

(1951) 11 MAD CK 0022

In the Madras High Court

Case No : O.S. Appeal No's. 67 and 84 of 1950

Ruku-ul-Mulk S. Abdul Wazid and Others

APPELLANT

Vs

R. Viswanathan and Others

RESPONDENT

Date of Decision : 01-11-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 1, Order 41 Rule 2, 11, 13, 2(9)

Citation : AIR 1953 Mad 261 : (1952) 65 LW 925 : (1953) 1 MLJ 56

Hon'ble Judges : Panchapakesa Ayyar, J;Govinda Menon, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; C.E. Padmanabhan, of Short Bawes and Co., for the Respondent

Judgement

1. These are two appeals against the judgment of our learned brother, Rajagopalan, J., in C. S. No. 214 of 1944 on the Original Side of this

Court, holding that the judgment of the Mysore High Court, consisting of Medappa C. J., and Balakrishnaiya and Mallappa JJ., operated as res

judicata in this suit regarding the movable properties mentioned therein, subject to proof of pecuniary or other interest of Medappa C. J., in a

"Mercedes" Car, belonging to the estate of the deceased Ramalinga, and proof of his having attempted, in October 1945 and the beginning of

1946, to dissuade Mr. L.S. Raju, Advocate for the plaintiffs, from appearing for the plaintiffs, Ramalinga's sons, and making strong and

unwarranted remarks against them, which two facts, if proved, would, in the opinion of our learned Brother, make Medappa C. J., so interested in

the subject-matter of the suit or in the parties to the suit as to make him disqualified to be a Judge in the matter, as he would be practically judging

his own cause and violating the principle of "audi alteram partem", and make the

trial "coram non iudice", and the judgment a nullity. Regarding the four items of immovables situated in Madras and included in C. S. No. 214 of 1944, our learned brother held that there was no question of applying the principle of "res judicata" u/s 13, C. P. C., since there was no attempt at any adjudication of the title to those (our items by the Mysore Courts, as three of them (included in the Bangalore City Suit) were specifically excluded from the decree, on objection being taken by the defendants (executors) to the inclusion of properties outside the jurisdiction of the Mysore Courts, and the fourth item had not been included in the Mysore suits at all.

2. The facts may briefly be stated. V. Ramalinga, the father of the plaintiffs, was a resident of Bangalore in Mysore State. He died at Bangalore on 18-12-1942. He had been extremely affectionate and considerate towards his wife, eldest son, Viswanathan, and other members of the family in the earlier stages and had tried to establish his eldest son, Viswanathan, in his prosperous business, he being worth over 20 lakhs of rupees and having influential connections and friends, but, it is said that he became, later on, disappointed with his eldest son's conduct and application to business, and felt himself insulted by the conduct of his wife, eldest son and other children, and so executed a will, dated 10-9-1942, some three months before his death, leaving to his wife, sons etc. only a comparatively paltry pittance and bequeathing almost his entire properties to charities claiming them all to be his self-acquired properties and therefore devisable by him by will. The properties were admittedly worth more than 20 lakhs and consisted of immovable properties situated in Bangalore cantonment, administered in those days by the British Resident in Mysore and subject to his Court, but admittedly part of Mysore State for purposes of sovereignty though appeals from the Resident's Court lay to the Privy Council till independence and retrocession, in Bangalore City, within the State of Mysore, and in Hospet, Madras City and other parts of Madras State, Ramlinga appointed three persons as executors to administer his estate after his death and conduct the charities he prescribed in the will.

Those are the defendants in C. S. No. 214 of 1944.

3. The executors obtained probate of the will from the District Judge, Civil and Military Station Bangalore Cantonment. An appeal to the

Resident's Court by the sons and daughters of Ramalinga (plaintiffs here and others), who had entered "caveat" failed. A further appeal was preferred by them to the Privy Council. Before that appeal came on for hearing before the Privy Council, the Cantonment area was retroceded to His Highness the Maharajah of Mysore. The Privy Council held, therefore, that they had no more jurisdiction to hear the appeal because Mysore had become an independent State not subject to their jurisdiction any more. An attempt was made to induce them to reconsider the matter, but they refused, by their order dated 12-12-1949, to reconsider the decision. The attempt of the plaintiffs and other members of Ramalinga's family to get the appeals taken on file by the Supreme Court of India and decided there, also failed, apparently because the Supreme Court considered that Mysore had not yet come within its jurisdiction by the relevant date. So, the Privy Council refused to deal with the appeals as it had lost its jurisdiction and the Supreme Court refused to deal with the appeals as it had "not got" jurisdiction by the relevant date. So, the plaintiffs fell between two stools and remained remediless in that matter.

4. The Executors applied also to this Court for probate with reference to the properties situated within the jurisdiction of this Court, and Chandrasekhara Aiyar J., on 17-7-1944 in O. P. No. 45 of 1944, granted probate to the executors regarding the properties situated within the jurisdiction of this Court. There was no appeal against that grant by any member of Ramalinga's family, apparently because the proceedings here were merely complementary to those instituted in the Court of the District Judge, Bangalore Cantonment, and appeals were filed in the Privy Council regarding the very same matter.

