

CALCUTTA HIGH COURT

Protap Kumar Sen

Vs.

Nagendra Nath Mazumdar

Civil Revn No. 697 of 1950

(R.P. Mookerjee and Guha, JJ.)

11.04.1951

JUDGMENT

B.P. Mookerjee, J.

1. On 30-5-1947, the pltfs. Petitioners filed a suit in the Ct. of the Subordinate Judge at Jessore, then a part of undivided Bengal. In pursuance of an order passed by the Subordinate Judge certain properties, belonging to the deft. situate within the district of 24-Pergannas, were on 28-6-1947, attached before judgment through the Dist. J. at Alipore. When the suit was so pending in the Jessore Ct. under the Indian Independence Act, 1947 (10 and 11 Geo. vi, c. 30) two new Dominions came into existence with effect from 15-8-1947; and among others the then Province of Bengal was partitioned between the two said Dominions, India and Pakistan.

2. The suit pending in the Jessore Ct. was decreed ex parte on 9-12-1948. On 3-8-1949, the pltfs. D. Hs. applied before the Subordinate Judge at Jessore, then situate within the Dominion of Pakistan, for a certificate of non-satisfaction under Order 21 Rule 6, Civil Procedure Code. The certificate of non-satisfaction was accordingly issued on 18-8-1949, and was received by the Dist. J. of Alipore, within the district of 24-Pergannas, West Bengal, situate within the Dominion of India. On 22-5-1950, the Dist. J. of Alipore directed the return of the certificate of non-satisfaction to the Ct. of the Sub-ordinate Judge at Jessore inasmuch as the decree passed by the Jessore Ct. was not capable of execution by the Alipore Ct. in another Dominion. It is against this order that the pltfs. have obtained this Rule.

3. In spite of service of notice being effected on the J. D. opposite party on two occasions, no appearance has been entered in this Ct. on behalf of the opposite party. Notice having been issued on the Advocate General of West Bengal under rule 1, Order 27A, Civil Procedure Code, we have had the advantage of hearing the Govt. Pleaders.

4. Although the learned Dist. J. has refd. to *Dominion of India v. Hiralal*¹, and *Sushama Roy v. A. S. M. Osman*², it need only be pointed out that in both those cases the decrees in question had been passed before 15.8-1947. In the present case, on the other hand, the suit

¹53 C.W.N. 817

was pending on 15-8-1947, and we are required to consider the effect of the provisions contained in the Legal Proceedings Order, 1947, issued by the Governor-General under section 9, Indian Independence Act, 1947. Under clause 4, Legal Proceedings Order:

Notwithstanding the creation of certain new provinces and the transfer of certain territories from the Province of Assam to the Province of East Bengal by the Indian Independence Act, 1947.

(1) All proceedings pending immediately before the appointed day in any civil or criminal Ct. (other than a h. C.) in the Province of Bengal, Punjab or Assam shall be continued in that Ct. as if the said Act had not been passed and that Ct. shall continue to have for the purpose of the said proceedings all the jurisdiction and power which it had immediately before the appointed day.

* * * * *; and

(3) effect shall be given within the territories of either of the two Dominions to any judgment, decree, order or sentence of any such Ct. in the said proceedings as if it had been passed by a Ct. of competent jurisdiction within that Dominion."

5. Applying these relevant provisions to the facts of the present case it must be held that the Jessore Ct. continued even after the appointed day to have, for the purposes of the proceedings which were pending before that Ct. immediately before that day, "all the jurisdiction and powers which it had immediately before the appointed day." Before the said appointed day, the Jessore Ct. had jurisdiction to forward a certificate of non-satisfaction to any other Ct. within the then Province of Bengal. In respect of the suit which was pending on the appointed day in the Jessore Ct. the latter would be treated as if there had been no partition of Bengal and the district of Jessore had not become a part of a separate independent Dominion.

6. Apart from the effect of sub-clause (1) of clause 4, Legal Proceedings Order, refd. to above, sub-clause (3) of the same clause makes a further provision the effect of which may also be consid. In respect of a suit or proceeding which was pending immediately before the appointed day in a particular Ct., the decree that may be passed by that Ct. in respect of that suit or proceeding will be given effect to within the territories of either of the two Dominions on the footing that such a decree had been passed by a Ct. of competent jurisdiction within that Dominion. Under the provisions contained in sub-clause (3) of clause 4, Legal Proceedings Order, therefore, the decree passed by the Jessore Ct. after the appointed day, in a suit or proceeding which had been pending immediately before the said appointed day, will be treated to be one by a Ct. of competent jurisdiction within the Indian Dominion, although Jessore was not after the said appointed day a part of the Indian Dominion. If the Jessore Ct. is to be deemed to be a Ct. within the Indian Dominion, as it must be in respect of a suit pending immediately before the appointed day, there is no handicap on the Jessore Ct. transmitting a certificate of non-satisfaction to the Ct. of the Dist. J. at Alipore. For the purposes of this suit, the two Cts. at Jessore and at Alipore have to be treated as being within the same Dominion.

7. Further, the Alipore Ct. within the Indian Dominion is to give effect to the decree passed by

the Jessore Ct., though outside the said Dominion, in a suit which was pending in the latter Ct. immediately before the appointed day, in the same manner as in the case of a decree passed by another Ct. within the Indian Dominion.

8. In this view, it must be held that the transmission of the certificate of non-satisfaction by the Jessore Ct. to the Ct. of the Dist. J. at Alipore was legal and valid.

9. We have then to consider the effect of the promulgation of the Indian Constitution. Under Article 395 of the Constitution, the Indian Independence Act was repealed. If the Indian Independence Act be not now in force, it is contended that the orders passed by the Governor-General under section 9 of the said Act would also become inoperative. Even if under the Legal Proceedings Order, 1947, refd. to above, the transmission of the certificate of non-satisfaction by the Jessore Ct. to the Dist. J. at Alipore were valid, can the Alipore Ct. on the basis of such a certificate, when the Const. Ind is now in force, put the same into execution? The effect of the repeal, as contained in Article 395, of the Constitution, is not to affect the rights and liabilities already accrued under the Indian Independence Act, and the Orders passed by the Governor-General thereunder. Section 6, Indian General Clauses Act (x [10] of 1897) which is attracted under Article 367 of the Constitution provides that the repeal of the Act will not affect the rights and liabilities which had accrued already. (See in this connection *Madan Gopal v. Province of West Bengal*³). The right which the decree-holders had got under the Governor-General's Order has not been affected by the subsequent repeal of the Indian Independence Act.

10. The result, therefore, is that this Rule is made absolute. The order passed by the Dist. J. of 24-Pergannas directing the return of the certificate of non-satisfaction to the Jessore Ct. is set aside, and further proceedings in execution will proceed according to law.

11. As there has been no appearance on behalf of the opposite party, there will be no order for costs in this Ct.

Guha, J

12. I agree.

Rule made absolute.

³54 C. W. N. 807