

(1941) 10 MAD CK 0031
In the Madras High Court

Krishnaswami Reddiar alias Rajah Chidambara Reddiar	APPELLANT
Vs	
Venugopala Reddiar by his agent V.A. Lakshminarasimha Aiyar and Others	RESPONDENT

Date of Decision : 31-10-1941

Acts Referred:

Citation : AIR 1942 Mad 614 : (1942) ILR (Mad) 376 : (1942) 55 LW 45 :
(1942) 1 MLJ 137

Hon'ble Judges : Mockett, J;Kunhi Raman, J

Bench : Full Bench

Judgement

Mockett, J.—It is unnecessary to set out the complicated facts which are the basis of the suit, the subject of this civil revision petition. The following statement of the essential facts is sufficient. The plaintiff filed O.S. No. 55 of 1932 in the Court of the Subordinate Judge of Trichinopoly against the defendants, who both reside in Rangoon. The prayer in the plaint is as follows:

(a) For a decree directing the defendants to deliver the properties" in Schedule 0, Parts I, II and III, together with profits from date of suit;" and declaring that the plaintiff is solely and absolutely entitled to the assets described in Schedule C, Part IV.

(b) In case the plaintiff is held not entitled to that relief, for a decree directing the division, of the properties in Schedules A, B and C into one fourth, three-eighths and three-eighths shares allotting Schedules A and B to the plaintiff and charity and adding so much property from Schedule 0 as may be necessary to make them a just moiety of three fourths and one-fourth respectively of the entire estate.

(c) For a decree that the, plaintiff is entitled to the trusteeship of the charity and to the management of the properties attached thereto described in Schedule B together with what may be added to them on the just ascertainment of one-fourth share for the charities.

It is common ground at the Bar that a large part of the properties concerned are immovable properties in Burma, the others being within the jurisdiction of the Court of the Subordinate Judge of Trichinopoly. Paragraph 20 of the plaint states:

The cause of action arose at Srirangam, Tiruvanaikoil, Manakkal, etc. villages in the Trichinopoly district, within the jurisdiction of this Court, in, February, 1932 - when Raja Ramanatha Reddi died and when plaintiff became aware of the unfair allotment to Krishnaswami Reddi's share out of Chidambara Reddiar's estate.

This plea is technically defective as it does not allege how and where the cause of action arose in terms of Sections 16, 17 and 20 of the Code of Civil Procedure. It is however obvious from a reading of the plaint that part of the cause of action arose in Trichinopoly and part in, Burma. The defendants never suggested otherwise, and u/s 21 of the Code of Civil Procedure, they would not have been permitted to take this technical point of pleading as, to jurisdiction at the trial had events, followed their normal course. The defendants did in fact, take an objection relating to court-fee, as a result of which the petitioner; in the words of his affidavit filed in I.A, No. 1280 of 1938,. "paid a very heavy additional" court-fee of Rs. 7,910 rendered payable in respect of properties situate in Burma, on 11th. January, 1938." As an important question concerning jurisdiction, is before us I am noticing the above; but actually it has not been contended before us that, had it not been for the following circumstances, this suit was not properly brought in the Court of the Subordinate Judge of Trichinopoly.

2. On April 1st, 1937, the Government of India Act, 1935, came into operation. Section 46 Sub-section (2) is as follows:

Burma shall cease to be part of India.

On the 16th of November, 1938, six years after the plaintiff had filed his suit in Trichinopoly, the defendants filed a petition praying for leave to file an additional written statement. The affidavit in support of that petition alleges (1) that the properties are situate partly in British India within the local limits of this Court's jurisdiction and partly in British Burma which formed part of British India when this suit was instituted, and (2) that out of the suit properties certain named items in the schedule are situate in Burma. Paragraph 4 is as follows:

Under the Government of India Act, 1935, Section 46 (2), Burma including British Burma has ceased to be part of India including British India from 1st April, 1937. This Court, being a British Indian Court, has, therefor, ceased to have, jurisdiction over the said properties in British. Burma from the said date. I am advised that there has come into existence a total want and absence of jurisdiction in this Court, in respect of the said pro-notes by reason of the said enactment and that a decree passed by this Court in respect of the properties in Burma will be a nullity.

Leave to file the additional written statement was granted. Paragraph 2 of that

statement alleges:

There has come into existence from 1st April, 1937 a total want and absence of jurisdiction in this Court in so far as the said properties are concerned by reason of the separation of Burma from India.

An additional issue, No. 33, directly raising the jurisdiction of the Court was framed as follows:

Has this Court now jurisdiction in respect of the properties situate in Burma included in the plaint C schedule in view of Section 46 (2) of the Government of India Acts, 1935?

The suit was rightly posted for arguments on this issue, because, in the words of the learned Judge in paragraph 2 of his judgment:

It was said that a decision on this point will save a lot of oral evidence in the case as the bulk of the properties claimed in this suit are situated in Burma and questions have been raised regarding the ownership of those properties.

