

(1942) 03 CAL CK 0032
In the Calcutta High Court

In Re: Goods of Mrs. Lilian Singh (known as Mrs. Lila Singh)

Date of Decision : 04-03-1942

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Citation : AIR 1943 Cal 93

Hon'ble Judges : Sen, J

Bench : Division Bench

Judgement

Sen, J.—The two questions involved in this application are (1) whether this Court has the power to restrain the respondent, Provabati Debi, who is a person not resident within the jurisdiction of this Court, from prosecuting an application for letters of administration to the estate of one Lila Singh which she has made in the District Court of Bhagalpore in the Province of Behar and (2) whether, if the Court has such power, it should exercise it in the particular circumstances of this case.

2. Lila Singh, also known as Lilian Singh was the wife of Mr. S.K. Mullick, a barrister. By him she had a son, who is the petitioner Ajit Mullick, an officer in the Bengal & Assam Railway. S.K. Mullick divorced his wife many years ago, and thereafter, she married or went through a form of marriage with one Deep Narain Singh of Bhagalpore who then had another wife living. The respondent, Provabati Debi, is the only daughter of that wife and Deep Narain Singh. Deep Narain Singh died on 30th November 1935, leaving him surviving this daughter, who was married during his lifetime. She filed a suit in the year 1937 against Lila Singh claiming the estate left by her father. The matters in dispute were referred to arbitration and certain property was awarded to Lila Singh.

3. On 30th July 1941 Lila Singh died intestate at Bhagalpore. On 10th November 1941 Provabati Devi applied to the Bhagalpore District Court for letters of administration to the estate of the deceased claiming to be her sole heir. On 21st November, 1941 the petitioner, Ajit Mullick, applied to this Court for letters of administration to the estate of his deceased mother, and he claims to be the sole heir. Provabati entered caveat, filed an affidavit in support thereof, and thereafter

applied by way of motion to this Court for an order staying the proceedings for letters of administration u/s 10, Civil P.C., and alternatively for an injunction restraining Ajit Mullick from proceeding with his application until the disposal of the application in the Bhagalpore Court. That motion has been disposed of by me. I have held, for reasons stated in my order, that an application u/s 10, Civil P.C., was not maintainable as the Bhagalpore Court could not grant letters of administration with respect to a considerable portion of the property left by the deceased which was in Calcutta. As regards the prayer for an injunction, I held that Ajit Mullick should not be restrained from proceeding with his application here inasmuch as this Court could give complete relief, whereas the Bhagalpore Court could not, and also for other reasons.

4. Ajit Mullick had already taken out the present notice of motion praying that pending the disposal of his petition for letters of administration there should be a receiver appointed to the estate of the deceased and in the alternative that an injunction should be granted restraining Provabati Devi from proceeding with her application in the Court of the District Judge of Bhagalpore. It is the latter alternative prayer that is being pressed and strenuously opposed.

5. The following facts are well established. The petitioner, Ajit Mullick, is the son of the deceased Lila Singh by her husband, S.K. Mullick. Provabati Devi is the daughter of Deep Narain Singh by his first wife, Lila Singh went through a form of marriage with Deep Narain Singh during the time of his first wife. The deceased has left property both at Bhagalpore and at Calcutta. The value of the property in Calcutta, which consists of certain securities and shares in public companies, are worth about Rs. 80,000. These securities and shares are deposited with Messrs. Grindlay & Co., Bankers, Calcutta. The District Judge at Bhagalpore cannot grant letters of administration with respect to the properties situate at Calcutta. Provabati Devi is not resident within the jurisdiction of this Court, but she has filed a caveat in the proceedings for letters of administration instituted in this Court by the petitioner, Ajit Mullick, and thereafter applied in these proceedings for a stay of the application of Ajit Mullick and for an injunction.

