**BOMBAY HIGH COURT**

Chunnilal Kasturchand

Vs.

Dundappa Damappa

First Appeal No. 289 of 1948

(Rajadhaksha and Shah, JJ.)

10.02.1950

**JUDGMENT**

**Rajadbyaksha, J.**

1.This is an appeal against an order passed by the Additional District Judge and First Class Subordinate Judge, Jamkhandi, dismissing the decree-holders' darkhast with costs.

2. It appears that one Chunilal Kasturchand Marwadi and another obtained a decree against Dundappa Damappa Navalgi and others in Suit No. 249/1927 in the Court of the Civil Judge, Senior Division, Belgaum. Dundappa was a partner in a partnership firm going by the name of Bashetappa Muttur and Chanbassappa Lakshethi and Co. which had business dealings with the plaintiffs. The plaintiffs brought the suit to recover arrears due to them and impleaded all the partners of the firm, including Dundappa who was defendant 5. Defendants 1 to 4 resided within the local limits of the special jurisdiction of the Belgaum Court. The other defendants, including defendant 5, did not reside within that jurisdiction and an application was made under Section 20 (b), Civil Procedure Code, to obtain leave of the Court to proceed against them. The cause of action also arose within the jurisdiction of the Belgaum Court Defendant 5 remained absent, and the suit proceeded ex parte against him Ultimately, a decree was passed on 11-3-1938, in favour of the plaintiffs for a sum of Rs. 12,865 with future interest at six per cent. per annum on Rs. 11,500 and costs against defendants 3 to 5 and against the estate of Murigeppa Muttur in the hands of defendant 7. Dundappa died during the pendency of the suit, and his heir Irappa Damappa Navalgi was brought on record in his place.

3. In execution of the decree Darkhast No. 418 of 1940 was filed in the Belgaum Court and was transferred for execution to the Court of the Subordinate Judge at Jamkhandi as defendant 5 resided and had property within the jurisdiction of Jamkhandi Court Jamkhandi was then an independent State in the Daccan with full civil and criminal jurisdiction. Under Section 44, Civil

Procedure Code, as then in force in that State, the Rajesaheb of Jamkhandi had passed an order on 15-08-1936 that the decrees of a Civil Court in British India may be executed in the State Courts as if they were decrees passed by the Civil Courts in the Jamkhandi State. In virtue of this order, execution was taken out against Irappa Damappa. The judgment-debtor appeared in answer to this darkhast and filed a written statement, Ex. 11, in which he raised a preliminary contention that as he was a permanent resident of Mudhol and Jamkhandi State and as the decree had been passed ex parte against him by the Belgaum Court, it could not be executed against him by the Jamkhandi Court.

4. The trial Court held that

> "as the judgment-debtor was neither a permanent resident within the territorial limits of the Belgaum Court and had not submitted to the jurisdiction of that Court, the question whether the decree of the Belgaum Court was a decree of a Court of competent jurisdiction had to be determined by principles of international law."

Accordingly it held that

> "the ex parte decree could not be executed by the Jamkhandi Court on the grounds mentioned in Section 13 (a), Civil Procedure Code,"

The learned Judge, therefore, dismissed the darkhast on 10-3-1948. Against that order the decree-holders have come in appeal to this Court as the High Court's jurisdiction with respect to Jamkhandi State "now merged in this Province" vests in this Court.

5. It is not seriously disputed that the decree passed by the Belgaum Court is a perfectly good decree and can be executed against any property of the judgment-debtors anywhere in what was formerly known as British India. Defendant 5 was a non-resident foreigner so far as the Belgaum Court was concerned. But even so, Belgaum Court had jurisdiction, as the cause of action arose within its territorial limits. The competency of the Court to try this suit had to be determined according to the Municipal law. (See Section 20. Civil Procedure Code).It was held in *Rambhat v. Shankar Baswant*[1], that :

> "Under the Civil Procedure Code (XIV [14] of 1882) British Courts are empowered to pass judgments against a non-resident foreigner provided that the cause of action has arisen within the jurisdiction of the Court pronouncing the judgment."

Similarly, it was held in *Gaekwar, Baroda State Rly. v. Habib Ullah*[2], that (p. 829) :

> "According to international law, pure and simple a Court has no jurisdiction to entertain a suit against a foreigner who neither resides within, nor has submitted to, its jurisdiction,

merely because the cause of action, wholly or in part, arose within its jurisdiction. But different considerations arise where the local Legislature has conferred such jurisdiction upon the Court. Such special local legislation is a recognised exception to the said rule of International law; and it follows that if the Indian Legislature has conferred jurisdiction upon the British Indian Courts to entertain suits against non-resident foreigners where the cause of action, wholly or in part, arose within their jurisdiction, such Courts undoubtedly have jurisdiction, if the conditions provided by the law to which they are subject

[1]25 Bom. 528: (3 Bom l. R. 82)

[2]56 all. 828: AIR 1934 All 740

exist. The language of Section 20 (c), Civil Procedure Code, is general and wide enough to apply to the case of non-resident foreigners, and there is nothing in the section which makes an exception as regards them. A Court in British India cannot disclaim jurisdiction against a non-resident foreigner, if the plaintiff's cause of action, wholly or in part, arose within its jurisdiction. What sanctity will attach to its decree if it is questioned in a foreign country is a different question." As long ago as 1892, it was pointed out by Lord Esher M.R. in *Companhia de Mocambique v. British South Africa Co*[3]*., that (p. 394)*:

"The question whether the Courts of a nation will or will not entertain jurisdiction of any dispute is to be determined exclusively by its nation itself, i. e., by its municipal law. If by express legislation the Courts are directed to exercise jurisdiction, the Courts must obey."

It was held in *Girdhar Damodar v. Kassigar Hiragar*[4]*,*

"Although it is true that a non-British subject, who does not personally carry on business within the territorial limits of the Court, does not make himself personally subject to the municipal law of British India, still, by establishing his business in British India, from which business he expects to derive profit, he accepts the protection of the territorial authority for his business and his property resulting from it, and may be fully regarded as submitting to the Courts of the country."

This decision was approved of by their Lordships of the Privy Council in *Annamalai Chetty v. Murugesa Chetty*[5]*,* It cannot, therefore, be doubted that the decree of the Belgaum Court is a good decree and can be executed against any property belonging to the judgment debtors anywhere in the territory which was formerly known as British India.

6. The difficulty, however, arises because that decree was sought to be executed in Jamkhandi Court and against a person who, when the decree was passed .against him by the Belgaum Court, was a non-resident foreigner. The Belgaum Court was, when the darkhast was being executed in Jamkhandi, a foreign Court qua Jamkhandi State. It is open to a Court executing a foreign Court's decree to enquire whether the foreign Court had jurisdiction to pass the decree. A decree pronounced by a Court of a foreign State in a personal action in absentem, the absent party not having submitted himself to its authority, is a nullity. See *Jivappa Tammappa v. Jeergi Murgesappa*[6]*,* The judgment-debtor has the same defences open to him as if he were sued on a

foreign judgment, i.e., those arising under Section 13, Civil Procedure Code. One such defense arising under clause (a) of Section 13 is that the foreign judgment has not been pronounced by a Court of competent jurisdiction. It was this defense which was taken up by defendant 5 in the Court of the Subordinate Judge at Jamkhandi.