The learned Judge has decided that he had no jurisdiction to try this suit regarding the movables and immovables situated in Burma. If that decision is right, the plaintiff must commence proceedings again in Burma regarding the property in Burma. The issues in that suit will be, as far as I can judge from a perusal of them, identical with those raised affecting the Indian property and remaining within the learned Judge's jurisdiction. They involve a decision inter alia as to the fact and validity of certain adoptions, the validity of a will, partition deed and trust deed, and questions of construction of the documents. Against that decision, this civil revision petition has been filed. It unquestionably raises an important question of jurisdiction and can be entertained by us u/s 115 of the Code of Civil Procedure. Sir Alladi Krishnaswami Aiyar, on behalf of the respondents, did not suggest that it is not a proper case in which we should decide the point in revision. I think it right to state that although it might be possible to say that this suit should proceed and that the point of jurisdiction should be taken on appeal, it would be a very grave hardship on the petitioner to do so. Immense expense might be incurred for obtaining the necessary evidence from Burma, which might possibly be thrown away were the final decision as to jurisdiction to be against the plaintiff in the appeal. As it seems to us that our decision in this civil revision petition will be final so far as the question of jurisdiction is concerned, we have thought it convenient and proper to decide it now. The point that we have to decide may be stated in this way : Has the jurisdiction of the Court of the Subordinate Judge of Trichinopoly, as from April 1st, 1937, entirely ceased . to exist in so far as a suit filed therein before that date affects immovable property in Burma? The respondents contend that the answer should be "yes"; the petitioner contends that the jurisdiction of the Courts relating to matters pending before April 1st, 1937, has been saved or at least has not been specifically taken away and that the Subordinate Judge can continue to try the suit and can pass a decree affecting the immovable property

in Burma. It is a basic principle of private international law that no British Court will entertain a suit affecting immovable property in a foreign country, nor will a foreign judgment adjudicating on the title to immovable property within British jurisdiction receive recognition in a British Court. This well-known principle has been treated as axiomatic before us and it is unnecessary to quote authority for it. The decisions of the highest Courts are unanimous. I am more than content to adopt the statement on the subject by Prof. Dicey in the fifth edition of his work on the Conflict of Laws, page 203, which reads as follows:

Subject to the exceptions hereinafter mentioned, the Court has no jurisdiction to entertain an action for (1) the determination of the title to, or the right to the possession of, any immovable property situated out of England.

The exceptions do not apply in this case. The respondents have therefore relied on this general principle. They contend that on and after the 1st of April, 1937 so far as the jurisdiction of his Court was concerned the Subordinate Judge had no more right to pass a decree relating to immovable property in Burma than he had to order delivery to the plaintiff of a house in Bangkok. The petitioner's contention however is that this general principle, formidable as it may seem, is not applicable to the special circumstances before us. Mr. K.S. Sankara Aiyar has argued that when a supreme Legislature" thinks it proper to. separate territories subservient to it into different entities for purposes of rule and administration, there is nothing startling in the proposition that when doing so it should have, for the purpose of tiding over the inevitable dislocation and inconvenience that may result, preserve in part the status quo preceding the day on which the separation takes place so as to prevent that inconvenience and possible injustice to the subjects affected wherever they may be, and he argues that the Legislature would only if it were unavoidable interfere with actions at law in course of trial. Counsel pursues this argument by pressing the contention that an interpretation upon the various enactments should be given, if possible, so as to ensure so reasonable a result. The ultimate decision must rest on a consideration of the Government of India Act and other-legislation, such consideration being according to the appropriate canons of construction.

3. The first provisions for consideration are Sections 292 and 293 of the Government of India Act. They correspond with Sections 148 and 149 of the Government of Burma Act, except of course that in the Burma Act the word "Burma" is substituted for "British India". Section 292 of the Government of India Act is as follows:

Existing law of India to continue in force. Notwithstanding the repeal by this Act of the Government of India Act, but subject to the other provisions of this Act, all the law in force in British India immediately before the commencement of Part III of this Act shall continue in force in British India until altered" or repealed or amended by a competent Legislature or other competent authority.

The effect of this section is that the existing law of India continues to operate. It

is hardly necessary therefore to say that the CPC continues in force subject to alteration, repeal or amendment. Section 293 is as follows:

Adaptation of existing Indian laws, etc. His Majesty may by Order in Council to be made at any time after the passing of this Act provide that, as from such date as may be specified in the Order, any law in force in British India or in any part of British India shall, until repealed or amended by a competent Legislature or other competent authority, have effect subject to such adaptations and modifications as appear to His. Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Act and, in particular, into accord with the provisions thereof which reconstitute under different names, governments and authorities in India and prescribe the distribution of legislative and executive powers between the Federation and the Provinces: Provided that no such law as aforesaid shall be made applicable to any Federated State by an Order in Council made under this section. In this section the expression "law" does" not include an Act of Parliament, but includes any ordinate, order, bye-law, rule or regulation having in British India the force of law.

