum of Rs. 1390-8-9 plus interest and cost as mentioned in sub-para. 6 above. This decree was passed by him on 13th May 1941 under the provisions of Sub-section (7) of Section 14 of the Act.

3. No appeal or revision was taken against this decree under the provisions of chap. 6 of the Act. The contention of the respondents before us, which has been accepted by the learned Subordinate Judge, is that this decree of the Special Judge has by reason of the provisions of Section 18 of the Act, superseded the decree passed by this Court. That section runs as follows: Subject to the right

of appeal or revision conferred in Chap. 6, the effect of a decree of a Special Judge under Sub-section (7) of Section 14 shall be to extinguish the previously existing rights, if any, of the claimant, together with all rights, if any, of mortgage or lien by which the same are secured, and where any decree is given by the Special Judge to substitute for those rights a right to recover the amount of the decree in the manner and to the extent hereinafter prescribed. As claims in respect of private debts both decreed and undecreed of the "landlord" who had applied for relief under Section 4 of the Act are required to be investigated into by the Special Judge (Sections 9 and 15 of the Act) the effect of the decree passed by the Special Judge would be to extinguish the decree passed by this Court in favour of Madan Gopal Bagla, if the Special Judge had the power to pass an order under Sub-section (5) of Section 9 and the further power to pass a decree under Sub-section (7) of Section 14 of the Act in respect of the debt due to Madan Gopal Bagla, seeing that the debt had been incurred by the applicant landlords outside the United Provinces of Agra and Oudh and had been decreed, firstly, by a Court of competent jurisdiction situate outside that Province, and, secondly, by the Original Side of this Court.

4. Act 25 [XXV] of 1934 was passed by the United Provinces Legislature with the previous sanction of the Governor-General obtained in pursuance of the provisions of Sub-section (3) of Section 80A, Government of India Act, 1915-1919. But as that legislature had power to legislate for the peace and good government of that Province only the Act, notwithstanding the fact that previous sanction of the Governor-General had been obtained could only have effect over that Province and not over any other Province of British India. Prima facie any provision made in that Statute would be ultra vires if and so far as it affects the rights of creditors which had originated outside that Province and which had been enforced by suits or sought to be realised by execution outside that Province. It would, therefore, follow that a decree passed by a Court outside that Province could not be affected in any way so long as it was not sought to be executed within that Province. If, however, that right is sought to be enforced by a suit in a Court situated within that Province or a decree obtained outside is sought to be executed within that Province the Legislature of that Province would have the power to curtail or take away the right to sue or to execute as the case may be. In fact Section 7 of the Act deals with such matters and enacts that suits or executions pending in civil or revenue Courts, in the United Provinces in respect of any public or private debt owed by the landlord who has made the application under Section 4 of the Act are to be stayed and no suit or proceeding against such a landlord is to be entertained in a Court within the Province after the Collector had by his order made under Section 6 of the Act forwarded the application to the Special Judge till certain contingencies had happened. The relevant provisions of the Act must, therefore, be considered in the light of what we have said above and at the same time keeping in view the rule that that construction has to be preferred which would make the provisions in an Act intra vires the Legislature which had passed it.

5. The preamble to the Act states that the object was to provide for relief to encumbered estates in the United Provinces, and Section 1(2) extends its operation to the whole of that province with the exception of two districts and portions of two other district Section The word "mahal" and the word "landlord" have been defined in Section 2 of the Act in a manner which indicates that the Legislature had in mind only estates situate in and persons residing within that Province. Section 4 gives the "landlord" as defined in Section 2 of the Act who is subject to or whose estate is encumbered with private debts the right to make an application to the Collector of the District in which his lands or any portion thereof are situate requesting that the provisions of the Act may be applied to him. This section and the sections of the Act which follow may be put into three distinct groups dealing with the three distinct stages of the proceeding.