7. The first question, therefore, is whether under the Civil Procedure Code as in force in Jamkhandi State, the Belgaurn Court was a foreign Court. Section 13 (a), Civil Procedure Code, as in force in Jamkhandi State, was substantially the same as in Act V [5] of 1908.

[3](1892) 2 Q. B. 358
[4]17 Bom. 662 that (p. 663)
[5]26 Mad. 544 at p. 552 : (30 I. A. 220 P.C)
[6]40 Bom. 551: (AIR 1916 Bom 307)

By order of the Huzur No. 163 of 1928 dated 2-4-1928, the Civil Procedure Code was introduced in that State as from 1-6-1928, with the modification that the words "British India" occurring in any of the laws in force in the State shall mean "territorial limits of the Jamkhandi State." Reading these words in the definition of a "foreign Court" as stated in Sub-Section (5) of Section 2 of the Code, we find that there is no substitution for the words "is not established or continued by the Governor-General in-Council" occurring in the definition. But even so, the general effect of the amendment is to make the Belgaum Court a foreign Court qua the Jamkhandi State.

8. The next question to consider then is whether this foreign Court was a Court of competent jurisdiction. This question has to be determined not by the territorial law of the foreign State but by the rules of private international law. The suit filed by the plaintiff was based on a personal claim and defendant 5 who was a resident of Jamkhandi State did not appear and submit himself to the jurisdiction of the Belgaum Court. The decree passed by the Belgaum Court against defendant 5 was therefore not a decree passed by a Court of competent jurisdiction. See the leading case of *Gurdyal Singh v. Rajah of Faridkote*[7], where it has been held that

> "no territorial legislation can give jurisdiction which any foreign Court ought to recognize against absent foreigners who owe no allegiance or obedience to the Power which so legislates.

In all personal actions the Courts of the country in which the defendant resides, not the Courts of the country where the cause of action arose, should be resorted to."

In delivering the judgment of the Board, Lord Selborne analyzed the various causes which give jurisdiction to a Court and held that (p. 185):

> "In a personal action, to which none of these causes of jurisdiction apply a decree pronounced in absentem by a foreign Court, to the jurisdiction of which the defendant has not in any way submitted himself, is by international law an absolute nullity. He is under no obligation of any kind to obey it; and it must be regarded as a mere nullity by the Courts of every nation except (when authorized by special local legislation) in the country of the forum by which it was pronounced."

See also *Chor Mal Bal Chand v. Kasturi Chand*[8], and *Mallappa Yellappa v. Raghavendra Shamrao, i. l. R*[9]. where the principles above referred to have been followed. The above principles are also in accordance with the rules laid down in Dicey's "Conflict of Laws" in chap. XIII relating to jurisdiction in actions in personam. In accordance with these principles, therefore, it must be held that the lower Court was right in taking the view that the Belgaum Court's decree was not a decree of a Court of competent jurisdiction, and capable of execution in Jamkhandi Courts, ignoring for the moment the changes that were brought about by the merger of the Jamkhandi State. We, therefore, proceed to consider what the effect of these changes is.

[7]21 I. A. 171 : (22 Cal. 222 P.C) [9](1938) Bom. 16: (AIR 1938 Bom 173)

[8]63 Cal. 1033: (63 C. L. J. 175)

9. As pointed out in "the White Paper on Indian States", the integration of the Indian States proceeded on two lines. Some States integrated with others, formed unions and these unions acceded to the Dominion of India by surrendering to the Dominion their jurisdiction in respect of certain specified subjects. Some other Indian States, however, parted with all their jurisdiction, with the result that in respect of these States the Dominion of India obtained full and exclusive authority for their governance. This authority for the governance of these States was exercised, in the first instance, under the Extra-Provincial Jurisdiction Act (XLVII [47] of 1947) until these States became part of one Province or the other as a result of action taken under Section 290A, Government of India Act, under which His Majesty had, by an Order in Council, power to increase the area of any Province. Under the Indian Independence Act, this power of His Majesty became exercisable by the Dominion Government.

10. In pursuance of those steps, the Extra-Provincial Jurisdiction Act, xlvii [47] of 1947, was passed and came into force on 24-12-1947.

It authorised the Central Government to exercise extra-provincial jurisdiction, i. e., "jurisdiction which by treaty, agreement, grant, usage, sufferance or other lawful means the Central Government has for the time being in or in relation to any area outside the Provinces." Sub-section (2) of Section 3 of the Act authorized the Central Government to delegate the exercise of that jurisdiction to any officer or authority. Section 4 of the Act enabled the Central Government to make such orders as it may deem expedient for the effective exercise of any extra-provincial jurisdiction of the Central Government. Without prejudice to the generality of the powers conferred by Sub-Section (1) of Section 4, the Central Government was authorized to make orders to provide (a) for determining the law and procedure to be observed, whether by applying with or without modifications all or any of the provisions of any enactment in force in any Province or otherwise; and (c) for determining the Courts, Judges, Magistrates and authorities by whom and for regulating the manner in which, any jurisdiction auxiliary or incidental to or consequential on the jurisdiction exercised under the Act is to be exercised within any Province. The authority of the Central Government under the Extra Provincial Jurisdiction Act was delegated to the Provincial Government in respect of specified States by Notifn. No. 150-IB, dated 25-2-1918. That notification is in the following terms :

> "Whereas the Central Government has full and exclusive authority, jurisdiction and powers for, and in relation to, the governance of the States specified in the Schedule (Jamkhandi is included therein) annexed thereto;
> "Now, therefore, in the exercise of the powers conferred by subs. (2) of Section 3 of the Extra-Provincial Jurisdiction Act, 1947 (XLVII [47] of 1947) and of all other powers enabling it in this behalf, the Central Government is pleased to delegate to the Government of Bombay, the power conferred by Section 4 of the said Act to make orders for or in relation to, the governance of the said States as respects any of the matters enumerated in List II or List III of the Seventh Schedule to the Government of India Act, 1935;
> "(i) the exercise of the power hereby delegated shall be subject to the control of the Central Government; and
> (ii) the delegation shall not preclude the Central Government from exercising the power hereby delegated."

This notification was superseded and replaced by another Notifn. No. 174-1B, dated 23-3-1948, which is in the following terms:

> "Whereas the Central Government has full and exclusive extra-provincial jurisdiction for, and in relation to, the governance of the States specified in the schedule annexed hereto (which schedule includes Jamkhandi);

Now, therefore, in the exercise of the powers conferred by Sub-Section (2) of Section 3 of the Extra-Provincial Jurisdiction Act, 1947 (XLVII [47] of 1947) and of all other powers enabling it in this behalf, and in supersession of the Notification of the Government of India in the Ministry of States, No. 150-IB, dated February 25-1948, the Central Government is pleased to delegate to the Provincial Government of Bombay the extra-provincial jurisdiction aforesaid, including the power conferred by Section 4 of the said Act to make orders for the exercise of that jurisdiction: Provided that –

> (i) the exercise of the jurisdiction hereby delegated shall be subject to the control of the Central Government; and
> (ii) the delegation shall not preclude the Central Government from exercising the jurisdiction hereby delegated."