5. The plaintiffs here, the three sons of Ramalinga, contended that the properties dealt with under the will of Ramalinga were the properties of the undivided Hindu family, of which he and they were members, and, so could not be bequeathed under the will under the Hindu law applicable to the parties, which is admitted to be the same in Mysore State as well as in Madras State. They at first instituted two suits, O. S. No. 56 of 1942-1943 in the District Court, Bangalore and O. S. 60) of 1944 in the District Court, Bangalore Cantonment, for establishing their contention that the properties were joint family properties, and that the will was null and void and

not binding on them, and for directing the executors (defendants 1 to 3) to deliver possession of the properties to them and the 4th defendant, their mother, and for rendering an account to them of their dealings with the properties and the profits, etc., and for costs. The Cantonment suit, of course, comprised only the movables and immovables of Ramalinga situated within the Bangalore Cantonment limits. The Bangalore City suit comprised not only the movables and immovables situated in Mysore State, but also the movables and immovables of Ramalinga situated in Madras State with the exception of one item of immovable property.

On objection being taken by the executors-defendants that the Bangalore City Court had no jurisdiction over the movables and immovables situated in Madras State, the plaintiffs filed C. S. No. 214 of 1944 in this Court, regarding the movables and immovables situated in Madras State, for the same reliefs. These movables consist of sugar shares, Oriental Assurance Company's shares, etc., valued at 4 to 6 lakhs now, and of all four items of immovable properties (one of which has been converted into cash subsequently) worth some four lakhs. The trial of the Madras suit was deferred until the completion of the trial of the suits in Bangalore City and Bangalore Cantonment, as the same witnesses and documents would obviously be required in all the three suits. Before the Cantonment suit was ready for trial, the retrocession intervened. So, both the Cantonment and the Bangalore City suits were tried by the same Judge, Mr. Ramakrishna Iyengar, the Bangalore City suit being renumbered as O. S. No. 61A of 1947. They were disposed of by him by a single judgment, though, of course, there were separate decrees in each of these suits.

The District Judge, Mr. Ramakrishna Iyengar, accepted the plaintiff's case and decreed both the suits, on 5-12-1947, but excluded the four items of immovable properties situated in Madras State from the scope of his decree, obviously because of the rule of private international law that a Court has no jurisdiction to entertain an action for the determination of the title to or the right to the possession of any immovable property situated outside its jurisdiction (mentioned by Dicey as Rules 20 and 66 in his book, Conflict of Laws).

6. The executors-defendants in both the suits appealed to the Mysore High Court against both the decrees. The appeal against the Cantonment suit

was numbered as R. A. No. 104 and the appeal against the Bangalore City suit was numbered as R. A. No. 109 of 1947-48 on the file of the

Mysore High Court. These two appeals were consolidated, and heard, in the first instance, by a Bench of the Mysore High Court, consisting of

Balakrishnaiya and Kandaswami Pillai, JJ. Before the appeals were heard, the plaintiffs-respondents applied to the Mysore High Court, in I.A.

No. 6, for a stay of the hearing of the appeal till the disposal of the appeals to the Privy Council against the grant of the probate. That prayer was

not granted, though I.A. No. 6 itself was formally dismissed only on 15-3-1949, after the appeals before the Division Bench were heard. The

plaintiffs-respondents tiled also I.A. No. 8 to record a compromise, which had according to them, been arrived at between them and the

appellants. That application also was dismissed on 15-3-1949. On 2-4-1949, the Bench Of the Mysore High Court delivered its judgment in the

two appeals. Kandaswami Pillai J., held that the decrees of the District Judge in favour of the plaintiffs should be continued, while Balakrishnaiya

J., held that the appeals should be allowed and the two suits dismissed. Balakrishnaiya J., the senior Judge, directed, u/s 15(3) of the Mysore High

Court Act, as follows:

Since a difference of opinion is expressed by my learned colleague on material questions involved in the appeals, these appeals are referred to a

Full Bench for decision u/s 15(3) of the High Court Act.

7. A Full Bench of the Mysore High Court had, therefore, to be constituted to hear the matter in Law and on the facts. The plaintiff's strongly

objected to the Full Bench being constituted of Medappa C. J., Balakrishnaiya J., and Mahappa J., as proposed, on various grounds. Mahappa J.,

was not objected to on any specific ground carrying conviction even to the plaintiffs themselves, and, so, the objection to his sitting in the Full