6. It has to be decided whether in the circumstances mentioned above, this Court has jurisdiction to restrain Provabati Devi from proceeding with her application at Bhagalpore pending the disposal of the application here, and, if so, whether there are sufficient grounds made out for granting an injunction. This Court has certainly the power to restrain by injunction a person from proceeding with a suit in another Court. These injunctions are granted by this Court not under the Civil Procedure Code, but in the exercise of its equity jurisdiction which it inherited from the Supreme Court. The Supreme Court was vested with the same powers in this matter as the Court of King's Bench and Chancery in England. That an injunction can be granted even with respect to proceedings in Courts outside this province and not subordinate to this Court, is also well established, and indeed it is not suggested by anybody that this Court has not this power. There is a long series of decisions of this Court from 1907 in which

this power has been recognised or exercised : Mungle Chand v. Gopal Ram 34 WB. 101, Vulcan Iron Works v. Bishunbhur Prosad 36 WB. 233, Jumna Das v. Haracharan Dass 38 Cal. 405, A. Milton and Co. Vs. Ojha Automobile Engineering Co., , Naskarpara Jute Mills Co. Ltd. Vs. Nirmal Kumar Jain, and Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney, .

7. Mr. Roy on behalf of the respondent, however, argues that this Court has no jurisdiction to issue such an injunction unless the party sought to be restrained resides within the jurisdiction of this Court. In support of his contention he relies upon two early decisions of this Court : Vulcan Iron Works v. Bishunbhur Prosad 36 WB. 233 and Jumna Das v. Haracharan Dass 38 WB. 405, and upon a recent decision of Gentle J. which has not yet been reported, namely, Binjraj Maheswria and Others Vs. Ramniwasdas Jalan and Others, decided on 5th January 1942.

8. Mr. S.N. Banerjee on behalf of the petitioner on the other hand relies upon the early decision in Mungle Chand v. Gopal Ram 34 WB. 101 and later decisions in A. Milton and Co. Vs. Ojha Automobile Engineering Co., , Naskarpara Jute Mills Co. Ltd. Vs. Nirmal Kumar Jain, and Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney, . He also relied upon certain cases of the other High Courts with which I shall presently deal. I shall confine myself now to the decisions of this Court. In 1907 Sale J. in Mungle Chand v. Gopal Ram 34 WB. 101 restrained the defendants, who were residents in the District of Bareilly, from proceeding with their suit there. This is what he said at page 103:

I think the powers of this Court to grant temporary injunctions are not confined to the terms of Sections 492 and 493, Civil P.C. This Court has acted for a long series of years on the view that its powers of control over persons within its jurisdiction, by injunctions operating in personam, are not restricted by the provisions of the Civil Procedure Code, and I think it is too late to ask us to depart from its practice. Therefore, I think this Court has power to restrain the defendant from proceeding with the suit at Bareilly, if justice requires the step. The question is whether I should adopt this course. The Bareilly Court will doubtless stay the defendant's suit in the Bareilly Court, when that Court is informed that this Court has restrained the defendant from proceeding with that suit. I am not to assume that the Judge of the Bareilly Court will take any step unfair to the defendant, or compel him to act in any way inconsistent with his duty of obedience to this Court.

9. It is quite clear from the facts stated in the report that the defendant resided and did business at Bareilly. It is also clear from the latter portion of the judgment quoted above that the learned Judge was deciding the matter on the basis that the defendant was not resident within the jurisdiction of this Court, and he was relying upon the assistance of the Court at Bareilly in making the injunction effective. Two years later in Vulcan Iron Works v. Bishunbhur Prosad 36 Cal. 233 Fletcher J. took the view that unless the defendant resided within the jurisdiction of this Court no injunction could be granted against him. He relied upon the well-known decision of the House of Lords in Carron Iron Co. v.

Maclaren (1855) 5 H.L.C. 416. Fletcher J. referred to the decision of Sale J. in *Mungle Chand v. Gopal Ram* 34 WB. 101 and agreed with the first portion of the judgment. With respect to the latter portion this is what he said:

But I take leave to differ from the learned Judge in the latter portion of his judgment when he says that the Bareilly Court will doubtless stay the defendant's suit in the Bareilly Court when that Court is informed that this Court has restrained the defendant from proceeding with that suit. This statement of the learned Judge is a wide extension of the view that he states this Court has acted on for a long series of years, namely to exercise power of control over persons within its jurisdiction and appears to me to be in direct conflict with the decision of the House of Lords in *Carron Iron Co. v. Maclaren* (1855) 5 H.L.C. 416.