6. The first or the initial stage is before the Collector of the District to whom the application is presented. The Collector is to see if the application had been filed within the time allowed and if it has complied with the other requirements mentioned in Sections 4 and 5. If those requirements had been fulfilled he is to forward the application to the Special Judge appointed by the Local Government under Section 3 of the Act, on the basis of an order to be passed by him to that effect. Here the first stage ends and the second stage begins and it terminates in the Court of the Special Judge. Roughly speaking in this stage of the proceedings the assets of the applying landlord and his liability for his private debts, both decreed and underfed, are ascertained after adjudication in such a manner as to make the adjudication binding on his creditors who had appeared before the Special Judge in pursuance of either a special notice served on them by the Special Judge or in pursuance of a general notice published by him in the manner prescribed by the Act. If a creditor chooses not to appear the debt due to him will be taken to have been discharged. In view of the importance of the proceedings of this stage and their effect on the rights of creditors and the claimants to the applicant's property the Legislature provided for a judicial adjudication by a Judicial Officer, namely a Special Judge, and gave a right of appeal and revision from the decision of the Special Judge to higher Courts, namely to the Court of the District Judge and to the High Court or the Chief Court, as the case may be, in the like manner as appeals and revisions are allowed against the judgment and decrees of civil Courts. To give finality to the decisions of the Special Judge in respect of the claims of the creditors the adjudications of the Special Judge are to have the same effect as decrees of civil Courts, subject to the limitation that decrees passed by the Special Judge against the applying landlord cannot be executed within the United Provinces except under the provisions of the Act. He is also to determine the public debts of the landlord, if there is a dispute in respect thereto in those cases only in which a suit would have been maintainable either in a civil or revenue Court. In other cases the decision of the Collector is to be final. After the amount of the private and public debts of the applying landlord are thus ascertained by decrees of the Special Judge he is to rank the debts in order of priority keeping in view the provisions of Section 16 of the Act.

7. The second stage is very important. We have summarised generally the provisions falling within the second stage but for the purpose of deciding the question before us, namely, whether the Special Judge can thus adjudicate on debts, both decreed and undecreed, outside the Province, we will have to examine some of the sections falling within what we have called the second group in more detail. The second stage ends with the termination of the proceedings before the Special Judge with the transmission by him to the Collector of the decrees passed by him under sub-Section (7) of Section 14 of the Act together with a list of properties of the applicant-landlord which he had found to be liable to be attached and sold.

8. The third stage which is the stage of realisation and distribution of the assets then begins. The sections dealing with that subject run into great details. They lay down what the Collector is to do in different contingencies for the purpose of having the private debts of the applicant-landlord as determined by the Special Judge as also his public debts as determined by him or by the Special Judge, as the case may be, paid. The points to be noted are: (1) that no property of the applicant-landlord vests in the Collector as in the Receiver in insolvency. Only in certain contingencies the Collector can sell or mortgage in usufructuary form, some but not all the properties of the applicant-landlord. A residential house with necessary furniture must be left to him, and a certain portion of income producing property must also be left outside the mortgage. In certain contingencies the Collector is to transfer portions of his property to his creditors in satisfaction of their dues as determined by the Special Judge; (2) that the Collector cannot by his own act and without the help of a competent Court realise the assets of the applicant-landlord situate outside the Province; (3) that the proceedings before the Collector are not like insolvency proceedings; and (4) that decrees passed by the Special Judge in favour of the creditors cannot be executed by them, but the Collector is to realise moneys from the applicant landlord or from his properties and pay the creditors. In short the creditors are to look to the Collector for payment and are to be paid by him or the Local Government.

9. These conclusions follow from the following provisions laid down in the Act: The applicant landlord is at first given a chance to pay up his creditors whose dues had been determined by the Special Judge by paying to the Collector within two months after the Collector had received the papers from the Special Judge (Section 22). If he pays the Collector is to distribute the money among the creditors in the order of priority determined by the Special Judge. If no such payment is made by the applicant landlord the Collector is to sell in the first instance the applicant's properties included in the list sent by the Special Judge and which the latter had reported to be liable to attachment and sale, other than proprietary rights in land, subject to an exception that a residential house with necessary furniture is to be left to the applicant landlord. This power of sale given to the Collector extends only to properties within the Province. For realising money from properties outside the Province the Collector can only take recourse to execution

proceedings in proper and competent Courts situate outside the Province on the assumption as if he was the decree-holder in respect of the decrees which the Special Judge had passed in favour of the creditors (Section 24).