Bench was eventually dropped. Balakrishnaiya J., was objected to as having already formed an opinion against the plaintiffs' contentions in the

case and delivered judgment against them in the Bench decision, and therefore unfit to sit on the Full Bench which had, to consider not merely the

law but also the very facts on which he had come to a definite conclusion against the plaintiffs but no interest or bias or partiality or misconduct was

alleged against him. Medappa C. J., was objected to on the ground that he had

beard the application for probate of Ramalinga's will when he was District Judge of Bangalore Cantonment, and had formed an opinion against the plaintiffs' contentions and overruled their contention that the will had been brought about by undue influence on Ramalinga by two enemies of theirs, converting Ramalinga's expressed original intention to bequeath at least 3/4ths of his properties to his wife and children into a decision to practically cut them off with a pittance. It was also alleged that Medappa C. J., was unfit to sit on the Full Bench, because he and his wife and children had, during the probate proceedings in the Cantonment in 1943 and subsequently, (till 1945, when the car was sold) been using the "Mercedes" car of Ramalinga's estate for going to Court, school, etc., practically as if the car belonged to him, and had thus a strong reason for favouring the executors who had allowed him the use of the car, and also because, in October 1945 and the beginning of 1946, he had attempted to dissuade Mr. L.S. Raju, the plaintiffs' Counsel, from appearing for them, and had made strong and unwarranted remarks to him against them. The plaintiffs filed I.A. No. 14 for a re-constitution of the Bench on the above grounds. That petition was dismissed, and a Full Bench was constituted of these three learned Judges alone. The attempt of the plaintiffs to move the Government of Mysore to change the constitution of the Full Bench, and to constitute another Full Bench consisting of "ad hoc" Judges, if necessary, also failed.

8. The plaintiffs next asked for an adjournment of the hearing of the appeals in I.A. No. 15, so that, they might get Sir Alladi Krishnaswami Ayyar, who was then said to be in Delhi and could not appear at the hearing, or Sri Sarat Chandra Bose who was intended to be briefed, failing Sir Alladi Krishnaswami Ayyar. Neither of these eminent Counsel had requested the Court for an adjournment. I.A. No. 15 was rejected on 20-7-49 by the learned C. J. I.A. No. 16 was then filed by the plffs. for another adjournment. All the three Judges of the Full Bench heard it. In that very application, the plaintiffs had objected at first to the presence of every one of the three Judges on the Full Bench. At the time of the hearing, they withdrew their objection to Mallappa J., being on the Full Bench, but persisted in their objections to the presence of the other two learned Judges.

The three learned Judges overruled the objections of the plaintiffs and dismissed

I.A. No. 16. Thereupon the Counsel for the plaintiffs asked for permission to withdraw from their appearance. That request also was rejected. All the same, when the two appeals were heard by the Full Bench, on 27-7-1949, the Plaintiffs and their Counsel did not participate in the hearing of the appeals. The appeals were thus virtually heard ex parte, and the judgment of the Full Bench in the appeals was delivered, by Mallappa, J. on 29-7-1949, allowing both the appeals of the executors and dismissing both the suits of the plaintiffs" the other two Judges concurred with him. The plaintiffs then filed I.A. Nos. 49, 50, 61 and 62 for reviewing the judgment of the Full Bench and for setting it aside on various grounds. All those petitions were heard by the same Full Bench and were dismissed. That marks the termination of the proceedings in Mysore State.

9. In C. S. No. 214 of 1944, the judgment of the above Full Bench was contended, by the executors" Counsel, to operate as "res judicata" and to be conclusive, u/s 13, C. P. C. regarding the properties comprised in this suit, and to preclude the contention of the plaintiffs, that they were ancestral properties, from being gone into by this Court. It is on this preliminary issue, regarding "res judicata" u/s 13, that Rajagopalan J., delivered the judgment which is in appeal before us. The plaintiffs, who seem to have succeeded more than the defendants, under the decision on this issue, have filed O. S. A. No. 84 of 1950, contending that Rajagopalan J. ought not to have restricted the scope of the enquiry into proof of bias, interest partiality, misconduct, etc., vitiating the judgment of the Full Bench regarding the movables, to actual proof of bias, partiality, etc., or probable proof thereof, but should have acted on several well-known decisions of the House of the Lords, the Privy Council, and our High Courts, that a mere suspicion of partiality, bias, or misconduct on the part of the Judge by a party would be enough, and ought to have at least allowed the plaintiffs full scope for proving every one of their allegations of partiality, bias, misconduct, pre-formed opinion, etc., against Medappa C. J., and of pre-formed opinion against Balakrishnaiya, J. O. S. A. No. 67 of 1950 has been filed by the defendants-executors and is against the exclusion of the immovable properties from the scope of "resjudicata" in Rajgopalan J."s order, and against the enquiry directed regarding the proof of interest, and bias by proof of possession of the estate "Mercedes" Car by Medappa C. J.,

and his asking the plaintiffs counsel Mr. Raju to withdraw from his appearance for the plaintiffs in the Bangalore suit and making allegations to him against the plaintiffs, it was urged that, under private international law, the contention of the plaintiffs regarding even the immovable properties could not be gone into as the finding of the Full Bench of the Mysore High Court that all the properties of Ramalinga were his self-acquired properties would be conclusive u/s 13, C. P. C., as it related to a matter directly adjudicated upon between the same parties and would not be affected by any of the exceptions and as the enquiry regarding the use of the motor car and the alleged attempt by Medappa C. J. to dissuade Mr. L.S. Raju from appearing for the plaintiffs and the allegations to him against the plaintiffs would be inexpedient and unwarranted under the rules of private inter-national law, though permissible, if alleged against a subordinate Judge, under the municipal law of a State.