In exercise of the powers delegated under the earlier notification dated 25-2-1948, and in exercise of the powers conferred by Section 4, Extra-Provincial Jurisdiction Act, the Government of Bombay made an Order which was known as the Administration of Deccan States Order, 1948. This Order came into force on 8-3-1948. That Order was applied to the Deccan States mentioned in Schedule I, and that schedule includes Jamkhandi State. Under clause (3) of that Order, the executive authority in the Deccan States was to be exercised by one or more officers to

be designated as the Chief Administrator, Deccan States. Under clause (4) of the Order: any law relating to any of the matters enumerated in Lists II and III in Sch VII to the Government of India Act, 1935, and any notification or order made or prescribed under any of those laws as were in force immediately before 8-3-1948, were continued in force until altered, repealed or amended by an order under the Extra-Provincial Jurisdiction Act, 1947 (XLVII [47] of 1947), provided that the powers that were exercised by the Rulers of such States were made exercisable by the Provincial Government or any officer empowered by the Provincial Government.

11. The enactments specified in Schedule II which includes the Bombay Civil Courts Act, 1869, were applied in the territory in those Deccan States in which laws corresponding to such enactments and covering matters contained in such enactments were not in force on 8-3-1948. There was a further proviso that in the enactments as so applied, the words "British India" were to be construed as meaning "all the Provinces of India and the Deccan States." Under clause (6), the High Court of Judicature at Bombay was given, in respect of a Deccan State, all such original appellate and other jurisdiction and superintendence over all Courts in the States. Any references to the "High Court" in the laws of the State were to be construed as a reference to the High Court of Judicature at Bombay. From 8-3-1948, the State High Courts ceased to have jurisdiction and all proceedings in those High Courts were, with effect from that date, transferred to the High Court of Judicature at Bombay. On 2-6-1948, the Administration of Deccan States Order was repealed and was replaced by the Administration of the Indian States Order which was more comprehensive in its application inasmuch as it applied not only to the Deccan States, but also to the Gujarat States. This Notifn. No. 2751/46-F.I. dated 2-6-1948, actually came into force on 10-6-1948. On 28-7-1948, another Order was issued which was known as the Indian States (Application of Laws) Order, 1948. This was under a Notifn. No. 3323/46-F dated 28-7-1948. Under clause 3 of this Order,

> "all enactments specified in Parts I and II of Schedule II to that Order and all orders and notifications issued thereunder and in force in the Province of Bombay immediately before the coming into force of that Order were extended to the Indian States." These enactments included the Civil Procedure Code and the Bombay Civil Courts Act. Under clause (5), all corresponding enactments in force in the States were repealed Clause (6) saved the jurisdiction of the local Courts for the purposes of proceedings then pending before the Courts. and finally there came an Order known as the States Merger (Governor's Provinces) Order, 1949. This was dated 27-7-1949. Under clause (3) of this Order, the States specified in Schedule II (which includes the Jamkhandi State) were to be administered in all respects as if they formed part of the Bombay Province, and any reference to Bombay Province was to be construed as including the territories of the States specified in Schedule II. Under clause (4), all the laws in force in a merged State were to be continued in force until repealed or modified by a competent Legislature.

12. The question then arises as to what is the effect of all these changes, and with reference to

what date the effect of these provisions is to be construed. There are four possible dates for construing the effect of these notifications. First is the date when the decree was passed by the Belgaum Court in 1938. The second is the date when the darkhast came for execution to the Jamkhandi Court in 1940. The third is the date when the order was passed by the Jamkhandi Court dismissing the darkhasts, viz. 10-3-1928. and fourthly, the date when the order is passed on the appeal before us.

13. It was first contended by Mr. Datar for the respondents that as the Belgaum Court was a foreign Court qua Jamkhandi Court when the original order was passed and when execution was taken out, it must continue to be considered as a foreign Court and its decree a nullity. This is obviously an untenable proposition, and Mr. Datar fairly conceded that if a darkhast were to be instituted now in Jamkhandi Court, it could not be resisted on the ground that the Belgaum Court was a foreign Court. A converse case to the present one came up for consideration before the Calcutta High Court in *Dominion of India v. Hiralal*[10], In that case a decree of the Jamalpur Court passed on 15-5-1947, was sought to be executed in the Court of Small Causes at Calcutta. When the decree was passed, the Jamalpur Court was not a foreign Court qua the Court of Small Causes, Calcutta, and hence it was argued that the Court of Small Causes, Calcutta, had jurisdiction to execute that decree. It was held that after 15-8-1947, Jamalpur Court became, in relation to the Court of Small Causes, Calcutta, a foreign Court, and the judgment on the basis of which a decree had been passed on 15-5-1947, by that Court was a foreign judgment. As Pakistan was not a very reciprocating territory, the Court of Small

[10] AIR 1950 Cal 12: (53 C. W. N. 817)

Causes could not entertain an application for starting proceedings in execution of that decree after 15-8-1947. Just as the Jamalpur Court became a foreign Court as a result of the political changes, similarly as a result of political changes in the Deccan, Belgaum Court which was a foreign Court qua the Jamkhandi Court could cease to be a foreign Court

14. It was next argued that the rights of the parties must be determined as on the date on which the execution was taken out and not as on the date on which the order was passed thereon. Although as a general rule that proposition is correct, the Court cannot ignore the subsequent events which have taken place. Although in 1940, the decree sought to be executed was the decree of a foreign Court, the question arises whether on the day on which the order was passed by the learned Judge it was a decree of a foreign Court. As pointed out by Mulla in his commentary on Order 7, Rule 7:

> "Ordinarily, the decree in a suit should accord with the rights of the parties as they stand at the date of its institution. But where it is shown that the original relief claimed has by reason of subsequent change of circumstances, become inappropriate, or that it is necessary to have the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties, it is incumbent upon a Court of justice to take notice of events which have happened since the institution of the

suit and to mould its decree according to the circumstances as they stand at the time the decree is made." See *Nuri Mian v. Ambica Singh*[11], In our opinion, therefore, the learned Judge had to consider whether on 10-3-1948, the judgment-debtor was entitled to resist the darkhast on the ground that the decree was passed by a Court which had no jurisdiction. The Calcutta High Court expressed the opinion in *Ram Ratan Sahu v. Mohant Sahu*[12], that :

"As a general rule, a Court of appeal, in considering the correctness of the judgment of the Court below, will confine itself to the state of the case at the time when such judgment was rendered, and will not take notice of any facts which may have arisen subsequently.