Under this section the Government of India (Adaptation of Indian Laws) Order, 1937, was made by His Majesty in Council. Clause 2 (1) states that the expression "Indian law" means a law as defined in Section 293 of the Act. Sub-Clause (2) is as follows:

The Interpretation Act, 1889, applies for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

The meaning of this sub-clause is clear : Just as the Interpretation Act affects the construction of Acts of Parliament, so equally can it be called in aid in construing the meaning of this Order. Clause (9) of the Order states:

The provisions of this Order which adapt or modify Indian laws so as to alter the manner in which, the authority by which, or the law under or in accordance with which, any powers are exercisable, shall not render invalid any notification, order, commitment, attachment, bye-law, rule or regulation duly made or issued, or anything duly done, before the commencement of this Order; and any such notification, order, commitment, attachment, bye-law, rule, regulation, or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances as if it had been made, issued or done after the commencement of this order by the competent authority and under and in accordance with the provisions then applicable to such a case.

4. Clause (10) states:

Save as provided by this Order, all powers which under any law in force in British India, or in any part of British India were immediately before the commencement of Part III of the Government of India Act, 1935, vested in, or exercisable by, any person or authority shall continue to be so vested or exercisable until other provision is made by some Legislature or authority empowered to regulate the

matter in question.

It has not been contended that the word "authority" does not include a Court. I consider that it must include a Court. The word seems to be all-comprehensive. According to the Oxford Dictionary it includes "power", "right to enforce obedience"; "delegated power"; and "person having authority". Clause (11) states:

Nothing in this Order shall affect the previous operation of, or anything duly done or suffered under, any Indian laws or any right, privilege,, obligation or liability already acquired, accrued or incurred, under. any such law....

The India and Burma (Existing Laws) Act, 1937, also requires consideration. It is an Act to explain and amend Sections 292 and 293 of the Government of India Act. Section 1, Sub-sections (1) and (2) read:

Continuance and adaptation of certain existing laws in India and Burma 26 Geo V & 1 Ed. VIII, c. 2. 1. (1) For the purposes of Sections 292 and 293 of the Government of India Act, 1935, which provide for the existing laws of British India to continue in force therein after the date of commencement of Part III of the said Act subject to the power of His Majesty in Council to make such, adaptations and modifications in any such law as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of the said Act,

(i) A law passed or made before the said date by a Legislature or other competent authority in British India, and not previously repealed, is for the removal of doubts hereby declared to be a law in force immediately before that date, notwithstanding that it, or parts of it may not then be in operation, either at all or in particular areas;

(ii) any such law which immediately before the said date has extraterritorial effect as well as effect in British India, shall, subject to any such adaptations and modifications as aforesaid, continue to have extraterritorial effect;

(iii) the power of His Majesty in Council to make in an existing Indian law such adaptations and modifications as aforesaid shall be deemed to include power to declare any such law, or any part thereof, to be repealed, if it appears to His Majesty in Council that its continuance is unnecessary or inexpedient in view of the provisions of the said Act;

(iv) nothing in the said sections shall be construed as continuing any temporary Act in force beyond the date fixed for its expiration.

2. 26 Geo v and 1 Ed. VIII c. 3. Paragraphs (i) to (iv) of the preceding sub-section shall apply also in relation to Sections 148 and 149 of the Government of Burma Act, 1935, (being the sections of that Act corresponding to the said Sections 292 and 293) with the following adaptations:

(a) references to British India and to an Indian law shall be construed

respectively as references to Burma and to a Burma law;

(b) for the words "in view of the provisions of the said Act" there shall be substituted the words "in view of the separation of India and Burma".

Section 1(i) (ii) of the above Act is expressed in the Clearest terms:

5. The Interpretation Act of 1889, Section 38, Sub-section (2) enacts:

Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not:

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigations, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

It is argued for the petitioner that the intention of the Legislature to be derived from a combined reading of the above Acts and Order indicate an intention generally to preserve the rights and liabilities of subjects engaged in litigation in British India before the passing of the Government of India Act. That the general intention of the Legislature was to preserve the rights of parties and not to affect legal proceedings in being before the 1st of April, 1937 seems to me clear. Clause 10 of the Order in Council continues the powers exercised by any person or authority under any law in force in British India or in any part of British India immediately before the commencement of Part III of the Government of India Act, 1935, which appears to be the date selected as the dividing line between the old and the new regime. I do not think that the provisions of Part III are relevant. Part III came into operation on the 1st of April, 1937 by the Government of India (Commencement, etc.) Order, 1936. Clause 11 of the Government of India (Adaptation of Indian Laws) Order states that nothing in the order shall affect the previous operation of, or anything duly done or suffered under, any Indian law, or any right, privilege, obligation or liability already acquired, accrued or incurred under any such law, or any penalty, forfeiture, or