10. The view of Fletcher J. found favour with Stephen J. who decided *Jumna Das v. Haracharan Dass* 38 WB. 405. In this decision reliance was also placed on the House of Lords case in *Carron Iron Co. v. Maclaren* (1855) 5 H.L.C. 416. The last two mentioned Calcutta cases, however, were not followed by this Court, and it seems from the decisions that the view of Sale J. in *Mungle Chand v. Gopal Ram* 34 WB. 101 was uniformly adopted until the very recent decision of Gentle J. in *Binjraj Maheswria and Others Vs. Ramniwasdas Jalan and Others*, . I would refer in this connection to the cases already noticed, namely, *A. Milton and Co. Vs. Ojha Automobile Engineering Co.*, ; *Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney*, and *Naskarpara Jute Mills Co. Ltd. Vs. Nirmal Kumar Jain*, . There is also the recent decision: of McNair J. in the unreported case of *Jivanram Purshottamdas v. Saqarmull Bagaria* decided on 27th November 1939. This decision was upheld by the appellate Court on 10th July 1940. It is clear from the pleadings in this suit that the defendants were residents in the District of Bhagalpore outside the jurisdiction of this Court. The defendants instituted a suit against the plaintiffs at Bhagalpore on 31st July 1939. The plaintiffs instituted their suit at Calcutta on 9th August 1939 and applied for an injunction restraining the defendants from proceeding with their suit at Bhagalpore. McNair J. relying upon the decisions of Sale J. in *Mungle Chand v. Gopal Ram* 34 WB. 101 and of Lort-Williams J. in *A. Milton and Co. Vs. Ojha Automobile Engineering Co.*, granted the injunction. It seems that by this time the principle was so well established in this Court that residence within jurisdiction was not a necessary pre-requisite to the granting of an injunction that the contrary contention was not even raised before McNair J.

11. The later decisions of this Court uniformly took the view that upon a proper case being made out this Court had the power to restrain a person not resident within its jurisdiction from proceeding with a suit in a Court outside this province. I would have had no difficulty in pronouncing my judgment in favour of this view were it not for the latest decision on the question by Gentle J., in *Binjraj Maheswria and Others Vs. Ramniwasdas Jalan and Others*, . The learned Judge has based his " decision upon two considerations. I give below the first ground for his decision. That is what he says:

There are some conflicting decisions upon this matter. In *Mungle Chand v. Gopal Ram* 34 WB. 101 and *Vulcan Iron Works v. Bishunbhur Prosad* 36 WB. 233, it appears to be emphasised that an order by this Court of the nature which is now sought to be obtained, cannot be granted unless the person against whom the order is to be enforced is within the jurisdiction, and the view appears to be expressed that he should reside within the jurisdiction. These three cases were pronounced in this Court separately by three learned Judges : Sale J., Stephen J. and Fletcher J. There are three contrary authorities, all of which were given by Lort-Williams J. : *A. Milton and Co. Vs. Ojha Automobile Engineering Co.*, *Naskarpara Jute Mills Co. Ltd. Vs. Nirmal Kumar Jain*, and *Bhagat Singh Bugga Vs. Dewan Jagbir Sawhney*, .

12. With the utmost respect I would point out that the first reason which seems to have weighed with the learned Judge is based on a misapprehension of the decisions. *Mungle Chand v. Gopal Ram* 34 WB. 101 is certainly not an authority for the proposition that this Court has no power to restrain a person not resident within its jurisdiction from proceeding with a suit outside this province. On the contrary it is an authority for the opposite view which found favour with Lort-Williams J., in the other cases mentioned above. Fletcher J., and Stephen J., differed from the view of Sale J., in *Mungle Chand v. Gopal Ram* 34 WB. 101. It is, therefore, not correct to say that these three different Judges have held one view and that Lort-Williams J., alone held the contrary view. The other reason given by Gentle J., for refusing an injunction is stated thus:

A Court will never grant relief or pass an order which it cannot itself enforce and since the defendant-respondent is not within the jurisdiction of this Court then the direct enforcement by this Court of any order restraining the prosecution of the Gorakhpore suit could not be attained and a Court will never grant an ineffectual order.

