
(1961) 08 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Ref. No. 45 of 1960 in Civil Ex. Second Appeal No. 12 of 1958

Daulat Singh

APPELLANT

Vs

Ratan Chand

RESPONDENT

Date of Decision : 03-08-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 13

Citation : AIR 1962 Raj 41 : (1962) RLW 145

Hon'ble Judges : Sarju Prasad, C.J;D.M. Bhandari, J;C.B. Bhargava, J

Bench : Full Bench

Advocate : M.L. Joshi, for the Appellant; M.M. Vyas and Ganpat Singh, for the Respondent

Final Decision : Dismissed

Judgement

Sarjoo Prasad, C. J.

1. This appeal by the judgment-debtor arises out of an execution case.
2. The relevant facts may be briefly set out to appreciate the point involved, which is one of limitation (sic). The decree-holder respondent obtained a decree for money against the appellant judgment-debtor from the Court of the Additional Subordinate Judge, First Class, Ajmer on 2-11-44. The decree was transferred originally for execution to a Court at Nimbera. Nimbera was then a part of Rajasthan which excluded the territory of Ajmer. Ultimately, when the Court at Nimbera was abolished and the territorial jurisdiction of that Court was transferred to the Court of Civil Judge, Chittor, proceedings for execution were taken out by the decree-holder in the Chittor Court. The appellant objected to the execution of the decree on the ground that it had been passed by a Court within the former State of Ajmer which was then a foreign court and could not be executed in the court at Chittor as the judgment-debtor had not submitted to its jurisdiction.

During the course of the execution proceedings the Ajmer State was also

integrated with the State of Rajasthan. It cannot be disputed that after the integration of Ajmer in Rajasthan decrees of the courts of the erstwhile Ajmer State would be deemed to be the decrees of the Rajasthan State and, as such, would be executable in any part of Rajasthan. But the point which was raised in this case is: whether the decree which was transferred before the integration of Ajmer with Rajasthan and in respect of which the application for execution was pending should be allowed to be executed since the decree when it was passed was a decree of foreign court and had not been validly transferred to the court of Nimbera or the court at Chittor, the judgment-debtor having never submitted to the jurisdiction of the Ajmer Court.

3. Mr. Joshi's contention for the appellant is that the application for execution which was presented in a court in Rajasthan prior to the integration of Ajmer with Rajasthan was not a proper application for execution and the proceedings for execution based thereon were, therefore, not maintainable. In support of his contention, he relies upon a Division Bench judgment of this Court in *Manakchand v. Shambhoo Singh*, ILR (1958) Raj 591.

The learned Advocate for the respondent, Mr. Murli Manohar, contends that according to the Full Bench decision of this Court reported in *Laxmichand v. Mst. Tipuri*, ILR (1950) Raj 236 : ((S) AIR. 1956 Raj. 81) (FB), the decree should be taken to have been validly transferred by the then Ajmer Court to a court in Rajasthan; and since during the pendency of the application for execution Ajmer became a part of Rajasthan, the decree became executable unconditionally in any part of the State and it was no longer open to the judgment-debtor to raise the plea that the decree was not executable on account of its having been passed by a foreign court to whose jurisdiction he had not submitted. As there was some conflict between the decision of the Division Bench relied upon by Mr. Joshi and the Full Bench decision of this Court, Chhangani J. referred the matter to a larger Bench and, eventually, the case was set down for hearing before a Full Bench.

4. We are of opinion that the earlier Full Bench decision concludes the matter and there is hardly any escape from the position that the decree now is executable just as the decree of any other court in Rajasthan; and no objection can be raised on the ground that the Ajmer Court was a foreign court and the decree was not validly transferred for execution to the Court at Nimbera or for the matter of that to the Court at Chittor. To illustrate the point it would be just enough to refer to the dictum of their Lordships in the earlier Full Bench case which is as follows :

"Now u/s 5 all courts constituted under the laws in force in the covenanting States were deemed to have been constituted under this Ordinance. Section 5 (1), therefore, does not merely continue the courts which were existing from before. On the other hand, it says that the courts, which were existing from before, shall be deemed to have been constituted under this Ordinance passed by the new State of Rajasthan.