punishment incurred in respect of any offence already committed against any such law. As to the interpretation of the Act, the Interpretation Act of 1889 is obviously of great importance. The Government of India Act, 1935, repealed the Government of India Act of 1915 wholly, and virtually the whole of the Acts of 1916 and 1919. Section 223 of the Government of India Act specifically provides that the jurisdiction in the existing High Courts shall be the same as immediately before 1st April, 1937. The learned Advocate-General argued as follows. The effect of Section 38, Sub-section 2 of the Interpretation Act, 1889, is that the repeals under the Government of India Act, 1935, shall not affect any right, etc., acquired or accrued under any enactment so repealed and similarly it shall not affect any legal proceeding or remedy in respect of any such right, and this means that only any rights expressly given under the repealed Acts are preserved. The legal proceeding must be directly traceable to the Act repealed. It only affects legal proceedings and the remedies given by the repealed Act; for example, suits against the Secretary of State. If this argument is sound it would follow that a suit filed in British India against the Secretary of State before 1st April, 1937, involving immovable property in Burma could be continued in British India notwithstanding the apparent conflict of jurisdiction involved by the coming into force of Section 46 (2) of the Government of India Act, 1935. I am asked to hold that nothing under any Act repealed by the Government of India Act, 1935, has any relation to the suit, the subject of this civil revision petition. I am unable to accept this contention. In the Act under which the High Court had its existence and exercised its jurisdiction, Section 101 was, among other sections, repealed. But the Code under which the High Courts referred to in S.219 of the Government of India Act, 1935, are to function and under which the Courts subordinate to the High Courts function, is to continue in force in British India until altered, repealed or amended by a competent Legislature. It is hardly necessary to state that an appeal in the suit before me would ordinarily lie to the High Court of Madras. There is no express reference to existing suits in which the jurisdiction of India and Burma may clash; there is no express provision for such a position. So we have, as argued by the respondent, the implications of private international law as a result of Section 46 of the Government of India Act on the one hand, and on the other a number of provisions, all in my opinion pointing in the same direction, the preservation of rights and" positions generally existing before 1st April, 1937.. It is necessary to consider the principles governing construction in the special circumstances of this case. A number of authorities have been cited, and it is convenient first to refer to the decision of the Judicial Committee in the. Colonial Sugar Refining Co. v. Irving (1905) A.C. 369. The question there involved was whether the right of appeal from the Supreme Court of Queensland to His Majesty in Council had been taken away by the Australian Commonwealth Judiciary Act, 1903, and Lord Mac-naghten at page 372, says this:

As regards the general principles applicable to the case there was no controversy. On the one hand, it was not disputed that if the matter in question be a matter

of procedure only, the petition is well founded. on the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal, In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested.

This is a clear pronouncement by the Judicial Committee on how legislation affecting a party's rights already accrued should be approached. Equally clear is Sulaiman, J., in the *United Provinces v. Mst. Atiq Begum* (1941) 1 M.L.J. Supp. 65 (F.C.):

Undoubtedly, an Act may in its operation be retrospective, and yet the extent of its retrospective character need not extend so far as to affect pending suits. Courts have undoubtedly leaned very strongly against applying a new Act to a pending action, when the language of the statute does not compel them to do so. It is a well recognised rule that statutes should, as far as possible, be so interpreted as not to affect vested rights adversely, particularly when they are being litigated. When a statute deprives a person of his right to sue or affects the power or jurisdiction of a Court in enforcing the law as it stands, its retrospective character must be clearly expressed. Ambiguities in it should not be removed by Courts, nor gaps filled up in order to widen its applicability. It is a well established principle that such statutes must be construed strictly, and not given a liberal interpretation.

There are no decisions on facts corresponding exactly with those before us; but there are decisions of this High Court Mating to the effect of transfer of territorial jurisdiction on decrees already passed. *Ramier Vs. Muthukrishna Aiyar and Others*, , is such a case. The facts were that the respondents obtained a final mortgage decree on the 20th of January, 1916 in the District Munsif's Court of Melur in respect of properties part of which were situated within its jurisdiction and part within the jurisdiction of the District Munsif's Court of Madura. In February, 1920, the jurisdiction of these Courts was re-arranged, with the result that the suit properties came within the jurisdiction of the District Munsif of Madura Taluk. An application for execution was filed on the 27th of July, 1927 in the latter Court without applying for the transfer of the decree from the Melur Court which continued to exist. The question was whether the Madura Court

could execute the decree. The Full Bench held that it could not without the decree having been transmitted from the Melur Court and that the Melur Court retained jurisdiction to execute the decree even after the transfer of territorial jurisdiction. Ramesam, J., who delivered the judgment of the Bench, says at page 814:

It seems to me that, unless the language of the notification is plain, directions as to future regarding pending business cannot be implied.