13. With great deference to my learned brother I feel difficulty in accepting this view. It is certainly a well known principle of law that a Court will not pronounce ineffective judgments, i.e., judgments which cannot be enforced at all. This is how Dicey propounds this principle in his "Conflict of Laws," Edn. 5, p. 80:

General Principle No. 3 : The Courts of any country have jurisdiction over (i.e., have a right to adjudicate upon) any matter with regard to which they can give an effective judgment, and have no jurisdiction over (i.e. have no right to adjudicate upon) any matter with regard to which they cannot give an effective judgment.

14. It seems to me that it would be stretching this principle to an unreasonable extent if one were to say that it is essential to the exercise of jurisdiction that the Court must have the power to enforce its decision directly. I have not been able to find any authority for this proposition. Courts in this country often have to pronounce judgments and have them enforced by Courts of another province. The CPC contains specific provisions for such indirect enforcement. I would refer

in this connection to Sections 40 and 136, Civil P.C., as instances. In matters with respect to which the Code is silent the convention by which Courts in this country mutually assist one another, and the spirit of co-operation existing among the Courts in India, will come into operation in a proper case and render the judgment effectual. If this Court is apprised of the fact that there is an injunction issued by the Court of another province restraining a party from prosecuting a particular suit here, I cannot conceive of this Court allowing the party to flout the order of that Court. It will refuse to permit the party to go on with the suit until the injunction is dissolved. I have not the slightest doubt that the Courts of other provinces will act in the same manner.

15. Further, if the injunction issued by this Court is disobeyed by a party resident in another province, there are means by which such a party may be arrested through the Courts of that province : vide *Chandanmal Karnani v. Sardari Lal* ILR (1937) Cal. 345 and *Kilachand Devchand & Co. v. Ajodhya Prosad Sukhnand* AIR 1934 21 Bom. 452. In both these cases the contempts were committed by persons living in a province other than that of the Court whose order had been flouted, and it was held that there was no difficulty in getting such person arrested and punished. I do not feel that I can agree with view of Gentle J. or with his reasons therefor. I now propose to examine *Vulcan Iron Works v. Bishunbhur Prosad* 36 WB. 233 and *Jumna Das v. Haracharan Dass* 38 WB. 405 which have been relied on by my learned brother, Gentle J., and which lay down the proposition that this Court has no power to issue an injunction upon a person not residing within its jurisdiction. In both these decisions the learned Judges rely upon the well known House of Lords case in *Carron Iron Co. v. Maclaren* (1855) 5 H.L.C. 416. In *Vulcan Iron Works v. Bishunbhur Prosad* 36 WB. 233, Fletcher J., after quoting a passage at p. 442 of the report of the case in *Carron Iron Co. v. Maclaren* (1855) 5 H.L.C. 416, says this:

And later in the same case Lord Brougham in the course of his speech to the House points out that jurisdiction is limited to cases where the party sought to be restrained is within the limits of jurisdiction of the Court for the only remedy for the breach of the injunction is by way of process for contempt which being proceedings of a quasi criminal nature could not be enforced against a party resident out of the jurisdiction.

16. Stephen J. in *Jumna Das v. Haracharan Dass* 38 WB. 405 followed Fletcher J. but his decision proceeded on the principle that a person living entirely under a foreign jurisdiction must be left to obtain such relief as his own Courts may afford. There can, I think, be no doubt that as a general rule a person living entirely under a foreign jurisdiction should be left to obtain, such relief as his own Court may afford-Normally, the Courts would not prevent a person from seeking relief in a Court within whose jurisdiction he resides, but it is quite a different thing to say that a Court has no-power under any circumstances to restrain a person not resident within its jurisdiction from proceeding with a suit in the province or country in which he resides.