10. So, these appeals raise very important questions of private International Law which require careful consideration. Before proceeding further we may state a few well-settled principles of private inter-national law. As observed by Wolff, in his Private International Law, 1945 Edition, the recognition of foreign judgments and their enforcement is an important problem arising in international intercourse by reason of the extensive foreign trade between a country and foreign countries in these days, and the judgments obtained by merchants of one country in respect of their debts and claims, in foreign Courts, and also because of world wars 1 and 2 having made millions of people migrate from their home country to other countries (like the vast migrations from Pakistan to India and "vice versa" after partition) and the migrations of the Jews, Poles, etc., from their home-lands and the need to recognise various foreign judgments got by these unfortunate persons.

As Wolff observes, it is impossible to recognise all judgments of all Courts in any country all over the world, despite its manifest advantages, as the disadvantages are equally manifest in so unrestricted a recognition. In his own words,

It is not advisable to trust every Court in the world to administer justice irreproachably. Bribery of Judges may have become so rare as to reduce this risk to a minimum; but in some countries unsatisfactory legal education,

appointment of Judges from political motives, and the influence which the state or some powerful criminal organization within the State brings to bear on the Judges are considerable obstacles to a universal recognition of judgments. Further, even where there is no danger of any kind of corruption of courts, differences between two countries in their fundamental attitude to questions of morality or public policy must often make the recognition of some individual judgments seem undesirable. Finally, general recognition might result in grave injustice where the same relationship was regarded differently by the courts of two countries", as in cases of marriage, divorce, inheritance, etc.

11. The extent to which foreign judgments will be recognised as conclusive in India has been clearly stated in Section 13, C. P. C. which runs as follows:

A foreign judgment shall be conclusive as to any matter, thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim, litigating under the same title, except--

- (a) where it has not been pronounced by a Court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of

British India in cases in which such law is applicable;

- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;

- (e) where it has been obtained by fraud;

- (f) where it sustains a claim founded on a breach of any law in force in British India.

12. Needless to say, Section 13, C. P. C. is based on well-known decisions of the House of Lords, Privy Council and other Courts in England

and abroad, and the High Courts in India. Though, after the coming into force of the Constitution of India on 26-1-1950, and the Independence of

India and the severance of India's dependence on the King of England and the Privy Council, the rulings of the Privy Council are not legally

binding on Courts in India, they are treated with very great respect, as held by the Federal Court and the Supreme Court and various High Courts

including our own, see the Bench decision in -- R. Lakshmi Narasa Reddi Vs. The Official Receiver, Sree Films Ltd., . That is why counsel on

both sides have profusely quoted from English rulings and text-books, Indian rulings being few, as India was not having this question of "foreign

judgments" frequently till she became independent-in 1947. We may add that the qualities required in Judges, and regarding a court of competent

jurisdiction and rules of natural justice, and what constitutes fraud and the effect of fraud on judgments, do not differ appreciably in English law and

the law of the Indian Republic. The Constitution of India accords the same recognition to foreign judgments as Section 13 C. P. C. does, and has

not altered the law of India in this respect. We may go further and say that even under the immemorial Hindu Law the views held regarding the

qualities required in Judges and judgments and the views about natural justice were much the same as held in Indian courts now, and judgments

were held to be null and void in cases of proved perjury, bribery and fraud and also where the party was not given an opportunity to be heard.

13. We shall now state the well-settled principles of international private law regarding the recognition of judgments and the application to Section

13 to them, and discuss the merits of the contentions in these appeals. A "foreign judgment" has been defined by the Privy Council in -- "Brijlal v.

Govindram", AIR 1947 P C 192, confirming the view expressed by Beaumont, C. J. and Weston J., in the Bench decision of the Bombay High

Court reported in -- Brijlal Ramjidas Vs. Govindram G. Seksaria, , the Privy Council decision being given on appeal. The Privy Council has said

that the expression "foreign judgment" must be understood to mean "an adjudication by a foreign Court upon the matter before it", and has added

that it would be quite impracticable to hold that a foreign judgment means a statement by a foreign Judge of the reasons for his order, since, if that

were the meaning of the judgment, Section 13, C. P. C., would not apply to an order where no reasons were given it is clear to us that the Full

Bench judgment is a foreign judgment, as mentioned in Section 13 within the definition accepted by the Privy Council. The phrase "directly

adjudicated upon between the same parties" in Section 13 also admits of little difficulty. It is clear from the Full Bench judgment that all the

properties included in C. S. No. 214 of 1944 and the properties in Mysore State, including the Bangalore Cantonment, were directly adjudicated

upon, except the four items of immovable properties included in this suit, regarding which there was no direct adjudication at all. We cannot agree

with the learned Advocate-General, who appeared for the executors-appellant in O. S. A. No. 67 of 1950, that simply because all the

properties of Ramalinga, movable and immovable, were held by the Full Bench to be the self-acquired properties of Ramalinga, and no exception

was made, there was an adjudication that these four items of immovable properties, which were not covered by the decree of the trial Court,

Bench Court or Full Bench, would be a matter directly adjudicated upon. When there was no decree at all regarding them, there cannot be any

adjudication.