The Full Bench referred with approval to the decision of Phillips and Venkatasubba Rao, JJ., in *Chokkalinga Pillay Vs. Velayudha Mudaliar and Others*, . In that case there was a suit on a mortgage properly brought in the Court of the Subordinate Judge of Kumbakonam, but at the time of the passing of the decree the jurisdiction of this Court had been transferred to Mayavaram. Nevertheless the Kumbakonam Court passed the final decree and the objection was taken that the decree was absolutely void. Phillips, J. observed at page 451:

The jurisdiction of a Court consists in its powers to entertain suits, and when once a suit has been properly entertained, it is difficult to understand how that jurisdiction is removed unless it is specifically so done by the order of a competent authority. Once the suit has been entertained, the remaining proceedings taken therein are not taken by reason of any particular territorial jurisdiction, but, in the exercise of the powers vested in the Court to try suits generally and consequently the only time at which the territorial jurisdiction comes into operation is at the time of filing the suit. Once the Court has seizin of the case, it has jurisdiction to try it to its conclusion, unless there is any reason for holding that that jurisdiction has been removed.

In *Ramakrishna Chetty v. Subbaraya Aiyar* (1912) 24 M.L.J. 54 : ILR Mad. 101 Benson and Sundara Aiyar, JJ."s discussion of general principles is of assistance. The facts are not relevant, but at page 103, the learned Judges observed:

It is at the same time a well-established principle that unless the terms of a statute expressly so provide or necessarily require it retrospective operation will not be given to a statute so as to affect, alter or destroy any Tested right. See Section 6, clause (c) of the Indian General Clauses Act and Section 8, clause (c) of Madras Act I of 1891. For to do so would result in great injustice, and it will be presumed that the Legislature did not intend to deprive any person of a right previously vested in him. The general rule that statutes relating to processual law have retrospective operation is as much subject to this important qualification as statutes dealing with substantive rights.

And at page 106, the rule as stated by Jessel, M.R., in *In re Joseph Suche & Co., Ltd* (1875) 1 Ch.D. 48. is relied on. This statement of the Master of the Rolls is: .

I so decide because it is a general rule that when the Legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them.

In *S. Girdharilal Son and Co. Vs. B. Kappini Gowder and Others*, , Varadachariar, J., on a reference under Clause 36 of the Letters Patent, there being, a difference of opinion between Pandrang Row, J., and Venkataramana Rao, J. had to consider whether Section 69, Clause 2 of the Indian Partnership Act was applicable to a suit filed after the passing of the Act to a promissory note executed before the passing of the Act. Pandrang Row, J., took the view that Section 74 expressly saved the suit, Venkataramana Rao, J., taking a different view. Varadaehariar, J., agreed with Pandrang Row, J. Section 74 of the Indian Partnership Act enacts:

Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect--(a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or (b) any legal proceeding or remedy in respect of any such right, title, interest, Obligation or liability, or anything done or suffered before the commencement of this Act.

The learned Judge came to this decision after considering whether Section 74 expressly saved the suit from the operation of Section 69, and, if Section 74 had no such operation, whether on general principles the Court ought to hold that Section 69 does not operate to enforce the cause of action which had accrued prior to the date of the coming into force of the Act. "It will be observed that this case does not deal with an action but with a cause of action. The learned Judge decided the case on the ground that S. 74 was directly applicable. But he discusses at pages 72 to 75, the implications of the words "processual law" and quotes with approval the warning of Holloway, J., in *O. Lee Morris, Esq. v. Sambamurthi Rayar* (1871) 6 M.H.C.R. 122 as to the danger of confounding processual provisions with those which under that fictitious appearance are really provisions of material or substantive law. The High Court of Patna in *Babui Dineshwari Kuer v. Ram Narain Singh* I.L.R.(1936) Pat. 704 has taken a different view to this High Court on the effect of the transfer of jurisdiction from one Court to another. Mohamad Noor and Saunders, JJ., held that where a preliminary decree for possession of land and mesne profits had been passed by a Court, which later ceased to have territorial jurisdiction over the area, after the notification of the Government transferring the area to the territorial jurisdiction of a newly established Court, applications for ascertainment of mesne profits should be made to the latter Court as the former Court entirely ceased to have any jurisdiction over the area concerned. The Madras decisions are of course binding upon me, but were it otherwise, I would, with respect, prefer the Madras view. My attention has been drawn to a judgment (not yet reported) of Pandrang Row and King, JJ., in A.A.O. No. 613 of 1938. A decree was passed by a Court in British Burma. On the 15th of March, 1937, the Court ordered the transmission of the decree to the District Court of Ramnad in this Presidency. It was received on the 25th March, 1937. The application for execution was made in the Court of the Subordinate Judge of Sivaganga on the 14th of June, 1937 and a further application to execute was made on the 6th of January, 1938. It was objected that after the 1st of April, 1937, the Madras Courts had no jurisdiction to execute

the decree passed by a Court in Burma although that decree had been transmitted by the Burma Court before the 1st of April, 1937. The learned Judges held that the contention that jurisdiction was lost appeared to them "not to take notice of paragraph 10 of the Government of India (Adaptation of Indian Laws) Order, 1937, dated the 18th March, 1937." After setting out the paragraph they observe,

This provision appears clearly to contemplate that powers which were exercisable by any authority such as a Court before the Act came into force should continue to be exercised or to be exercisable even thereafter unless some other provision was made by a competent authority regarding the subject matter of the jurisdiction.