But the Court will, in exceptional cases, depart from this rule, especially where by so doing, it can shorten litigation and best attain the ends of justice by preserving the rights of both parties. It is not only in the power, but it may some times be the duty of a Court of appeal to take notice of events which have happened during the pendency of the appeal, and such events when not appearing on the record may be proved by extrinsic evidence."

So, even if on 10-3-1948, the Belgaum Court was a foreign Court qua the Jamkhandi Court, we have, in appeal, power to consider what the position now is owing to a change of circumstances; and in order that we may do complete justice to the parties, it is incumbent upon us to see how the rights of the parties stand at present. It is not disputed by Mr Datar that since the merger Order of 27-7-1949, at least the Belgaum Court is no longer a foreign Court, and the decree of that Court is executable in any part of the Indian Dominion, including the territory which was formerly known as the State of Jamkhandi. On this ground alone, we must hold that the decree of the Belgaum Court can now be executed by the Jamkhandi Court and we must therefore set aside the order of the lower

[11] 44 Cal. 47 at p. 55 : AIR 1917 Cal 716

[12] 6 C. L.J. 74 : (11 C.W.N 732)

Court and send the proceedings back to the Jamkhandi Court for further execution in accordance with law.

15. But we are not satisfied that the learned Judge was right in holding that on 10-3-1948, the Belgaum Court was a foreign Court. It is true that it was on 1-8-1949, that complete merger took place in the sense that the limits of the Province were extended to include the Indian States. But even before that date the Government of Bombay had, in exercise of the delegated power, extra-provincial jurisdiction with reference to the Jamkhandi State, Extra-provincial jurisdiction was first delegated in the notification dated 25-2-1948, which was subsequently replaced by the notification of 23-3-1948. The preamble to this notification is of very considerable significance. The preamble to the first notification says that

"the Central Government has full and exclusive authority, jurisdiction and powers for, and in relation to, the governance of the States specified in the Schedule annexed thereto (which includes the Jamkhandi State)."

The notification dated 23-3-1948, says that "the Central Government has full and exclusive extra-provincial jurisdiction for, and in relation to, the governance of the States specified in the Schedule annexed thereto (which again includes the Jamkhandi State)."

It was this jurisdiction which was delegated for being exercised by the Provincial Government. This full and exclusive authority and jurisdiction for the governance of the States could not have been obtained unless there was a cession of that jurisdiction by the Rules concerned. Article 1 of App. X of the merger agreement reproduced in the White Paper says that "the Raja hereby cedes to the Dominion Government full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State and agrees to transfer the administration of the State to the Dominion Government on.....date."

Paragraph 76 of the White Paper on the Indian States says that

> "the Deccan States signed merger agreements on 19-2-1948, and subsequent dates. Although the precise date on which the Rajesaheb of Jamkhandi signed the merger agreement is not on record, it is clear from the preamble to the notification of 25-2-1948, which specifically refers, among other States, to Jamkhandi State, that the agreement must have been signed ceding full and exclusive authority over that State to the Dominion Government some time prior to that date."

This full and exclusive authority, which, under Act xlvii [47] of 1947, must be termed as extra-provincial jurisdiction, was delegated to the Provincial Government on 25-2-1948. It was in exercise of this delegated authority that the Provincial Government issued the Daccan States Order which came into force on 8-3-1948. The Jamkhandi State therefore ceased to be a separate entity prior to 25-2-1948, and all the revenue, civil and criminal authority for the governance of the State was ceded to the Central Government. From that date, therefore, the subjects of the Jamkhandi State ceased to owe allegiance to the Ruler and commenced to owe that allegiance to the new sovereign, viz. the Dominion of India. From March 8, Government of Bombay exercised the authority delegated by the Central Government. Therefore on 10-3-1948, the Jamkhandi State was already a part of the Indian Union, and the Belgaum Court could not be considered as a foreign Court for the purpose of execution proceedings pending in the Jamkhandi Court.

16. It was next argued by Mr. Datar that subsequent changes in the law could not affect the vested right of the individuals. He contended that the judgment-debtor had, when the darkhast was instituted, a vested right to resist the decree of a foreign Court, and that vested right could not be taken away. As a general principle in the matter of construction of subsequent changes in law the contention of Mr. Datar is correct. The following observations appear in Maxwell's "Interpretation of Statutes," Edn. 9, at p. 222 :

> "It is chiefly where the enactment would prejudicially affect vested rights, or the legality of past transactions, or impair contracts, that the rule in question prevails. Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or Imposes a new duty, or attaches a new disability in respect of

> transactions or considerations already past, must be presumed, out of respect to the Legislature, to be intended not to have a retrospective operation."

The same principle has been laid down in *United Provinces v. Mt, Atiqa Begum*[13], We are, however, not sure that this is a case where vested rights are affected and not a case of considering the jurisdiction of the forum for the execution of a decree. Even assuming that this is a case of a right vested in the judgment-debtor to resist the decree as on the date when the darkhast was executed, the change that had come about when the order was passed by the learned Judge was not by reason of any change in the law but by reason of a change in the status of the judgment-debtor. The judgment-debtor was in a position to resist the decree of the Belgaum Court and to contend that the Belgaum Court was not a Court of competent jurisdiction because of his status as a national of the Jamkhandi State. It was not in consequence of any change of law but as a result of an act of State that the judgment-debtor lost that status and is now and was from at least 25-2-1948, onwards a national of the Indian Union and a citizen of the Dominion of India. We do not think, therefore, that the principles which apply to the construction of a statute which affects the vested rights could be applied to the alteration of the status of an individual by an act of State. Even on this ground, therefore, we think that the learned Additional District Judge of Jamkhandi was in error when he held that the Belgaum Court was a foreign Court, and that the decree passed by the Belgaum Court could not be executed by the Jamkhandi Court on the day on which he passed his order dismissing the darkhast.

17. We must, therefore, allow this appeal, set aside the order passed by the learned Judge and remand the proceedings back to the Court of Civil Judge, Senior Division, Belgaum, with a direction that the darkhast should be allowed to proceed and should be disposed of in accordance with law.