Besides, Dicey, Wolff and other authorities on private international law are emphatic that a municipal Court of a country has no jurisdiction to

entertain an action for the determination of the title to or the right to the possession of immovables situated in foreign lands. The exception that

where a municipal Court has jurisdiction to entertain a suit for administering an estate or trust and the property includes moveables or immovables

situated abroad, the municipal Court may have jurisdiction to determine questions of title to the foreign immovables for purposes of the

administration, mentioned as an exception to rule 20 by Dicey, and relied on by the learned Advocate-General, will have no application to this

case for three reasons. First of all, the trial Court's decision and the decision of the Bench and the Full Bench in these cases were not in

administration suits or proceedings, but in regular suits for recovery of properties from the executors, claiming them to be ancestral properties not

devisable by Ramalinga by will. Secondly there was "no decree or adjudication" regarding "these four items", one of them not being inducted in the

suits at all, and the other three being omitted from the decree after objection taken to jurisdiction. Thirdly, the learned Advocate-General had to

confess that there was no direct decision in his favour. The decisions relied on by the learned Advocate-General, namely,--"In re Piercy (1891) 1

Ch 83; -- "In re Hoyles (1911) 1 Ch 179 and -- "In re Duke of Wellington (1948) 1 Ch 118, will not prove the point raised by the appellants in

O. S. A. No. 67 of 1950, as, though the lands in those cases were situated in Italy, Canada (Ontario) and Spain, the jurisdiction was assumed by

the Courts in England and the party submitted to their jurisdiction, and there was "no consideration or recognition of a foreign judgment and its

applicability to lands in England at "all". Besides, as already mentioned, the lands were "covered" by the decree in those cases, and were "not left

out" of the decrees, as in our case "expressly owing to want of jurisdiction". In -- "In re Ross (1930) 1 Ch 377; it has been held that the "lex loci"

(local law) or "lex situs" (law of country where the lands are situated) will govern immovables, though the law of domicile will govern movables.

That is also the view taken in India, as in all civilised countries, see -- "Khur Singh v. Achar Khasia", 49 Cal W N 754.

It follows, therefore, that Rajagopalan J.'s judgment holding that "res judicata" did not operate by virtue of the Full Bench judgment of the Mysore

High Court regarding the four immovables was right, and must be confirmed, and the appeal, O. S. A. No. 67 of 1950, dismissed, regarding that

matter. We may add that the clause ""the matter directly adjudicated upon"" in Section 13 C. P. C. is narrower than the clause ""the matter directly

and substantially in issue"" in Section 11.

14. We now come to the contention of the learned Advocate-General, in O. S. A. 67 of 1950, that Rajagopalan, J., was not justified in ordering

any enquiry regarding the motor car allegation or the alleged attempt to dissuade Mr. L.S. Raju from appearing for the plaintiffs, and the contention

of Mr. Padmanabha Mudaliar in O. S. A. No. 84 of 1950, that Rajagopalan, J., should have ignored the Full Bench judgment "in toto" regarding

the movables also, or, at least, directed a full and unrestricted enquiry into all allegations of interest, bias, partiality, misconduct, preconceived

notions, and errors in procedure, on the part of Medappa, C. J., and Balakrishnayya, J. who took part in the Full Bench. The scope of an enquiry

into a foreign judgment, for holding it not to be conclusive, has been laid down in the exceptions to Section 13, C. P. C., which will be conclusive

in the matter, as can be inferred from the judgment of the Privy Council in -- "Brijlal v. Govindram", AIR 1947 P C 192, Dicey and Wolff also

expressly say that the foreign judgment of a court of competent jurisdiction regarding movables will be conclusive unless it is vitiated by fraud, or, is

opposed to fundamental principles of natural justice, as, for example, by want of due notice to the party affected thereby, or denial of an

opportunity to a party I of presenting his case to the Court, (under which last heading the alleged attempt of Medappa, C. J., to dissuade Mr. L.S.

Raju, if proved will fall.) Dicey says that the fraud invalidating a foreign judgment may be either "fraud on the part of the party" in whose favour the

judgment is given (as by bringing the Judge to give a decision in his favour, misleading the Judge into giving a decision in his favour, by proved false

evidence, etc.), or "fraud on the part of the Court" pronouncing the judgment (as, for example, by writing a judgment before hearing the parties

and delivering that judgment after hearing the parties & pretending that it was written only after hearing the parties, or taking a bribe for delivering a

corrupt and untenable decision in favour of a party).