The learned Judges point out that no other provision had been made and they observe:

It seems to us that both the Words and the policy of paragraph 10 of the Adaptation Order referred to above contemplated that the Court to which decrees were transmitted for execution before the 1st April, 1937 should continue to execute those decrees even after the 1st April, 1937 on applications presented to it for execution subsequent to the 1st April 1937.

6. With that decision I am in respectful agreement.

7. The learned Advocate-General has urged that if the view maintained by the petitioner is upheld, a strange position arises u/s 10 of the Code of Civil Procedure, the explanation to which states that the pendency of a suit in a foreign Court does not preclude the Courts in British India (British Burma) from trying a suit founded on the same cause of action, and he has referred us to the Full Bench judgment of the High Court of Rangoon in *Arunachallam v. Valliappa* AIR 1938 Rang. 130 (F.B.). The question before the Full Bench was whether a Court in Burma had power to stay a suit filed after 1st April, 1937, when the matters in issue were before a Court in British India in a suit filed before that date. The Full Bench held that Section 2 (5) and Section 10 of the CPC as amended related to a matter of procedure and therefore on well established principles affected existing proceedings and that therefore the Court in Burma had not the power to grant a stay of the suit in India. No argument was addressed on the topic before us now, that is, whether the Indian Court continued to have jurisdiction at all. The facts in the Indian suit, a partition suit, are not set out. The decision related to the power of the Court in Burma to stay the suit and rested entirely on whether this was a matter of procedure, which it was held to be. It seems to me to leave wholly untouched the much wider question now before us. Roberts, C.J., in his judgment discusses the English authorities which distinguish the position when matters of procedure and rights of action are concerned and he cites with approval the statement of Jessel, M.R., to which I have referred . above. It is argued that there is nothing to prevent a suit being filed now with regard to this identical matter in Burma. The answer to

that objection must, I think, be that the right to continue this action remains in the Madras Court, alternatively that may be a position for which provision has not been made in the Act. Whether execution of any decree can be done directly or whether it will be necessary to sue as on a foreign judgment is not for us now to decide, nor do I think it in any way affects our decision. In arriving at a decision in this case it is not possible to draw on decisions from similar facts. The matter has not been discussed before on facts similar to those before us. I am not aware that the Courts in England at any time had jurisdiction to deal with real property in Southern Ireland. A consideration of the provisions and rules of the Supreme Court in England is of no assistance. Apart from the common right of appeal to the House of Lords, the jurisdiction of the Courts of England and Scotland is distinct. Order 11, rule 1 of the Rules of the Supreme Court makes provision for the issue of writs beyond the jurisdiction. There is no provision exactly corresponding to Section 17 of the Civil Procedure Code. Order 11, rule 1, by implication, prohibits the issue of a writ out of the jurisdiction unless in the case of land the whole subject matter is situate within the jurisdiction. The difficulty or apparent difficulty arises in this case from the fact that a supreme Legislature has thought fit to make the far-reaching changes over territories subservient to it. It is not a case of cession of territory to a foreign state, It is a re-arrangement within the Empire. The supreme rule remains. The British Legislature had absolute authority within its own territorial limits to dispose of the rights of its subjects and all property within its limits--the law of eminent domain, a phrase of public international law. The British Legislature cannot legislate with regard to the rights of Britons in the Courts of e.g. Thailand and when it is argued that the foundations of private international law and indeed commonsense are shaken when it is suggested that a British Court might just as well pass a decree affecting land in Thailand, I think the argument is founded on a fallacy. This is not a case of the British Legislature passing an Act purporting to affect foreign territory. The Act affects its own territory. I again must emphasize that the British Legislature can do just what it thinks fit with regard to the jurisdiction of the Courts subservient to it over territories subservient to it and there is nothing to me in the least startling, in the contention of the petitioner. I must confess to being more surprised at the result of the respondent's argument that the petitioner who has been rightly prosecuting his suit in a Court for several years should be held now to be in the wrong Court. The Government of India Act could have contained an express provision to the effect, that suits previously within the jurisdiction of Burma and Indian Courts affecting immovable property in either country should continue within the jurisdiction of those Courts exactly as if the Act had not been passed. Such a provision would have been purely for the purpose of what I will describe as winding up the old order, such process, continuing for the convenience of the subject for a time after the introduction of the new order. One of the decisions I have to make in this case is whether that has in fact been done by the various provisions of law to which reference has been made. The learned Advocate-General's chief argument is that this is a case of processual law only and therefore the canons of construction above cited are