17. For the reasons which I shall presently set out I am of opinion that such power does exist. It is not possible to frame a comprehensive formula of the conditions under which such power should be exercised. The Court will have to decide for itself upon the peculiar circumstances of each case whether the exercise of such power is necessary for the ends of justice and it is not desirable to fetter the discretion of the Court by laying down any rigid rule. All that one need say is that such power should be exercised sparingly and with great caution, and only when the ends of justice urgently require its exercise. If Stephen J. in *Jumna Das v. Haracharan Dass* 38 WB. 405 be taken to have laid it down as an inflexible rule that a person living outside the jurisdiction of this Court cannot be restrained by an injunction of this Court from proceeding with a suit in his own province, then I must respectfully beg leave to differ from that view. I have carefully been through the judgment of the House of Lords in *Carron Iron Co. v. Maclaren* (1855) 5 H.L.C. 416, and I am of opinion that the House of Lords did not lay down any such inflexible rule. I am also unable to agree with Fletcher J. in his interpretation of Lord Brougham's judgment in the above-mentioned case. As this decision of the House of Lords is the basis of the decisions upon which the respondent relies, I think that it is necessary to examine the facts of that case in detail. They are as follows:

One Henry Stainton died leaving a will by which he appointed Maclaren and Dawson and certain other persons his executors and trustees. The testator died possessed of considerable property in both England and Scotland. He was in his lifetime the London Manager of the Carron Iron Co. which was a company incorporated under the Union Seal of Scotland. It is important to remember that the company was a Scotch Company and not an English Company. It was, as the Lord Chancellor stated in his judgment, a body locally situate in Scotland. Now, Maclaren and Dawson as executors and trustees of Henry Stainton brought an administration suit in London. As I have already stated, Stainton had properties both in England and Scotland. After the death of Stainton, the Manager of the Carron Iron Co. examined Stainton's accounts and claimed as due from Stainton to the Carron Iron Co. a considerable sum of money. Some correspondence passed between the solicitors of the Carron Iron Co. and those of Maclaren and Dawson but they could not agree in the matter. Thereupon the Carron Iron Co. commenced an action in the Court of Session in Scotland against Maclaren and Dawson as executors to recover the sum which they claimed to be due from Stainton to the company. Messrs. Maclaren and Dawson then applied to the Court of Chancery for an injunction restraining the Carron Iron Co. from proceeding with their suit in Scotland.

18. It is of the utmost importance to remember that the Carron Iron Co. was not a party to the suit instituted in London, and that it, took no part whatsoever in that suit and claimed no relief or assistance therein. Upon an application for an injunction by Messrs. Maclaren and Dawson a notice was issued by the Court of Chancery upon one H. Tibbets Stainton described as the agent of the Carron Iron Co., in London. The Carron Iron Co., did not appear in the Court of Chancery in

answer to that notice and the injunction was issued upon the abovementioned agent, leave was granted to the company to move to dissolve it on short notice. The company thereupon moved the Court of first instance, refused to dissolve the injunction and the Carron Iron Co., appealed to the House of Lords.

19. I think that it is necessary to summarise three important facts which should be borne in mind for a proper appreciation of the judgment of the House of Lords. The first fact to be remembered is that the Carron Iron Co., was not a party to the suit in London and had not taken any part whatsoever in it. In no way did it seek the assistance of the Court in London. Secondly, the Carron Iron Co., did not appear to oppose the application for the injunction. Thirdly, the injunction was directed to an agent of the Carron Iron Co., resident in London, and not to the company itself. I shall now examine the judgment of the House of Lords. The first portion of the Lord Chancellor's judgment is concerned with examining and stating the circumstances under which the Court of Chancery would restrain a party from instituting proceedings in a foreign Court and he sums up the position thus:

The result of the authorities is that if the circumstances are such as would make it the duty of the Court to restrain a party from instituting proceedings in this country they will also warrant it in restraining proceedings in a foreign Court, but though they will justify such a course, yet they will not, as I apprehend, make it the duty of the Court so to act, if from any cause it appears likely to be more conducive to substantial justice that the foreign proceedings should be left to take their course : Carron Iron Co. v. Maclaren (1855) 5 H.L.C. 416 .