Dicey says:

There are two rules relating to these matters which have to be borne in mind and the joint operation of which gives rise to difficulty. First of all,

there is the rule, which is perfectly well established and well known, that a party to an action can impeach the judgment in it for fraud. Whether it is

the judgment of an English Court or of a foreign Court does not matter; using general language, that is a general proposition, "unconditional and

undisputed". Another general proposition which, speaking in equally general language, is perfectly well settled is, that when you bring an action on

a foreign judgment, you cannot go into the merits which have been tried in the foreign Court.

Relying on the ruling in -- "Abouloof v. Oppenheimer", (1882) 10 Q B D 295 and -- "Vadala v. Lawes", (1890) 25 Q B D 310, he says that in

cases of fraud bringing about a foreign judgment, the Municipal Court will have to go into the very facts which were investigated and which were in

issue in the foreign Court. Mr. Padmanabha Mudaliar, for the appellants in O. S. A. No. 34 of 1950, urged before us that the Full Bench judgment

was already prepared and was ready before the hearing before it began, and was delivered after the hearing, fraudulently pretending that it had

been prepared only after the hearing, and, so, was vitiated by fraud and should be treated as null & void & as not operating as "res judicata" even

regarding the movables. The learned Advocate General urged before us that this point was not raised before Rajagopalan, J., and, so should not

be allowed to be raised before us. We agree. The only thing urged by the

plaintiffs, even according to Mr. Padmanabha Mudaliar, in their affidavit dated 28-1-1950, before Rajagopalan, J., was the following passage in the affidavit:

One other feature which makes his judgment unacceptable is that, within 24 hours of the closing of arguments in the case I refused to appear or to be represented by counsel, he pronounces judgment on a complicated matter and accounts, requiring days of laborious study and research, thus giving room for suspicion that the judgment was a foregone conclusion, and that the Full Bench hearing was a farce. Memorials against such an unjudicial performance have been forwarded to the authorities concerned and we are awaiting their decision and action. In these circumstances, which I beg leave of Court to prove by evidence, the said Full Bench judgment is a nullity and the rights of the parties said to have been acquired thereunder are equally null and void.

It is dear to us that that passage only mentioned a preconceived opinion by the Judges, and that it has not actually covered the point of "fraud" now raised before us, which is much wider and would have been stated in that form had that been the contention relied on, especially seeing that Dicey's rule would have covered it and invalidated the judgment, Section 13(d). C. P. C., also invalidating it, as the proceedings, in which the judgment was obtained, would then be clearly opposed to natural justice. So, we cannot allow the plaintiff-appellants to raise this point before us. and reject this argument, though, we agree that fraud, if alleged and proved, will indeed, vitiate every judgment, as held by the House of Lords in -- "Castrique v. Imrie", (1870) 4 H. L. 414 and accepted by all courts and text book writers.

15. The next argument of Mr. Padmanabha Mudaliar, for the plaintiffs-appellants, was that, as per the ruling in -- "Pemberton v. Hughes", (1899)

1 Ch 781, a foreign judgment would only be recognised and acted upon in England, notwithstanding any irregularity of procedure under the local law, provided the foreign Court had jurisdiction over the subject-matter and over the persons brought before it and the proceedings did not offend against "English views of substantial justice". He urged that the clause "opposed to natural justice" in Section 13(d) would also mean "opposed to notions of justice entertained in this Court". He then relied on the rulings in --

"The King v. Sussex Justices; Ex parte McCarthy", (1924) 1 K B 256; -- "The King v. Essex Justice; Ex parte Perkins", (1927) 2 KB 475; -- "Rex v. Divine, Ex parte Walton", (1930) 143 L T 235 and -- "The King v. Salford Assessment Committee; Ex parte Ogden", (1937) 2 K B 1 and urged that, as per those rulings, justice must not only be done, but must also seem to be done, and that a mere apprehension in the minds of the parties that the decision would not be delivered by a Judge impartially, and without bias or partiality, is enough to vitiate a judgment delivered by such a Judge, especially when the party had protested before the Judge himself, as here, against his hearing the case, and that, therefore, the Full Bench judgment of the Mysore High Court would be null and void and would not operate as "res judicata" even regarding the movables, and that even proof of the alleged acts of bias, partiality, misconduct, pre-conceived notion, etc., would be unnecessary in such a case.

