

(1954) 02 KL CK 0007
In the High Court Of Kerala
Case No : A.S. No. 42 of 1951

Travancore Forward Bank Ltd.

APPELLANT

Vs

A. Subbaraya Iyer

RESPONDENT

Date of Decision : 18-02-1954

Acts Referred:

Citation : AIR 1954 Ker 406

Hon'ble Judges : K.T. Koshi, C.J;M.S. Menon, J;G. Kumara Pillai, J

Bench : Full Bench

Advocate : K.T. Ninan, for the Appellant; N. Varadaraja Iyengar and S. Bhoothalinga Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Menon, J.—The decree concerned in this appeal is the decree of the Court of the Additional Subordinate Judge of Madura in Original Suit No. 29 of 1949 dated 24-3-1949 and the Court in which execution is sought is the Court of the District Munsiff of Vaikom. The judgment-debtor's objection to execution was allowed and hence this appeal by the decree holder.

2. The only point argued before us in this appeal which is not covered by our judgment in - "P.C. Vareed v. Gopalbai" AIR 1954 KER 358 (FB) (A), (a copy of which is appended and shall form part of this Judgment) is the contention of Mr. Ninan, learned Counsel for the Appellant, that as provisions for reciprocal service of summons obtained between the Province of Madras and the State of Travancore presence or submission was unnecessary under the rules of private international law and the decree should be held to be capable of execution in this State.

3. His argument was based on the following passage from Cheshire's Private International law (4th Edn.) p. 600:

The one doubt is whether a foreign Court possesses jurisdiction to give a judgment which will be regarded as actionable in England if, under procedural

provisions similar to those contained in the English Order xi, it serves the Defendant out of the jurisdiction. In "Re Dulles," Denning L.J. referred to - "Harris v. Taylor" 1915 2 KB 580 (B), where the Manx rules allowed service out of the jurisdiction if a tort had been committed in the Isle of Man, and expressed the following opinion.

Those rules correspond with the English rules for service out of the jurisdiction contained in R.S.C. Order 11 and I do not doubt that our Courts would recognize a judgment properly obtained in the Manx Courts for a tort committed there, whether the Defendant voluntarily submitted to the jurisdiction or not, just as we should expect the Manx Courts in a converse case to recognize a judgment obtained in our Courts against a resident in the Isle of Man on his being properly served out of our jurisdiction for a tort committed here."

It will be noticed that the learned Lord Justice limits the suggested area of reciprocal recognition. The implication of his observation certainly is that judgments of Scottish and Irish Court founded upon rules for extra-territorial service similar to those contained in Order 11 will be recognized. But will this indulgence be shown to the judgments of other Courts, whether British or not? It is submitted that the correct test is not the nationality of the Court, but the correspondence of the foreign and English rules regulating service out of the jurisdiction. Only if the circumstances in which the foreign Court has assumed jurisdiction are substantially similar to those covered by the English rule should the judgment be regarded as effective in England.

4. The contention was not advanced before the lower Court and is not even indicated in the Memorandum of Appeal. There is also no evidence to show how as a matter of fact the service of summons was effected in this case.

5. The question raised is interesting but in view of what is stated in the preceding paragraph we must decline to consider it. The appeal falls and is dismissed with costs here and in the Court below.