Therefore, the new State by this provision accepted the courts of the covenanting States as its own courts, and said that they would be deemed to have been constituted under the law made by it. Thus the courts of the former covenanting States were from the very beginning treated to be the courts of the new State, for Section 5 says that the courts constituted by the law of the former covenanting States shall be deemed to have been constituted under this Ordinance. Thus from the very time of their constitution the courts, which were existing in the various covenanting States in Rajasthan became courts of the new State. Therefore, the decrees passed by such courts, which were deemed u/s 5(1) to be courts of the new State of Rajasthan from the very date of their constitution became decrees of the courts of the new State of Rajasthan.

It follows from this that all decrees passed by any court situated within the boundary of the State of Rajasthan became the decrees of the courts of the new State of Rajasthan. Those courts, therefore, no longer remained foreign courts even at the time when they passed decrees before the constitution of the present State of Rajasthan in April, 1949, As such the decrees passed by the courts of the former covenanting States within the boundaries of the present State of Rajasthan cannot be called decrees of foreign courts at the time when they were passed, and, therefore, no objection can be taken by a judgment-debtor to the execution of those decrees u/s 13 of the Code of Civil Procedure."

The above observation was made on an interpretation of Section 5(1) of the Rajasthan Civil Courts Ordinance (No. VII) of 1950 and after a careful review of the various other relevant provisions of the CPC and Section 49 of the Rajasthan High Court Ordinance. It is, therefore, clear on the authority of that Full Bench decision, which was constituted of five Judges, that the decrees passed by the Ajmer Court became the decrees of the Courts of the new State of Rajasthan from the very date that the decrees were passed and, as such, were executable in any of the Courts of Rajasthan and no objection could be raised by the judgment-debtor to the execution of those decrees. It will be needless for us to add to the discussions on the point when the principle has been so clearly formulated in the earlier decision.

Mr. Joshi, however, relies upon the later Division Bench judgment of this Court in ILR (1958) Raj 591 where the Full Bench decision was considered and yet their Lordships did. not allow execution of the decree on the ground that the decree transferred for execution had been passed before the integration of Ajmer in Rajasthan. They held that since the decree was not executable there at the time when the decree was passed, execution of the decree could not be allowed on the execution petition presented prior to the integration of Ajmer. The learned Judges, however, observed that it was open to the decree-holder to present a fresh petition for execution of the decree in the Court of the Civil Judge, Ajmer, on account of the changed position of law. We regret that we are unable to subscribe to the view taken in the Division Bench judgment.

It appears that the attention of the learned Judges was not adequately directed

to the passage quoted from the Full Bench: judgment earlier and to the extent that this decision is in derogation of the law laid down in the Full Bench case, we feel constrained to observe, with great respect to the learned Judges, that the case cannot be regarded as any authority for the proposition put forward by Mr. Joshi.

5. Mr. Joshi then contends that in any case the matter should be reconsidered by a still larger Bench and he has tried strenuously to reopen the points covered by the Full Bench decision of this Court. We do not feel at all persuaded to accede to that request. In our opinion, the decision of the Full Bench is calculated in any ease to advance the course of justice and not to defeat justice by taking a hyper-technical view of the law of limitation and the doctrine of foreign courts. Although these territories were under different principalities, yet, it is common knowledge that transaction continued between parties living in these territories as if they all belonged to the same country.

On account of the different complexion of the political administration in the various principalities and in British India, the doctrine of foreign courts was applied to these territories inter se; but after the integration, it is as well that the mischief of the doctrine has been abated and eliminated and it is recognised that all these courts from their very inception as it were, formed part of the State of Rajasthan and parties were free to execute the decrees passed in these courts, irrespective of the fact that the decrees were passed prior to the integration of the territories in the present State.

6. We must, accordingly, dismiss this appeal and direct that the case should go back to the learned Civil Judge of Chittor for execution according to law. Since the Division Bench judgment of this Court appears to have caused some confusion to the appellant, We feel that parties should bear their own costs of this appeal.