20. Then the Lord Chancellor goes on to state the facts of the particular case before him, and he concludes by saying this at p. 441:

Over such a creditor the Courts here can exercise no jurisdiction whatever. He is altogether beyond their reach and must be left to deal as he may with his own forum and to obtain such relief as the Courts of his own country may afford.

21. This passage read out of its context would certainly seem to indicate that the Court has no jurisdiction to issue an injunction over a person resident outside its jurisdiction, but if the judgment be read as a whole it becomes quite clear that no such general proposition was being laid down. What the Lord Chancellor was saying is that ordinarily over a creditor resident outside jurisdiction the Court has no jurisdiction to issue an injunction, and that in the particular circumstances before him the Court had no jurisdiction to restrain the Carron Iron Co., but he was far from saying that the Court under no circumstances could restrain a person residing outside its jurisdiction from proceeding with a suit outside jurisdiction. At p. 442 this is what he says:

It must be observed that we are dealing with the case of a foreigner or rather a foreign corporation seeking no assistance from the Courts of this country. If the appellants had come in under the decree so as to obtain payment partially from the English assets a very different question would arise according to the doctrine

in *Beauchamp v. Lord Huntley* 1822 Jack 546 where Lord Eldon restrained a creditor who had sued under English decree from further prosecuting a creditor's suit in Ireland. It is sufficient to say that this is not the case before the House. The appellants are not restrained by reason of their having sought or obtained any relief in this country, but solely because they had agencies for the sale of their goods in this country.

22. These observations of the Lord Chancellor clearly indicate that in certain circumstances the Court of Chancery has power to restrain a person residing outside its jurisdiction from proceeding with a suit in a foreign Court. I now turn to Lord Brougham's judgment. After endorsing the view of the Lord Chancellor this is what he says:

I will just add one other argument. The process of contempt is in its nature a quasi-criminal proceeding. Now suppose the injunction is issued and suppose, notwithstanding that injunction the party goes on and breaks the injunction, he is liable to be committed for contempt. Now, here I will suppose the Carron Iron Co. in Scotland to disregard, or, as it were, contemn, the injunction, and to proceed notwithstanding. Surely it cannot be said that as against the agent here (who is but a salaried correspondent for the sale of goods) against whom this proceeding is taken that is to say, who is served with the notice of the injunction, and who is here within the jurisdiction of the Court - surely, it can never be contended that, as against him, a proceeding which is quasi-criminal in its nature, could be had, in consequence, not of anything which he did, but in consequence of what his principal the Carron Co. did in Scotland, in violation and breach of the injunction.

23. This is the passage which I presume, is relied on by Fletcher J. in *Vulcan Iron Works v. Bishunbhur Prosad* 36 WB. 233, for his proposition that the jurisdiction of this Court in granting injunctions must be limited to cases where the party sought to be restrained resides within the limits of the jurisdiction of the Court because contempt proceedings cannot be enforced against a party resident outside jurisdiction. Now, it seems to me that Lord Brougham was not really saying this. As I read his judgment he was not laying down any general proposition that an injunction could not be issued upon a person resident outside jurisdiction because it would not be possible to punish such person for a possible breach. What he was pointing out was that in the particular circumstances of the case before him if the injunction were disobeyed by the company in Scotland, the only person whom the Court could call upon for punishment would be not the company but its salaried correspondent in London as he and not the company had been served with the notice of the injunction; and he then goes on to say that it would be absurd to punish such a person for something which the company had done. The whole of Lord Brougham's judgment stresses the fact that the London agent really did not represent the company at all and that the injunction had been issued upon such agent. He begins his judgment thus:

My Lords, I take it to be perfectly clear in the first place that the respondent here

was the mere agent of the Carron Co. for the sale of the goods of that company.

24. After describing in detail the powers of the respondent he goes on to say:

The order of injunction was served upon the person thus described. They might just as well have served it upon all the sellers of the goods of the Carron Company....