18. In the circumstances of this case, we make no order as to the costs of this appeal.

**Shah J.**

19. After stating facts the judgment proceeded:] Now it is true that the cause of action for filing the suit in the Belgaum Court arose within the limits of the jurisdiction of that Court. The plaintiffs also obtained leave of the Court under Section 20 (b), Civil. P. C., to sue the defendants who did not reside within its jurisdiction, and, therefore, the suit must

[13] AIR 1941 FC 16: (I.L.R. (1941) Kar. F.C. 72)

be deemed to be properly instituted according to the provisions of the Civil Procedure Code, Act V [5] of 1908, and the decree passed by that Court was binding upon those defendants who were British Indian Nationals, and was also binding upon all defendants residing within the limits of what then was British India. But the competency of the Court of the First Class Subordinate Judge at Belgaum to try the suit either by reason of the cause of action arising within the limits of the Court or by reason of the leave granted by the Court could not render the decree one passed

by a Court of competent jurisdiction so as to make it enforceable against the respondent who was a foreigner and was not ordinarily residing within the jurisdiction of the Court which passed the decree and who had not submitted to the jurisdiction of the Court. It is well settled that even where there are reciprocity agreements under which decrees of Courts of one State are enforceable by Courts of another State, a judgment-debtor is entitled to raise all contentions which he could have raised if a suit had been filed on a foreign judgment: see *Jivappa Tammappa v. Jeergi Murgesappa*[14], and *Veeraraghava Ayyar v. Muga Sait*[15], It is also well settled that the competency of a Court to pass a decree against a foreigner is to be judged by reference to principles of private international law and not by reference to the municipal code of the State governing the Court which passed the decree. Their Lordships of the Privy Council in the case of *Gurdyal Singh v. Rajah of Faridkote*[16] observed (p. 185):

> "In a personal action, to which none of these causes of jurisdiction apply, a decree pronounced in absentem by a foreign Court, to the jurisdiction of which the defendant has not in any way submitted himself, is by international law an absolute nullity. He is under no obligation of any kind to obey it; and it must be regarded as a mere nullity by the Courts of every nation except (when authorized by special local legislation) in the country of the forum by which it was pronounced.

These are doctrines laid down by all the leading authorities on international law ; among others, by Story (Conflict of Law, Edn. 2, Sections 546, 549, 553, 554, 556, 586), and by Chancellor Kent (Commentaries, Vol. i, p. 234, note c., Edn. 10), and no exception is made to them, in favour of the exercise of jurisdiction against a defendant not otherwise subject to it, by the Courts of the country in which the cause of action arose, or (in cases of contract) by the Courts of locus solution is. In those cases, as well as all others, when the action is personal, the Courts of the country in which a defendant resides have power, and they ought to be resorted to, to do justice." The instances of jurisdiction which their Lordships of the Privy Council referred to were of territorial jurisdiction attaching upon all persons either permanently or temporarily resident within the territory while they are within it but did not follow them after they have withdrawn from it; of jurisdiction which exists always as to land within the territory and also of jurisdiction which would be exercised with regard to moveables within the territory and in questions of status or succession governed by domicile, their Lordships also further observed (p. 185):

> "As between different provinces under one sovereignty the legislation of the sovereign may distribute and regulate jurisdiction ; but no territorial legislation can give jurisdiction which any foreign Court ought to recognise against foreigners, who owe no allegiance or obedience to the Power which so legislates. "

[14] 40 Bom. 551: (AIR 1916 Bom 307)

[15] 39 Mad. 24: (AIR 1915 Mad 486 F.B)

[16] (21 I. a. 171: 22 Cal. 222 P.C)

20. On behalf of the appellants, it was contended that these rules would not, however, apply to cases when execution of the decrees of a Court of British India, which was then the paramount power, were sought to be executed in the Courts of smaller satellites like Indian States; and in

support of his submission, the learned advocate for the appellants relied upon the decisions in *Girdhar Damodhar v. Kassigar Hiragar*[17], *Rambhat v. Shankar Baswant*[18], and *Gaekwar Baroda State Rly. v. Habib Ullah*[19], The learned advocate for the appellants contended that the Courts in British India were in those cases held competent to entertain suits and pass decrees against non-resident foreigners when the cause of action arose within the jurisdiction of the Court in British India. It is, however, clear from a reference to those decisions that the Courts in each of the cases there were considering whether suits could be filed against a foreigner even though he was not residing within the jurisdiction of the Court in which the suit was filed if the whole or part of the cause of action arose within the territorial limits of jurisdiction. It was held in those cases that the competency of a Court to entertain a suit when the cause of action arose within its jurisdiction was not affected by reason of the circumstance that the defendant or one of the defendants, if there were more defendants, was a non-resident foreigner. In those cases no question that a decree passed by the Court in which the suits were filed could be enforced by a foreign tribunal arose.

21. In my view the competency of a Court to entertain an action and to pass a decree must be judged by the municipal law of the State when that question arises in a Court within the limits of the State which has constituted the Court which entertains the suit or passes the decree and is not to be judged by applying rules of international law. But where a question arises as to the enforcement of a decree or order passed by a Court in another territory, the rules of international law must prevail.

22. The learned advocate for the appellants also contended that the question whether a foreign Court was competent to try a case must be decided by the Courts of the foreign country and according to the law of that country; and he relied upon a decision of the Privy Council in *Brijlal Ramjilal v. Govindram Seksaria*[20], It is impossible to accept that contention. In the case before the Privy Council, it was suggested that the High Court at Indore had wrongly exercised its powers in transferring certain proceedings initiated in the District Court for filing an award. Their Lordships of the Privy Council observed that the question whether a foreign Court is a proper Court to deal with a particular matter according to the law of the foreign Court is a question for the Courts of that country. Their Lordships were not dealing with a question as to the competency of the High Court at Indore to decide the question but they were only dealing with the question of the propriety of the order of transfer. That case obviously has no application to the facts of the present case.

23. It must, therefore, be held that the decree of the Belgaum Court was at the date when the execution application was filed not capable of enforcement in the Courts of the Jamkhandi State.

24. But the question still remains whether by reason of the agreement of accession entered into by the Jamkhandi Ruler and the ultimate merger of the Jamkhandi State in

[17] 17 Bom. 662

[18] 25 Bom. 528 : (3 Bom. L.R. 82)

[19] 56 ALL 828: (AIR 1934 All 740)

[20] 50 Bom. l. R. 556 : (AIR 1947 PC 192)

the territory of the Indian Union, after August 1947 the Courts which are functioning in that territory have ceased to be foreign Courts, and the decree of the Balgaum Court is enforceable in the Courts in that territory. It is now unquestioned that the Jamkhandi State has merged with the Union territory and that territory is now a part of the Bombay Presidency and is being administered by the Government of the Province of Bombay, and the Courts which are set up in that territory are the Courts of the Indian Union.

25. The contention of the learned advocate for the appellants is that when the order was passed by the learned Additional District Judge, Jamkhandi on 10-03-1948, the Jamkhandi State had acceded to the Indian Union, and the Governor General of India was entitled to exercise the extra-provincial jurisdiction in that territory and since then the Jamkhandi State has merged with the Indian Union, and consequently the learned trial Judge was not only entitled but was bound to pass an order in execution ; and in any case, this Court must take into consideration events which had transpired since the date on which the darkhast was filed and the order was passed by the learned trial Judge and an order for execution should be passed so as to shorten litigation. In order to appreciate the argument advanced on behalf of the appellants as to the effect of certain orders issued under the provisions of the Extra-Provincial Jurisdiction Act it is necessary to examine the history of the Jamkhandi State and the course of the legislation which culminated in the territory of the State being merged with the Indian Union.