We cannot agree. The rulings relied on by him are all "rulings of a municipal Court" about courts subordinate to it, and simply vitiated the rulings of subordinate Courts, and "not any foreign judgments". The learned Advocate-General rightly urged that there is a distinction in this matter between vitiating the judgments of "courts subordinate to one's jurisdiction" on the grounds of suspected bias, interest etc., initiating (sic) (and vitiating) the judgments of "foreign Courts". As he urged, foreign judgments are recognised by private international law only on the principle of "comity between the nations, reciprocity, acquired rights, acquired obligations, international usage and custom" etc., and "not as fundamental rights guaranteed by any world constitution or world court", the world not having reached that stage yet. That is why, as already noticed, the Privy Council in -- "Brijlal v. Govindram", AIR 1947 P. C. 192, agreeing with the Bombay High Court, held that a foreign judgment of a competent Court, not falling within the exceptions to Section 13, C. P. C., would be conclusive, even if it gave "no reasons for the judgment", Which, of course, would be unthinkable in the case of courts subordinate to the High Court or Privy Council. That is also why the Privy Council and the Bombay High Court held in that case an Indian Court cannot go into the question of the misconduct of arbitrators appointed by a foreign Court, by allowing unauthorised persons to approach them and discuss the merits of the arbitration matter with them, to

be not vitiating the foreign judgment, as it did not go to the "jurisdiction" of the foreign Court. Needless to say, the decision would have been different if the misconduct was of arbitrators appointed by a Court subordinate to the municipal Courts, and not by a foreign Court, though in -- "Eckersley v. Mersy Docks and Harbour Board", (1894) 2 Q B 667, it was held that the rule which applies to a Judge or other person holding judicial office, namely, that he ought not to hear cases in which he might be suspected of a bias in favour of one of the parties does not apply to an arbitrator named in a contract, to whom both of the parties have agreed to refer disputes which might arise between them under it. The view of the Bombay High Court and the Privy Council in "Brijlal v. Govindram", AIR 1947 P C 192, in the case of a foreign judgment, is in favour of the executors, and precludes, in our opinion, an enquiry into mere bias, interest, etc., of the Judges in a "foreign" judgment.

16. The learned Advocate-General urged that it is "neither expedient nor proper" to apply to judgments of foreign Courts, which may be Courts of U. S. A., United Kingdom, U. S. S. R., or other powerful foreign country, in future, -(and not merely of near-by Mysore, Pudukkottai, Indore or Bikaner, now part of India), now that India has attained independence and is having ambassadors in those countries and close relations with them, and that, therefore, any principle invalidating "foreign judgments" not warranted by specific rulings or by authoritative text-book writers like Dicey and Wolff, and merely resting on an alleged bias, partiality, pre-conceived opinion, procedural irregularity, or alleged misconduct of Judges, like those raised by Mr. Padmanabha Mudaliar for the plaintiffs and not recognized by any rulings or responsible text-books writers should not be recognized, by any theory of logical extension, as that would act like a boomerang, recoils on Indian Courts and their judgments when relied on in foreign Courts to the great detriment of private international law and the worsening of relations between nations and countries. On this ground, he vigorously opposed the ""logical extension"" of the well-established principles of private international law, attempted by Rajagopalan, J., in directing an enquiry into the car episode and the attempt to dissuade Mr. L.S. Raju.

There is force in what he says so far as the car episode is concerned. The alleged

attempt to dissuade Mr. L.S. Raju for the plaintiffs, if proved, will fall within the scope of well-established rules. We are not disposed to agree with Mr. Padmanabha Mudaliar in his extreme contentions. It is well settled that a mere error in procedure in a foreign court will not affect its conclusive nature u/s 13, C. P. C., provided that error in procedure does not amount to a violation of natural justice u/s 13(d), C. P. C., as held in -- "Pemberton v. Hughes", (1899) 1 Ch. 781. If a judgment is pronounced by a foreign Court over persons within its jurisdiction and in a matter with which it "is competent to deal, it was held in that case that English Courts will never investigate the propriety of the proceedings of the foreign Court unless they offend against the English views of substantial justice. Of course, one of the rules of "substantial justice" all over the world is that a man shall not be a judge in his own cause, and that is the basis of the ruling in -- "Price v. Dewhurst", (1337) 8 Sim 279, where a judgment of a Danish Court, consisting of persons interested in the property in dispute, was held to be vitiated and was disregarded by the English Court. That is also the basis of disregarding foreign judgments where a party is not given notice of the hearing of the case, or is not allowed an opportunity of representing his case to the Court. This will all be opposed to natural justice u/s 13(d), and will make the Court, in most cases, not a Court of competent jurisdiction also, u/s 13(a), C. P. C.

17. It is, therefore, clear to us that errors in procedure, interest of slight nature (like using cars, eating Marriage dinners etc.), mere suspected bias, pungent observations of judges at hearings, a non-liberal attitude towards requests for constituting another Bench and not hearing the case themselves, and not granting adjournments for engaging eminent counsel, will all be "inadequate for vitiating" A Foreign Judgment of a competent court, as not affecting the jurisdiction or coming under any other exception mentioned in Section 13, C. P. C. The Full Bench had given its judgment regarding the movables on the merits of the case, u/s 13(b). That judgment was not founded on any incorrect view of international law, or a refusal to recognise the law of British India in cases in which such law is applicable, u/s 13(c), it being admitted before us that the Hindu law applicable to the parties and concerning the matter is the same in Mysore State as in Madras. Under the ruling of the Privy Council in -- "Nataraja

v. Subbaraya", ILR (1950) Mad. 862. where the law is the same, the judgment of the foreign Court regarding "movables", over which it has

jurisdiction, will be "conclusive" u/s 13, C. P. C., unless vitiated by one of the exceptions in Section 13, C. P. C., like being opposed to natural justice etc.