25. Reading the judgment and relating it to the particular facts of the case I must say with great respect that it affords no basis for the views expressed by Fletcher and Stephen JJ., in the decisions mentioned above. On the contrary the Lord Chancellor's judgment makes it perfectly clear that even though the Carron Co. were resident in Scotland the Court of Chancery in London would have had the power to restrain it from proceeding with its suits in Scotland if it had appeared in the London suit and taken part therein. That the Court has such power is clear from the observations of Dicey in his "Conflict of Law" (5th Edn., p. 32) where the following principle is enunciated:

The Courts of any country have a right to "exercise jurisdiction," i.e., all Courts of competent jurisdiction, over "any person who voluntarily submits to their jurisdiction."

26. In this connexion I would also refer to the remarks of Jessel, M.R., in *Dawkins v. V. Simonetti* (1880) 50 L.J. 30. This is what he says at p. 32:

The plaintiff then applied to the Court of Probate for an injunction to restrain the defendant from proceeding in the foreign Court. The first question is whether there is any jurisdiction at all to do this. I am far from saying that when a man had appeared in an English suit, he does not give the Court jurisdiction to grant any proper application against him. I do not think it impossible that there might be cases in which it would be proper to grant injunction.

27. Eventually for other reasons the injunction was not granted. In this case the defendant was an Italian residing in Italy and it is clear from the observations of the Master of the Bolls that upon such a person the Court of Chancery had jurisdiction in a proper case to issue an injunction. In the present case, the respondent has entered caveat and filed an affidavit in support thereof. She has also made a substantive application in the proceedings for letters of administration for stay thereof and in the alternative for an injunction against the petitioner restraining him from proceeding therewith. Although she states in her affidavit that the application for letters of administration is not maintainable she nowhere indicates that she entered caveat under protest or that she was objecting to the jurisdiction of the Court. The respondent has fully submitted I to the jurisdiction of this Court and she has also invoked its aid. In these circumstances it seems to me that it would be unreasonable and illogical to allow her to say that this Court has no jurisdiction to pass an - order restraining her from doing something which the Court considers to be detrimental to the proper disposal of the matter before it. The Bombay High Court has held that the Court

would have jurisdiction in circumstances like these over a person resident outside jurisdiction, *Mulchand Raichand v. Gill and Co.* AIR 1920 7 Bom. 296. To the same effect is the decision of the Patna High Court in *Ganga Singh v. Pirthichand Lal* AIR 1922 Pat. 34. The Calcutta cases and the House of Lords' case were all considered here. I hold therefore that this Court has jurisdiction to restrain the respondent by an injunction from proceeding with her application before the District Court of Bhagalpore and respectfully dissent from the decisions in *Vulcan Iron Works v. Bishunbhur Prosad* 36 WB. 233, *Jumna Das v. Haracharan Dass* 38 WB. 405 and the decree of Gentle J. in *Binjraj Maheswria and Others Vs. Ramniwasdas Jalan and Others*, .

28. There remains the question whether I should exercise this jurisdiction. On the facts of this case, I am of opinion that I should. The District Court at Bhagalpore cannot grant letters of administration with respect to the property which is at Calcutta as it is over Rs. 10,000 in value: vide Section 273, Succession Act. If the proceeding in that Court is allowed to continue and if it succeeds fresh proceedings will have to be taken with respect to the Calcutta property. This Court on the other hand can give complete relief. Next, the petitioner is an officer in the Bengal and Assam Railway doing important work in connexion with the war. He cannot obtain leave at this juncture to go to Bhagalpore and it is difficult to foresee when he can get leave. The respondent according to her own statement is an educated lady who has travelled to England on more than one occasion. She is not a pardanashin lady and there is no great impediment in her coming to Calcutta, if necessary, for the purpose of this application. In these circumstances, I consider that it would be vexatious to allow her to continue with the proceedings in Bhagalpore and I accordingly issue an injunction upon her restraining her from continuing with her application for letters of administration at Bhagalpore pending the disposal of the application for letters of administration by the petitioner. I have no doubt that the learned District Judge at Bhagalpore when apprised of the decision of this Court will take such steps as he thinks proper to prevent the respondent from disobeying the orders of this Court if she makes any attempt to do so. The costs of this application will be costs in the proceedings for letters of administration which has now been marked as a contentious cause.