26. Jamkhandi Chief was one of the Deccan Jahagirdars in the days of the Maratha Rule. He was a descendant of Hari Bhat, the founder of the Patwardhan family a Brahmin who became a family priest of Ghorpades of "Ichalkaranji after the overthrow of the Peshwas. The saranjam which had been granted to Hari Bhat was divided, and the head of one of the branches became the Ruler of the Sangli State, and the heads of other branches became the Rulers of Jamkhandi, Miraj, Karundwad, Tasgaon and Shetbal. After the battle of Khadki in November 1817 the Chiefs of Sangli, Miraj, Tasgaon, Shetbal, Kurundwad and Jamkhandi entered into treaties with the British Government. The Chief of Jamkhandi was recognized as a First Class treaty Chief and entitled to exercise full jurisdiction in criminal and civil cases. With the passing of the Indian Independence Act, 1947, by the British Parliament, the suzerainty of the British Crown over the Indian States including the Jamkhandi State lapsed as from 15-08-1947, and with it all the treaties and agreements in force at the time of the passing of the Indian Independence Act between the British Crown and the Rulers of the Indian States, and all the functions exercisable by the British Crown at the date of the accession of the Indian States and obligations of the British Crown existing on 15-8-1947, towards the Indian States or the Rulers thereof and powers, rights, or the jurisdiction exercised by the British Crown came to an end. However by the instrument of accession (which also provided for the passing of a standstill-agreement) the Dominion Government of India was entitled to exercise all powers and jurisdiction which the Crown Representative previously exercised. In order to regulate the exercise of the powers and jurisdiction which was granted to the Dominion Government under the instrument of accession executed by the Rulers of the Indian States, the Governor-General issued an Ordinance, being

Ordinance XV [15] of 1947, which provided for the exercise of the extra-provincial jurisdiction acquired or continued under the instrument of accession This Ordinance was later replaced by India Act XLVII [47] of 1947, being the Extra-Provincial Jurisdiction Act. Under that Act the Central Government was entitled to exercise or delegate to any officer or authority the exercise of the extra-provincial jurisdiction which had vested in the Central Government by reason of the treaties, agreements, grants usage, sufferance or other lawful means. The Dominion Government was also authorised to issue notifications for the effective exercise of the extra-provincial jurisdiction and to make provisions for determining the law and procedure to be observed, for determining the persons who were to exercise jurisdiction generally or in particular cases, and for determining the Courts of Judges and Magistrates and authorities by whom and for regulating the manner in which any jurisdiction express, incidental or consequential on the jurisdiction exercised under the Act was to be exercised within any province and for regulating the amount, collection and application of fees.

27. On or after 19-2-1948, the Rulers of Deccan Sates, including the Jamkhandi State, who had previously decided to merge their suzerainty in a proposed Union of Deccan States, decided in favour of integration with the Bombay Province, and they signed merger agreements on 19-2-1948, and on subsequent dates The Government of India by a Notifn. No. 150-1B dated 25-2-1948, delegated to the Government of Bombay the powers under Section 4, Extra-Provincial Jurisdiction Act in respect of the Deccan States. That notification states:

> "Whereas the Central Government has fall and exclusive authority, jurisdiction and powers or, and in relation to, the governance of the States specified in the Schedule annexed hereto;

Now, therefore, in the exercise of the powers conferred by sub-sec. (2) of Section 3 of the Extra Provincial Jurisdiction Act, 1947 (XLVII [47] of 1947) and of all other powers enabling it in this behalf, the Central Government is pleased to delegate to the Government of Bombay, the power conferred by Section 4 of the said Act to make orders for, or in relation to, the governance of the said States as respects any of the matters enumerated in List II or List III of the seventh Schedule to the Government of India Act, 1935," Then follow two provisos, with which we are not concerned. Jamkhandi State is included in the Schedule to the Order. This notification was slightly modified by a further Notifn. No. 174-1B dated 23-3-1948, whereby the entire extra-provincial jurisdiction, including the power conferred by Section 4, Extra-Provincial Jurisdiction Act, 1947, to make order in the exercise of the jurisdiction, were delegated to the Government of the Province of Bombay. Under an Order dated 2-3-1948, called the Administration of Deccan States Order, 1948 the Deccan States (except Kolhapur) were administratively integrated with the Province of Bombay The States so integrated were 17 Deccan States, which included the Jamkhandi State. The Administration of Deccan States Order, 1948, came into force on 8-3-1948. Under clause (3) of Section 1 of that Order, the Provincial Government of Bombay was entitled to appoint or designate the Chief Administrator for the Deccan State and also to appoint

Administrators for the administration of those States. Section 4 of that Order provided :

> "4. Application and continuance of Laws. - (1) Such provisions, or such parts of provisions, -
> (a) of any law relating to any of such matters enumerated in Lists II and III in the Seventh Schedule to the Government of India Act, 1935, or
> (b) of any notification, order, scheme, rule, form or by-law issued, made or prescribed under any law of the class referred to in clause (a), as were in force immediately before the appointed day in any Deccan State shall continue in force until altered, repealed or amended by an order under the Extra Provincial Jurisdiction Act, 1947 (XLVII [47] of 1947):
> Provided that the powers that were exercised by the Ruler of such State under any such provisions of law immediately before the appointed day, shall be exercised by the Provincial Government or any officer specially empowered in this behalf by the Provincial Government.
> (2) The enactments specified in Schedule II hereto annexed shall, so far as circumstances admit, and subject to any amendments to which the enactments are for the time being generally subject, in the territories to which they extend, apply to a Deccan State in which laws corresponding to such enactments and covering matters contained in such enactments are not in force on the appointed day :
> Provided that in the enactments as so applied, except where the context otherwise requires, references to 'British India' shall be construed as references to 'all the Provinces of India and the Deccan States'."

Under Section 5 of the Order the High Court at Bombay was to have all original, appellate and other jurisdiction and superintendence over all Courts in the State as under the law in force immediately before 8-3-1948 or exercisable by any other High Court. The Order also provided for appointment of heads of departments and certain specified departments and for the continuance of existing taxes, duties, fees, etc. The effect of this Order was to extinguish the sovereignty of the Jamkhandi State and to merge, what before that date was a separate State into the Dominion of India. The Courts which were till then functioning as the Courts of the State became Courts of the Dominion of India It is true that such laws as were in operation which a provincial Legislature could have passed prior to 8-3-1948, by reason of the Government of India Act, 1935, were continued and certain Acts of the Central and Bombay Legislature were made applicable if there were no laws corresponding to such enactments and covering matters contained in such enactments were not in force. The Order dated 2-3-1948, was superseded by a consolidated Order issued on 2-6-1948, which applied not only to the Deccan States but also to the Gujarat States and the Janjira State. That Order came into force on 10-6-1948; but it did not make any substantive alteration in the earlier Order. The Order dated 2-6-1948, was further modified by an Order dated 28-7-1948, called the Indian States (Application of Laws) Order, 1948. Under Section 3 of that Order enactments specified in parts I and II of Schedule II attached

to the Order and all notifications, orders, schemes, rules and by-laws issued, made, or prescribed under such enactments and in force in the Province of Bombay immediately before 28-7-1948, were extended to and put in force in the States subject to any amendments to which the State enactments were generally subject in the Province of Bombay. Sub-clause (2) of that section provided :

> "All references to the Province of Bombay in the said enactments, notifications, orders, schemes, rules and by-laws shall be construed as including references to the Province of Bombay and the Indian States."