18. It. follows from the above discussion that we do not agree with the view of Rajagopalan, J., that a "logical extension" can be made of the well-

settled principles of private international law on the point, and an enquiry into the motor car incident justified in order to show that Medappa, C. J.

had so identified himself with the executors, who were alleged to have allowed him the use of the car, as to make him practically a person deciding

his own cause, he having made the plaintiffs' cause his own. It is not as if the plaintiffs had alleged that Medappa, C. J., had claimed the Mercedes

car to be "his own" and was, therefore not a person competent to decide on the title to the properties u/s 13(a). It was merely alleged that he

"used the car" for himself and his wife and children. It was not even stated whether he had used the car "free or for hire". There was "no claim" by

the plaintiffs or others on Medappa, C. J. for any dues in respect of the alleged use of the car. The car itself was alleged to have been used in

1943-45 when Medappa, C. J. was District Judge, Bangalore Cantonment, and was hearing the probate application. It was sold away in 1945 or

1946 long before Medappa, C. J., sat on this Full Bench, It is too much to say that, from these facts, Medappa, C. J., would be "coram non

judice", or had identified himself with the executors, and that his taking part in the Full Bench would be opposed to "natural justice". Nor in our

opinion, ran the contention that Medappa, C. J., and Balakrishnayya J., were disqualified to sit on the Full Bench by reason of previous

acquaintance with the matters in dispute and forming opinions regarding the matters in dispute, come within any of the exceptions to Section 13, C.

P. C. as interpreted by the Privy Council or our High Courts.

Regarding Mallappa, J., nothing was alleged before us, and "he" was the person who wrote the judgment of the Full Bench in question.

Incidentally, that will also militate against the allegation that the judgment of the Full Bench was ready before the hearing began, as it is "this Judge",

against whom nothing is alleged, who wrote the judgment, and not Medappa, C.

J., or Balakrishnaiya, J. However, we entirely agree with

Rajagopalan, J. that the matter of tile attempt to dissuade Mr. L.S. Raju from appearing for the plaintiffs, and alleged statements to him defaming

the plaintiffs, will fall within Section 13(a) and Section 13(b), C. P. C. and amount to a denial of an opportunity to a party of presenting his case to

the Court properly, and make Medappa. C. J., "coram non judice" and vitiate the Full Bench judgment, "if proved". We cannot agree with Mr.

Padmanabha Mudaliar that a "mere allegation" to that effect without enquiring into it, or proof of it, will do to vitiate the judgment. Allegations and

apprehensions will not do to vitiate a judgment (municipal or foreign) under our law. It is one thing for a Judge himself to decide not to hear a case

which the party does not want him to hear, because of alleged fears of the party that he will not get an impartial hearing and judgment; it is quite

another thing to hold a judgment to be vitiated when such a request is refused, as here. So too, it is one thing for the executors to decide not to

raise the question of "res judicata" in this suit and rely on it, but to prove, by evidence let in this suit, that the properties are the self-acquired

properties of Ramalinga and not ancestral properties; it is quite another thing to compel them not to raise and rely on "res judicata". It is obvious

that a party is entitled to rely on "res judicata", and burke a trial, if he can do so under the law, and many reasons will operate on his mind in

deciding on his course of action. What the law allows, a Court cannot disallow. So too, "a mere statement" by a party of alleged misconduct

disentitling a Judge (like Medappa. C. J.) to sit on a Full Bench, on the ground of incompetency or incongruity with natural justice, will not do. As

observed by "Jaimini", the Hindu expert on "Mimamsa" and Evidence, two thousand years ago, "mere assertion is not proof, and "repeated

assertions" cannot take the place of "proof. So, Rajagopalan J. was fully justified in holding that, even regarding the alleged attempt of Meddappa,

C. J., to dissuade Mr. L.S. Raju from appearing for the plaintiffs, and presenting their case to the Court, and thus disentitling him from sitting on the

Full Bench, "proof was necessary", and "mere allegation or assertion would not do".

19. In the end, therefore, we are of opinion that O.S.A. No. 84 of 1950 deserves to be dismissed with costs, and that O. S. A. No. 67 of 1950

deserves to be allowed in part, regarding the deletion of the enquiry ordered by Rajagopalan, J. into the "Mercedes" car incident, but has to be dismissed regarding all other findings, and we do so accordingly. The judgment of Rajagopalan, J., will be modified by deleting the enquiry into the "Mercedes" car episode, and confirmed in all other respects. In O. S. A. No. 67 of 1950, all the parties are directed to bear their own costs.