not relevant, and naturally much has been made of the fact that the CPC provides for the bringing of a suit in one jurisdiction relating to land in another. I am unable to accept that argument. The CPC is not confined to procedure." The Judicial Committee in *Nilkant Bail-want v. Vidya Narasinh* (1930) 59 M.L.J. 379 : L.R. 57 IndAp 194: I.L.R 54 Bom. 495 (P.C.) describes the Code thus:

The provisions of the Code are regulations dealing with the jurisdiction and governing the procedure of the Courts in British India...

Their Lordships held that the Code gave a British Indian" Court jurisdiction to try suits relating to immovable property within the jurisdiction of another British Indian Court, if part of the immovable property, the subject of the suit, was within its own jurisdiction, but that it did not give jurisdiction over land in Kolhapur State. It is therefore from the Code that the Court of the Subordinate Judge" of Trichinopoly derives its- jurisdiction. So far as the procedure governing trial is concerned, it is also derived from the Code. But jurisdiction and procedure are distinct, and I hold that the former, i.e., jurisdiction does not come under the description of processual matter. It seems to me that Lord Macnaghten's statement of the law in the *Colonial Sugar Refining Co. v. Irwin* (1905) A.C. 369 is entirely applicable to the facts in this petition. I see no reason to distinguish in principle between the action with which we are concerned now and the appeal with which their Lordships of the Judicial Committee were concerned. The reports of the arguments of the distinguished counsel who appeared before the Board show that no attempt was made to make any such distinction. Mr. Asquith, counsel for the petitioner, argued that the alteration made by this section was one of procedure and did not affect private rights and therefore took effect with reference to "pending actions"; and Mr. Cohen for the appellants contended that there was no section in the Commonwealth Act which gave power to deprive any Court of the jurisdiction which it was exercising at the time the Act was passed. No doubt Burma is now in the position of a foreign country for many purposes when considering its relations with India. But that position is only of recent creation and long after the institution of this suit. There is no question that the petitioner had a right to file this suit in the Court of the Subordinate Judge of Trichinopoly in 1932, and I find it difficult to agree that a matter of procedure only is affected when a supreme Legislature is said to take from a litigant a right to have heard in a Court convenient to him a suit relating to another part of a territory under the same Legislature. If that view is correct, then I think that the whole trend and meaning of the many detailed provisions to which reference was made, is that the object and intention was to retain to Courts the jurisdiction which they held before the 1st of April, 1937 in regard to litigation then properly before them. It has been impossible for the learned Counsel for the respondent to point to any provision in the Act which expressly takes away that jurisdiction. The most that has been argued is that it is done by implication or "by necessary intendment", the implication and intendment to be derived from Section 46 of the Government of India Act. 1935.

8. For the reasons I have given I hold (1) that the combined effect of the India and Burma Existing Laws Act, 1937, Section 1, Sub-sections (1) and (2), the Government of India (Adaptation of Indian Laws) Order, 1937, paragraphs-1, 9, 10 and 11, and the Interpretation Act, 1889, 52 and 53 Vic. Ch. 63, Section 38 (b) (c) (d) and (e) is expressly to preserve to the Court of the Subordinate Judge of Trichinopoly jurisdiction to try the suit, the subject of this civil revision petition; and (2) that the petitioner had a right to file his suit in the above Court and that right to continue it has not been taken away expressly by the Government of India Act, 1935. Accordingly I consider that this civil revision petition should be allowed with costs here" and below so far as the hearing on the preliminary issue is concerned and the learned Subordinate Judge will therefore proceed with the hearing of this suit. As this judgment involves a substantial question of law as to the interpretation of the Government of India Act, 1935, a certificate will issue in accordance with the provisions of Section 205 of that Act. There will be an interim stay of hearing until the 5th January, 1942. If by then an appeal to the Federal Court has not been lodged, the proceedings will continue. Otherwise the stay will continue pending the decision of the Federal Court.

Kunhi Raman, J.