10. If the sale proceeds of the sale conducted by him in respect of the applicant-landlord's properties within the province falling within the aforesaid description or the proceeds of the sale of applicant-landlord's properties situate outside the Province realised through executing Courts outside the Province on the Collector's application are sufficient to discharge the decrees passed by the Special Judge the proceedings end there, the administration by the Collector being thus fully completed. If not the Collector is to mortgage in usufructuary form only a portion of the applicant landlord's property to a person willing to pay the balance of the debts due from him due on the basis of the Special Judge's decrees. Properties producing at least one-fourth of the post-slump profits must be left out of the mortgage apparently for affording the applicant-landlord the means to meet his expenses (Section 25). If no person is agreeable to accept a usufructuary mortgage on those terms the Collector is to determine the instalment value of the applicant's proprietary rights in land liable to attachment and sale in accordance with certain rules framed by the Local Government. If the amount still due by the applicant-landlord is less than the instalment value so determined by the Collector the Collector is to direct the applicant to pay to the Local Government money in such instalments covering a period not exceeding 20. years, as the Local Government may determine, the obvious intention being that the Local Government would pay the creditors (Section 27). What has to be done by the Collector if the amount still due by applicant-landlord exceeds the installment value is provided for in Sections 28 and 31, Whatever installments are ordered are to be paid by the applicant-landlord into the treasury of the Local Government with the land revenue and cusses and can be recovered by the Local Government by the same process by which arrears of land revenue can be recovered. On failure to pay two consecutive installments the whole is to become due and can be recovered by the same process as land revenue (Section 29). In order that the administration may be effective the applicant-landlord is prevented from making any alienations till the contingencies mentioned in Section 44 occur. These are (a) if his application is dismissed or (b) the proceedings quashed or (c) when his debts have been liquidated.

11. We have dealt with this part of the Act in some detail for the purpose of drawing the following inferences: (a) that this scheme of administration fits in with the Act having only local operation in the strict sense of the term, that is to say, operation within the United Provinces and not beyond; (b) that a creditor in whose favour the Special Judge has passed a decree cannot himself take out execution of the decree so passed in his favour; (c) that the intention of legislature is to save the applicant landlord from harassment by, and consequent expenses of suits and executions taken by his creditors, and, as Section 7 indicates, within the Province.

12. What we have stated in (b) above removes the misapprehension on which the learned Subordinate Judge has proceeded in coming to the conclusion that Madan Gopal Bagla, the appellant before us, had applied to execute in Benares the decree of the Special Judge passed in his favour. It is on this finding that he held that he, the appellant, is to be taken to have accepted the decree passed by the Special Judge in his favour in substitution of the decree passed by this Court and so cannot be allowed to execute the last mentioned decree. The material on which he came to his finding to the effect that appellant was executing the decree, of the Special Judge in Benares is the order recorded by the Sub-Divisional Magistrate, Benares, who was apparently exercising the powers of the Collector of that District under the Act, on the petition filed before him on 27-3-1944, by the applicant landlords, Ram Kissen Das and Lachmidas, and which has been set out at page 45C of Part I of the paper book. By that petition the said persons applied for the issue of an injunction by the said Sub-divisional Magistrate, Benares, on the appellant Madan Gopal Bagla to restrain him from proceeding with this execution case (No. 2 of 1943) pending in the Second Court of the Subordinate Judge, Howrah. The learned Sub-Divisional Officer sent this petition to the Howrah Court with the following order passed on 6-4-1944: The counsel for Madan Gopal Bagla creditor bag not turned up. Let a copy of this petition be forwarded to the Court of the Second Subordinate Judge at Howrah with the remark that execution proceedings regarding the decrees in question (namely decrees passed, by the Special Judge) are already going on under the United Provinces Encumbered Estates Act proceedings in this Court.

13. This petition and this order which was in Urdu was filed by the judgment-debtor-respondents before the learned Subordinate Judge on 12-5-1944, without a translation. On that day they prayed that a translation may be ordered to be made by an officer of the Court. The officer to whom the learned Subordinate Judge sent it for being translated reported on 18-5-1944, that he with his limited knowledge of Urdu writings could not read the document correctly as it was written in Sikastha style. The case was taken up for hearing on 20th May following. The document was translated in Court on that date by a witness called for the purpose. Not knowing previously what was stated in the aforesaid order of the Sub-Divisional Magistrate, Benares, the appellant filed a petition on the same day stating that he undertook not to proceed with the execution case pending at Benares. The arguments concluded on that date. The appellant asked for being allowed a little time to argue the point made by the judgment-debtors on the said order of the Sub-divisional Magistrate, Benares, but his prayer was disallowed. In our opinion, the appellant was placed under a disadvantage. The appellant's lawyers assumed from the order of the Sub-divisional Magistrate that his client had made an application for execution of the decree passed in his favour by the Special Judge. That was a wrong assumption and that mistake was excusable seeing that the learned Subordinate Judge in his considered judgment had made the same mistake. That order did not state that the appellant had applied for execution of the decree passed in his favour by the Special Judge and that his application for execution was pending in

the Court of the Sub-divisional Magistrate. It simply stated the fact that the decree passed by the Special Judge was under execution in proceedings taken before him under the Encumbered Estates Act. Having regard to the provisions of the Encumbered Estates Act falling within what we have called the third group and which we have summarised above, that sentence in the Sub-divisional Magistrate's order under, lined (here italicised) by us means that he himself exercising the functions of the Collector of Benares District had started execution of the decrees passed by the Special Judge, and the execution so started was still pending. The underlined (here italicised) sentence means that he, the Sub-divisional Magistrate, had already taken steps to realise the amounts decreed against the applicant-landlords, but that he had not at that time actually realised the same. The aforesaid reason which is the first reason given by the learned Subordinate Judge in his support of his order cannot be supported.