Clause 5 of the Order provided as follows :

> "5. Repeal of enactments in force in Indian States. - All enactments in force in any Indian State or part thereof and corresponding to the enactments in force in the Province of Bombay and extended to any such State under para. 3 shall stand repealed :
> Provided that the repeal by this Order of any such enactments shall not affect the validity, invalidity, effect or consequence of anything already done or suffered or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand or any indemnity already granted, or the proof of any past act or thing ;

Nor shall the repeal by this Order of any enactment affect any principle or rule of law, or established jurisdiction, form or coarse of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, in so far as the same respectively is not in any way inconsistent with any of the enactments extended under para. 3 of this Order, notwithstanding that the same respectively may have been in any manner affirmed, recognized or derived by in or from any enactment hereby repealed;
Nor shall the repeal by this Order of any enactment revive or restore any jurisdiction. office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force immediately before the date on which this order comes into force." Under Clause 6 of the Order all local authorities, Courts, tribunals, authorities, officers and official bodies constituted or appointed, or societies, institutions or associations whether deemed to have been constituted, appointed, registered or recognized under the corresponding enactments extended to the Indian States by that Order and all proceedings pending before the said local authorities, Courts, tribunals, or authority or officers or official bodies immediately before the enactments in force in any Indian States were directed to be continued before the authorities which were continued and they were to be subject to the same control, superintendence, appellate, revisional, or otherwise, under the corresponding law extended under the Order. The Civil Procedure Code of 1908 (V [5] of 1908) was one of the Central Acts mentioned in Schedule II part I, annexed to the Order. By a further notification

dated 27-7-1949, the Governor-General issued the States Merger (Governor's Provinces) Order, 1949. That Order was issued in the exercise of the powers conferred under Section 290- A, Government of India Act, 1935, and it provided in Clause 3, that from 1-8-1949, the States, specified in the schedules should be administered in all respects as if they form part of the Provinces specified in the heading of that schedule. Under Clause 4 of the Order all the laws in force in a merged State or in any part thereof immediately before 1-8-1949, including Orders under Section 3 or Section 4, Extra-Provincial Jurisdiction Act, 1947, were to continue in force until repealed, modified, or amended by a competent Legislature or other competent authority. The expression 'merged State' was defined as meaning any of the States specified in the schedules annexed to the Order. Jamkhandi State was one of the States mentioned as having merged in the Province of Bombay. The effect of this Order was that the territories of the States which till 1-8-1949, were separately recognized and were separately administered, though their sovereignty was not lost, finally lost their identity as from 1-8-1949, and these territories formed part of the Province with which they were merged.

28. On the review of the Orders it is evident that under the Extra-Provincial Jurisdiction Act the Central Government devised a scheme for the exercise of its extra provincial jurisdiction acquired under the instrument of accession. Administrative merger having been agreed to by agreements entered into by the Rulers of the States it was carried into effect by the Order dated 8-3-1948, and 28-7-1948, and the final merger of the territory of the various States referred to as Indian States was accomplished by the States Merger (Governor's Provinces) Order, 1949, as from 1-8-1949.

29. It was urged by Mr. Datar for the respondent that at the date of the decree as well as at the date of the darkhast the Belgaum Court was a foreign Court, and a decree of that Court could not have been executed in the Courts of the Jamkhandi State as the judgment-debtor was a non-resident foreigner, the decree against him being a nullity in so far as the Courts of the Jamkhandi State were concerned. As a corollary to that argument it was urged that if the decree was a nullity, any subsequent alteration of the law could not have the effect of validating the execution proceedings against the judgment debtor. It was argued that if initially the decree of the Belgaum Court was a decree of a foreign Court it could not cease to be such by any subsequent alteration of the Civil Procedure Code applicable to the Jamkhandi State. It was further argued that in any case the relevant date for ascertaining whether the decree was operative under the principles of private international law was the date on which the darkhast was filed, and the subsequent change during the pendency of the darkhast in the capacity or the authority of the Courts which were functioning in the territory which was originally the territory of the Jamkhandi State could not operate to deprive the judgment-debtor of his right to claim exemption from execution of the decree which when passed against him could be treated as a nullity. Mr. Datar also urged that the expression 'rights accrued or acquired' in para. 5 of the Order dated 28-7-1948, included the right to plead a defence against execution of a decree of the Belgaum Court being levied against the judgment-debtor, and by reason of para. 4 of the States Merger (Governor's Provinces) Order,

1949, the rights which were preserved under para. 6 of the previous Order were maintained. Finally, Mr. Datar contended that the order dated 10-3-1948, passed by the trial Court was a valid and lawful order when passed, and this Court sitting in appeal was only concerned with the question as to the legality of that order when passed and could not consider the effect of the subsequent States Merger (Governor's Provinces) Order, 1949, which became operative as from 1-8-1949. In my view the entire structure of the argument of Mr. Datar is based on two erroneous assumptions, (1) that it was by reason of the change of law that the judgment-debtor was deprived of a right which was vested in him by statute, namely, the Civil Procedure Code of the Jamkhandi State, and (2) that the merger of the Jamkhandi State with the territory of the Dominion of India did not take place before 1-8-1949, or in any case before 28-7-1948. In my view both the assumptions are erroneous and proceed upon a misconception as to the true effect of the instrument of accession and the subsequent agreements to merge entered into by the Ruler of the Jamkhandi State.

30. Now, it is true that prior to 28-7-1948, the Civil Procedure Code as passed by the Jamkhandi State was applicable to the State territory. That Civil Procedure Code was in terms the same as the Civil Procedure Code, Act v [5] of 1908, of British India as amended till 1944, with this alteration that the expression 'British India' wherever it occurred in the latter Code was substituted by the expression 'Jamkhandi State.' However for all practical purposes there were two separate Codes of Civil Procedure of two different States. Even after the agreement of merger entered into by the Ruler of Jamkhandi sometime on or after 19-2-1948, the Civil Procedure Code of the State was continued till 28-7-1948. The Civil Procedure Code of the Dominion of India was made applicable as from 28-7-1948. It is true that under Para. 5 of the Order of 28-7-1948, the repeal of the State Code became effective as from 28-7-1948. But that circumstance does not support the argument that till 28-7-1948, the Courts functioning in the territory which was originally the Jamkhandi State were Courts of a State foreign to the Dominion of India. By the agreement of merger the sovereignty of the Jamkhandi State was merged into the Dominion of India and the Ruler of that State ceased to have authority over the territory of the Jamkhandi State. All the Courts, tribunals, authorities and bodies which were functioning till the date of the agreement of merger as constituted or recognized by the Jamkhandi Ruler continued as constituted under the laws of the Dominion of India. The sovereignty of the Jamkhandi State was extinguished. This is clear from the terms of the order issued by the Government of India on 25-2-1948, delegating its authority under the Extra Provincial Jurisdiction Act. It is true that the Acts applicable to the State, if they were Acts, which, it was competent for the Jamkhandi Ruler to pass as if he had been a Provincial Legislature under the Government of India Act, 1985, were continued, but they had not the effect of continuing the sovereignty of the Jamkhandi State as a separate independent State. The fact that for administrative purposes the territory was not merged with the Province of Bombay is again irrelevant in considering whether the Courts functioning in that territory were Courts of the Dominion of India or the Courts of a foreign State. The authority of the State having lapsed and the Courts functioning therein having continued to function under the superintendence of the

