
(1913) 10 MAD CK 0021
In the Madras High Court

Kuthalidatt Narayanan Moothad and Others

APPELLANT

Vs

The Cochin Sirkar

RESPONDENT

Date of Decision : 16-10-1913

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 86

Citation : (1915) ILR (Mad) 635 : (1913) 25 MLJ 621

Hon'ble Judges : Tyabji, J

Bench : Division Bench

Judgement

Tyabji, J.—The question in this case is whether the Subordinate Judge was right in ordering the name of the 1st defendant as representing

the Rajah of Cochin to be struck off from record, He made this order because he was of opinion that Section 86 of the CPC applied and that the

Rajah of Cochin could not accordingly be sued. It is admitted that the consent of the Governor-General in Council has not been obtained and that

if the section applies the Subordinate Judge's order is correct.

2. It was argued before me however, that in this case the Rajah of Cochin was sued not as such Rajah, but as trustee of the temples referred to in

the plaint and that Section 86 applies only in cases where a Prince or Chief is sued in his capacity as such Prince or Chief. I am unable to accede

to this argument. I see nothing in Section 86 to warrant a Prince or Chief being brought on the record except on the terms referred to in Section

86. The section seems to me to be exhaustive with reference to the question when such a Prince or Chief can be brought on the record against his

wish. I see nothing to support the contention that the question whether or not a Chief or a Prince can be brought on the record depends upon the

relief sought or upon the question whether the acts alleged to constitute the cause of action are of a sovereign or of a private character. It seems to

me that Section 86 definitely lays down in what cases Municipal Courts have the power to adjudicate upon any matters whatever against such

Princes or Chiefs as are referred to in the Section It was held in the *Maharajah of Jaipur v. Lalji Subhai* ILR (1907) A.379, that the Governor

General in Council has no power to give his consent to a suit except in the three instances specifically referred to in clauses (a), (b) and (c) of the

section and that if leave is granted in cases not falling within any of the three clauses, Courts of law are required to dismiss the suit as against the

Prince or Chief.

3. As the question is of importance I think it is necessary to refer to the authorities, in order to explain rather than to support the view that I have

taken of the construction of Section 86, for the section seems to me to be clear in itself. The general rule of International law is thus stated in

Westlake on Private International Law. "" Foreign States, and those persons in them who are called sovereigns, whether their title be Emperor,

King, Grand-Duke, or any other, and whether their power in their States be absolute or limited, cannot be sued in England on their allegations

whether ex contractu, quasi ex contractu or ex delicto "" 5th Edition (1912) page 271. The apparent exceptions to that general rule, so far as the

English Courts are concerned, are stated in the same book, and in the *Sultan of Johore's* case (1894) 1 QB, 149,156. It seems to me that Section

86 of the CPC lays down the same general rule with certain exceptions specified and clearly defined in the section itself,-which exceptions are of a

legislative extension of the jurisdiction ordinarily exercised by Municipal Courts and are made to depend upon the consent of the Governor-

General in Council being previously obtained. The general rule of International law just referred to by me was lately restated in *Statham v. Statham*

and the *Gaekwar of Baroda* (1912) Probate 92. In that case the question was whether His Highness the Maharaja of Gaekwar of Baroda could

be made a party to proceedings in the Courts of England against his will; and it was laid down in the clearest terms that that course could not be

adopted. It was not alleged that the question whether or not the Gaekwar could be sued in England depended upon the nature of the cause of

action, or upon whether he was purported to be sued in his private or in his sovereign capacity and yet these contentions could have been raised

on the , facts in that case if they could have furnished any answer to the objection.

4. The case relied upon by the learned pleader who appeared for the petitioner seems to me to furnish very little assistance for the decision of the

point with which I have now to deal. The first case relied upon by him was that of Chanda Lal v. Awah Bin Umar Sultan (1896) 21 Bom. 351 in

which Mr. Justice Strachey expressed the view that it is in the power of the prince or chief to waive the provisions of Section 86 and submit himself

to the jurisdiction of the Courts of British India

5. It is not alleged that there was any waiver in the present case. But it is argued that if waiver can give jurisdiction to the Court, then it is implied

that the exceptions contained in the clauses (a), (b) and (c) to the general rule in Section 86 are not exhaustive,-in other words that the sole

exceptions to the general rule are not those specifically mentioned in Section 86 itself; and that just as waiver may be added to the exceptional

cases in which the Courts have jurisdiction over independent sovereigns, so also another exception may be made and that one such other

exception is the case when the sovereign is sued in his private capacity and not as sovereign. As I understand, however, Mr. Justice Strachey's

decision, it is to the effect that, though Section 86 provides certain exceptions to the general law that, sovereigns may not be sued, that general law

is in itself subject to the proviso that the sovereign may himself waive his right of questioning the jurisdiction of Municipal Courts. Therefore

assuming that this argument for the petitioner can have any force in the construction of the section, it can certainly have no force unless it is shown

that the alleged exception is recognised in International Law as restricting the scope of the general rule just in the same way as the exception about

waiver is recognised. But in the first place I do not think that the ruling in Chanda Lal v. Awah Bin Umar Sultan (1896) 21 Bom. 351 establishing

another exception to Section 86 so as to derogate from the section being construed as exhaustive in itself. Secondly the alleged exception is not

recognised by general International Law, It was contended before me that certain dicta in the case of the Duke of Brunswick v. The King of

Hanover (1848) 2 H. L. Cases 1 show that sovereigns may be sued in their private capacity. But the actual decision in that case was that the Court

had no jurisdiction, and I do not think that the cautious dicta on which reliance was placed can be of any assistance in view of the law as laid down

in such cases. as Nighell v. Sultan of Johore (1894) 1 Q.B. 149 and Statham v. Statham and the Gaekwar of Baroda (1912) Probate 92. The

point was expressly considered by Willard J. in the Sultan of Johore's case (1894) 1 Q.B. 149 where the effect of the Duke of Brunswick's case is

explained. For these reasons I think that this petition must be dismissed.

6. The judgments in Civil Revision Petitions Nos. 511 and 512 of 1912 will follow.

7. I do not wish to interfere with the order of the Lower Court as to costs; but here the petitioner in each case will pay one third of the

Respondent's costs.