14. It is, therefore, necessary to examine the other contention of the judgment-debtors respondents which also found favour with the learned Subordinate Judge, namely, whether the decree passed by this Court was superseded as soon as the Special Judge passed a decree in favour of the appellant in respect of the debt for which the decree was passed in his favour by this Court. This question involves the construction of Section 18 of the Act. If only the language of this section is simply followed and no other considerations are brought to bear, a decree passed by a competent Court even outside the Province in respect of a debt due by the landlord who made the application under Section 4 of the said Act would be extinguished, for previously existing rights of the creditor are extinguished; and the right he has under a decree passed before the decree passed by the Special Judge would fall within the phrase, "previously existing right" occurring in that section. The learned Subordinate Judge simply proceeded upon the bare language of that section. He has not referred to any other provisions of the Act for finding out the intention of Legislature, nor has he considered the question whether that section would be effective on decrees passed by competent Courts outside the United Provinces or on decrees passed by Chartered High Courts seeing that the Act is not a Central Act. In a matter of construction it is of the utmost importance to examine the statute as a whole and to find out the intention of the Legislature, for the intention of the Legislature as gathered from the Statute may require the dictionary meaning of words and phrases in the section to be construed to be restricted or expanded, as the case may be.

15. The preamble to the Act expresses the object of the legislation. It is to provide for the relief of encumbered estates in the United Provinces. The preamble by itself does not help us on the question we have to decide. Section 1(2) makes the Act applicable to the whole of the United Provinces except certain specified areas. This is in accordance with the powers of the Provincial Legislature as given by Section 80A, Government of India Act (1915-1919). Leaving aside the exception this means that the provisions of the Act would have operations, that is to say, effect in

that Province only. Section 8 of the Act requires the applicant-landlord to file a statement before the Special Judge specifying inter alia his debts, and giving the names and addresses of his creditors. It may be and probably is the intention of the Legislature that the applicant-landlord must give a complete list irrespective of the fact whether the debts or some of them had been incurred in or outside the Province or irrespective of the fact that the creditors reside within the Province or outside, or whether they have obtained decrees in Courts situate within, or outside the Province. Section 9 empowers the Special Judge to publish general notices in the local gazette and in newspapers and also at the offices of the Collector within whose district any part of the applicant's property is situate calling upon the creditors of the applicant-landlord to prefer their claims before him within a certain time. He is to send by registered post like notices to the individual creditors whose names and addresses appear in the statement of the applicant-landlord filed under Section 8. The intention of the Legislature is that all creditors of the applicant-landlord should have notice of the proceedings but it does not necessarily follow therefrom that the Special Judge would have jurisdiction to adjudicate upon claims of all the creditors of the applicant-landlord, or that the effect of their non-appearance before him within time would be the discharge of their claims for ever, irrespective of any other fact.

16. In our opinion Sections 7, 13, 14 (7) and 18 would have to be considered together. Section 18 as its language implies would have operations only over the rights of such creditors in respect of whose claims the Special Judge had passed decrees under Section 14 (7) of the Act. The bare fact that he had passed a decree is not sufficient. An enquiry must be made whether the decree he had passed was one which he had jurisdiction to pass, for a decree passed without jurisdiction is in the eye of law a piece of waste paper. The question for consideration therefore is over what claims the Special Judge had jurisdiction to adjudicate, it cannot, in our opinion, be held that he has jurisdiction over the claims of all and every one of the creditors to whom notices under Section 9 had been issued, for that would involve in some cases assumption by him of jurisdiction of an extra provincial nature which the United Provinces Legislature could not in law confer on him. The presumption that a subordinate Legislature legislates *intra vires* would stand against it, and so an intention which would have that far reaching effect is not to be imputed to that Legislature, Section; 7 gives some indications of the intention of that Legislature. It prevents suits and proceedings by creditors being instituted or taken only in Courts,-civil and revenue in the United Provinces after the Special Judge had acquired season till the termination of the proceedings under the Act; suits and proceedings pending in such Courts only are stayed, and all processes in execution issued by such Courts only in pending proceedings are rendered void. In our opinion the intention of the legislature is to stay pending suits and proceedings or to stop their institution after the relevant date mentioned in Section 7, so that the Special Judge may adjudicate upon the subject-matter of the preceding suits or proceedings so stayed or may adjudicate upon the subject-matter of suits or proceedings which could have been, but for the bar

imposed by Section 7, instituted in the Province.