High Court at Bombay for all purposes, the Courts continued under the authority of the Dominion of India. As from the date of the agreement of merger the territory of the Jamkhandi State ceased to be an independent State or a foreign State, and the subsequent application of laws which were operating in the Dominion of India as from 28-7-1948, had only the effect of co-ordinating the administration of the State territory with the administration of the rest of the Dominion of India. The States Merger Order dated 27-7-1949, terminated finally the separate administration of that territory as an independent unit. If therefore, on 10-3-1948, i.e. on the date on which the trial Court passed an order, it was a Court not in an independent foreign State but a Court which was either constituted or continued by the authority of the Government of India, it could not be and that it was a foreign Court qua the Belagum Court. Both the Belgaum Court and the Court of the Additional District Judge at Jamkhandi ware Courts of the same State; and consequently when execution was sought of the decree passed by the Belgaum Court the Jamkhandi Court was bound to execute the decree.

31. Mr. Datar's contention that the rights which the respondent had arose by reason of the Civil Procedure Code of the Jamkhandi State, and they could not be taken away by reason of the repeal of that Code and that the right to plead a bar to the execution of the decree of a foreign Court was a substantive right which could not be retrospectively taken away by reason of the repeal of the Civil Procedure Code of the Jamkhandi State has in my opinion, no substance. It is not by reason of the repeal of the Jamkhandi State Civil Procedure Code and the application of the Civil Procedure Code of the Dominion of India that any rights of the judgment-debtor are sought to be taken away Substantially there has been no alteration of law, but there has been an alteration in the status of the respondent and the character and authority of the Court as a result of which what was, at the date of the darkhast, a foreign Court has ceased by reason of the exercise of the sovereign authority of the Indian Dominion to be a foreign Court and the respondent has ceased to be a foreigner. The alteration is not one of law but of status and consequently the authorities Mr. Datar has relied on, namely, *United Provinces v. Atiqa Begum*[21], and *Piare Dusadh v. Emperor*[22], and Maxwell on the Interpretation of Statutes, at p. 229, have no application. By reason, of the agreement of merger the status of the judgment-debtor is changed. He is no longer a foreigner with reference to the Belgaum Court. The Court in which the decree is sought to be executed is not a Court of a foreign State Consequently, the rule of private international law that a decree of a Court cannot be executed in a foreign Court against a person who was qua the Court which passed the decree a non-resident foreigner is no longer of any application. The rule of private international law has remained the same, but its operation in so far as it concerns the Court in which execution is sought is altered. The judgment-debtor may well be entitled to resist execution of the decree of a Court of a State which at the date when execution is sought is a Court of a foreign State, but he is no longer entitled to resist the execution of a decree of the Belgaum Court which is not the decree of a Court of a foreign State.

32. The right to plead that a decree of a foreign Court shall not be executed against a defendant who was a foreigner in relation to the Court which passed the decree and had not submitted

himself to the jurisdiction of that Court is a rule of private international law, and was not the creation of either the Civil Procedure Code of the Jamkhandi State or the Civil Procedure Code as was continued under the Order dated 2-3-1948. There is, therefore, no "right" which could be said to have accrued or been acquired under a statute which was repealed or that the 'right" was preserved under the operations of para. 5 of the Indian States (Application of Laws) Order, 1948. There is, therefore, no substance in the contention that a vested right was retrospectively sought to be taken away by alterations in the law. In the first instance there is no alteration of the law applicable, and in any case there is no right which arose by reason of a statute and which is sought to be taken away by reason of the alteration of law.

33. It is not necessary, therefore, to consider the argument of Mr. Datar that we must not take into consideration the merger of the Jamkhandi territory into the Province of Bombay, which, according to him, was effected after the trial Court passed the order. Even if there is some substance in the contention raised that there has been a merger of the Jamkhandi State only from 1-8-1949, and the authority of the Jamkhandi State had continued as an independent unit with truncated sovereignty, it is clear from the terms of clause 6, Indian States (Application of Laws) Order, 1948, read with the Order dated 2-3-1948, that the Courts functioning in that territory were Courts continued under the authority of the Governor-General and were, therefore, not foreign Courts in relation to the Courts in the Indian Dominion; see the definition given in clause (5) of Section 2 Civil Procedure Code. The Courts functioning in the Jamkhandi territory being Courts continued by the authority of the Governor General, though in a foreign State, could not be foreign Courts in relation to Belgaum Court. It is difficult then to accept the view that the Court of Belgaum would be a Court of a foreign State with reference to the Courts functioning in the Jamkhandi territory ; see the majority judgment of the Full Bench in *Jagniram Premsukh Firm v. Ganpati*[23],

34. There is also no substance in the contention of Mr. Datar that the decree of the Belgaum Court continues to be a decree of a foreign Court in spite of the merger of the

[21] AIR 1941 FC 16 at p. 37: (I. L. R. (1941) Kar F. C. 72)

[22] AIR 1944 FC 1: (45 Cr. L. J. 413)

[23] I. L. R. (1941) Nag. 1 : (AIR 1941 Nag 36 F.B)

Jamkhandi territory with the Indian Dominion. The application of the rule of private international law can only arise when the decree is sought to be executed and not before. The relevant date for ascertaining the character of the decree could not be the date on which the execution application was filed in the Court of the trial Judge. In my view the relevant date is the date on which a Court is called upon to pass an order for execution of a decree, and at that date the Jamkhandi territory was a part of the territory of the Indian Dominion. In any case, this Court is entitled with a view to avoid multiplicity of proceedings to grant relief which is proper and effectual after taking into consideration events which have happened since the date of the judgment of the trial Court. In the circumstances of the case, I see no justification for withholding the relief to which the decree-holder is fairly entitled at this date. The jurisdiction to take cognisance of events which have transpired since the institution of the proceedings or even after the judgment of the trial Court is undoubted : see *Ramyad Sahu v. Bindeswari Kumar*[24], *Nuri*

*Mian v. Ambica Singh*[25], and *Priyambada Debee v. Bholanath Basu*[26],

35. I agree therefore, that the trial Court must be held entitled to execute the decree against the judgment-debtor.

Appeal allowed.

[24] 6 C. L. J. 102;

[25] 44 Cal. 47 : (AIR 1917 Cal 716)

[26] 60 Cal. 685 : (AIR 1933 Cal 534)