9. An interesting question of constitutional law arises for decision in this civil revision petition. The suit out of which the petition arises was filed in the Court of the Subordinate Judge of Trichinopoly in 1932 and it was registered as O.S. No. 55 of 1932. Unfortunately, it has had a chequered career. Had the trial proceeded in the normal course, the suit would have been disposed of prior to the 1st April, 1937, and the plaintiff would not have had to face the contentions which were urged in the Court below and which are now urged before this Court on behalf of the defendants. We are told that as the result of a certain order in an interlocutory application which became the subject-matter of a civil revision petition in this Court in 1935 and as the result of a dispute as to the proper court-fee payable in the lower Court, the suit became ready for trial only in 1940, eight years after it was instituted in the lower Court. In the interval, the Government of India Act of 1935, was passed, and according to Section 46 (2) of that Act, it was declared that Burma shall cease to be part of India. This provision came into force from the 1st April, 1937, under the Government of India Act (Commencement, etc.) Order, 1936. The subject-matter of the suit included not only properties situated in British India within the local limits of the jurisdiction of the lower Court, but also immovable and movable properties in British Burma. Therefore, on the coming into force of S: 46 (2) of the Government of India Act, 1935, the defendants raised an additional plea that the lower Court had ceased to have jurisdiction to proceed with the trial of the suit so far as it related to the properties situated in British Burma. The lower Court has arrived at the conclusion that the defence raised on this point is well founded and has answered the question as to whether it has jurisdiction to try the suit or not in the negative. The plaintiff has come to this Court challenging the correctness of

this view.

10. The main question for determination is whether the separation of British Burma from British India from the 1st April, 1937 by the Government of India Act, 1935, will affect actions pending on that date. The petitioner's learned advocate argues that in view of the statutory provisions and judicial decisions relied on by him, in the absence of an express "provision that pending actions shall be affected by the new enactment and in the absence of any special provision made for the procedure relating to such actions, the new Act cannot affect prejudicially suits instituted prior to the 1st April, 1937 and which were pending on that date. This contention is based on the assumption which, it seems to me is fully warranted in view of the pronouncement of the Judicial Committee of the Privy Council on that question, that it is a question of substantive law that is concerned in the present case and not merely a question of procedure or adjective law. The right of a party to institute a suit or to file an appeal in a particular Court must, in view of the decision of the Privy Council reported in the *Colonial Sugar Refining Co. v. Irwing* (1905) A.C. 369 be regarded as a substantive right and not merely a matter of procedure or processual law. If the right involved is not of this nature but affects only a rule of procedure, then there cannot be any doubt as to the retrospective effect of Section 46 (2) of the Government of India Act, 1935. But if, on the other hand, the right affected concerns a rule of substantive law, as I feel no doubt it does in the present case, then different considerations must prevail and the newly enacted statute cannot prima facie be presumed to be retrospective in its effect.

11. It must be stated that in the present case at the time when the suit was instituted in the lower Court, there was no doubt whatsoever that it had jurisdiction to entertain the suit and try it. It is by the coming into force of Section 46 (2) of the Government of India Act, 1935, on the 1st April, 1937, that it has become possible, for the defendants to contend that the lower Court has no jurisdiction to go on with the trial of the suit.

12. It is, argued by the petitioner's learned advocate that the suit in the present case which was properly instituted on the date the plaint was filed in the lower Court could be continued as if the Government of India Acts, 1915 and 1919 which were in force on the date of its inception still continued to be in force, especially in view of Section 38 of the Interpretation Act, 1889, and Clauses 10 and 11 of the Government of India (Adaptation of Indian Laws) Order, 1937. This is because no other provision has been made by the "Legislature or authority empowered to regulate the matter in question" for the continuance of an action like the suit in the present case which was, properly instituted in the Court below in accordance with the law in force on the date of such institution.

13. The petitioner's learned advocate does not question the rules of private international law which are relied on by the learned Advocate-General on behalf of the respondents. He argues that the question in the present case turns entirely on the interpretation of the Government of India Act, 1935 and the other

enactments and rules relied on by him which have all been dealt with in what I may with respect refer to as the exhaustive judgment, just pronounced by my learned brother. Learned Counsel argued that the jurisdiction that was admittedly vested in the lower Court On the date the suit was filed has not been taken away by legislation and that therefore it must be held that the lower Court has power to continue the trial and dispose of the suit pending there.

14. The learned Advocate-General argues that the scope of Section 292 of the Government of India Act, 1935, is not so wide as contended on behalf of the petitioner but that the expression "competent authority" occurring in this section must be construed as referring to an authority with reference to British India alone and not to any higher or different authority. He also argues that the Interpretation Act can only be applied in interpreting Acts of Parliament and not any other Acts or rules arising as the result of an Act of Parliament. According to him, Sections 292 and 293 of the Government of India Act do not affect the present case. The legal proceeding contemplated by these sections must, he argues, be directly traceable to the Act Repealed; in other words, it can only apply to legal remedies given directly by the Acts of Parliament. It can have no reference to a right or proceeding under an Act passed in pursuance of a Parliamentary statute.

15. There are no authorities directly in point. I am not satisfied that there is any warrant for construing the provisions of these statutes in such a restricted manner. I am in complete agreement with the view taken by my learned brother on the statutory provisions relating to the subject and the cases cited at the Bar and I do not therefore wish to discuss them again in my judgment.

16. I agree to the order proposed by my learned brother.