17. No doubt the scheme is to confer on the Special Judge exclusive jurisdiction and for that purpose the jurisdiction of the ordinary Courts are excluded. As the jurisdiction of Courts, civil and revenue, in the United Provinces only is excluded by Section 7, and could be excluded by the Legislature of that Province the exclusive jurisdiction intended to be conferred" on the Special Judge by that process of exclusion would extend only over such debts for the enforcement of which the creditors would have had to take recourse to Courts, situated in the United Provinces only and could not have had the right to take recourse to any Court outside that Province. This, in our opinion, is not only a reasonable construction but the only construction possible, for that Legislature could not in law take away or curtail the jurisdiction of Courts situate outside the Province. No doubt, Section 10 on its language would apply to all creditors, and Section 13 defines the consequences of their non-appearance before the Special Judge within the prescribed time. But if the discharge of a debt be disputed it would be the subject-matter of a suit or proceeding in a civil or revenue Court, as the case may be. A Court would necessarily come into the picture and the Legislature of the United Provinces cannot compel a Court outside the Province to accept the law as laid down by it in Section 13 of the Act, a provision which can have operation in view of Section 80A (1), Government of India Act (1915-1919) only within that Province and not beyond it, and United Provinces Legislature has ineffect said so in Section 1, Sub-section (2) of the Act. The "creditors" in Section 10 must be limited to those creditors only, who would have had to enforce their rights by suits or proceedings in the United Provinces only, and who could not have instituted their suits or taken proceedings in Courts outside that Province, either by reason of the provisions of Section 16(c) and (d) or Section 20, Civil P.C., or of the Letters Patents of Chartered High Courts, with or without leave, as the case may be. We accordingly hold that the Special Judge had no jurisdiction to adjudicate upon the claim of Madan Gopal Bagla and so Section 18 of the Act is out of the way.

18. Assuming that different construction can and ought to be put on Sections 11 and 18 of the Act those provisions cannot affect the decree passed by this Court in favour of Madan Gopal Bagla, for this Court had power under the Letters Patent to pass that decree, and either to execute it itself or have it executed by a transferee Court and the Provincial Legislature even of this Province, much less of another Province, could not have by legislation affected its jurisdiction at the time when the said decree was passed, for at that time the Central Legislature was by virtue of Clause 44, Letters Patent, the only legislative authority in India which could have modified the Letters Patent: *Narsingh Das v. Chogemull*, et seq. Our decision is in agreement with the result of the decisions of the Bombay High Court in *Shankar Vishnu v. Maneklal Haridas*¹ and of the Lahore High Court in *Durbar Patiala v. Narain Das Gulab Singh*² The last mentioned case is on all fours with the case before us. Although we agree with the result of those decisions we have

some hesitation in holding that the United Provinces, a Province in British India, is to be regarded as foreign territory for the purposes of the said Encumbered Estates Acts, and so reserve our opinion on the reason given in the first mentioned case. We also reserve our opinion on some of the detailed reasons given in the last mentioned case.

19. The last contention of the respondents before us is that Madan Gopal Bagla is bound by the decree passed by the Special Judge, with the consequence that Section 18 of the Act must have its operation on his pre-existing rights, on the ground that he had submitted to the jurisdiction of the Special Judge. No doubt the doctrine of submission to jurisdiction is an accepted doctrine in Private International Law but in our judgment there is no scope for the application of that doctrine to domestic Courts. A domestic Court has either jurisdiction or none over the subject-matter of the litigation by the laws of the State. This is conveniently expressed by the maxim that consent cannot confer jurisdiction to a domestic Court, where by law it has none. To defeat this execution it will have to be proved that Madan Gopal had voluntarily abandoned his rights under the decree passed by this Court, and evidence on the record is not sufficient for so holding.

20. The result is that this appeal is allowed. The execution case started in the second Court of the Subordinate Judge would proceed from the stage in which it was before 22nd May 1944 when Miscellaneous Case No. 12 of 1944 was allowed. The appellant must have costs of this appeal and of the lower Court. The hearing fee in this Court is assessed at Rs. 85.

Sharpe, J.

21. I agree.

Cases Referred.

127 A.I.R. 1940 Bom. 362

231 A.I.R. 1944 Lah. 302