

Bababhat Vs. Narharbhat and ors.

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Court : Mumbai

Decided On : Apr-24-1888

Reported in : (1889)ILR13Bom221a

Judge : Birdwood and; Parsons, JJ.

Appellant : Bababhat

Respondent : Narharbhat and ors.

Judgement :

Birdwood, J.

1. The plaintiff sues as the adopted son of Chimanbhat to recover certain property in the Belgaum District. The defendant No. 1 denies the adoption and claims as heir of Chimanbhat. Defendant No, 2 supports defendant No. 1's claim. Both he and defendant No. 3 deny that they are in possession of the land. The Courts below have found that the alleged adoption is not proved, and have rejected the plaintiff's claim with costs. We think that, as regards the defendants Nos. 1 and 3, that decision must be upheld; but that, as against the defendant No. 2, the question of the plaintiff's adoption is res Judicata, as it was decided in his favour by the Huzur Divani Court of the Kurundvad State, in the Southern Maratha Country, on a remand on appeal by the Governor in Council of Bombay of a suit brought by the plaintiff against defendant No. 2 for the recovery of land in that State. An authenticated copy of the judgment relied on by the plaintiff (Exhibit No.

3) is filed in this case; and, under explanation VI of Section 13 of the Code of Civil Procedure, the production of that copy is presumptive evidence that the Court which made the judgment had competent jurisdiction. It is not indeed contended that the Huzur Divani Court would not be a Court of competent jurisdiction to try such a suit as the present relating to land within its territorial jurisdiction. It is argued, however, that the language of Section 13 itself precludes the use of this foreign judgment as conclusive evidence in this suit, inasmuch as the Huzur Divani Court is not 'a Court of jurisdiction competent to try this subsequent suit.' But if the interpretation contended for were correct, the decision of no District Court would ordinarily be res judicata in another district, 'inasmuch as the jurisdiction of each District Court is ordinarily limited to cases arising in the district itself. Such an interpretation would restrict the application of the section in a way which could not, we think, have been intended, and would deprive explanation VI of the section of all meaning. We are bound to read the explanation with the earlier part of the section so as to give it an adequate meaning; and its intention is clearly to show what presumption is to be drawn from the production of a foreign judgment relied on as res Judicata in any Court to which the Code applies' It implies, and so does Section 14, that a foreign judgment can be relied on in Courts subject to the Code. Mr. Justice Field, in his well-known work on the Law of Evidence in British India, remarks that the principle has been substantially adopted in India that the judgment of a foreign or Colonial Court, having jurisdiction over the parties and the subject-matter of the suit, cannot, when sued on, be impeached in British India on the ground that it is erroneous on the merits; the term 'Court of competent jurisdiction' in Section 13 of the Code of Civil Procedure of 1877 being wide enough to include a foreign competent Court; Field's Law of Evidence, 4th ed., page 347; see also *Kandasami Pillai v. Moidin Saib* I.L.R. 2 Mad. 337. Mr. Field, indeed, seems to be of opinion that, when the Code was amended in 1882, this principle was lost sight of, a foreign Court not being within the words in Section 13 'a Court of jurisdiction competent to try such subsequent suit.' But we cannot suppose that, in adopting this form of expression, the Legislature intended to restrict the application of the section in any way; for we cannot so construe the section as to neutralize the provision contained in explanation VI and to restrict to an inconvenient extent the application of the rule laid down in the *Duchess of*

Kingston's Case 2 Smith's L.C. 778, which, previously to the passing of the Code of 1877, (in Sections 12 and 13 of which it was embodied) had been adopted by the Courts in India, independently of the provisions of Section 2 of Act VIII of 1859, and applied in a great many cases. See *Misir Ragho Bardial v. Sheo Baksh Singh* I.L.R. 9 Cal. 439 : L.R. 9 IndAp 197 . We think that the intention of the Legislature was merely to give more definite expression to that rule, and that the words 'Court of jurisdiction competent to try such subsequent suit' mean a 'Court having concurrent jurisdiction with the Court trying the, subsequent suit, whether as regards the pecuniary limit of its jurisdiction or the subject-matter of the suit, to try it with conclusive effect.' This is the construction we are led to place on these words on a consideration of the decision of the Privy Council just referred to and of the judgment of this Court (West and Nanabhai, JJ.,) in *Bholabhai v. Adesang* I.L.L. 9 Bom. 75 . As the judgment of the Kurundvad Huzur Divani Court was one on the merits and conclusive in the Kurundvad territory, as between the plaintiff and the defendant No. 2, on the question of the plaintiff's adoption, and was not appealed against to the Governor in Council, the question as to the plaintiff's adoption decided by that judgment cannot now be litigated between the same parties in the present suit. We, therefore, reverse so much of the decrees of the Courts below as rejects the claim against the defendant No. 2 and award the claim as against him. We confirm the rest of the decree. We order the plaintiff to pay the costs of defendants Nos. 1 and 3 throughout, and the defendant No, 2 to pay his own and plaintiff's costs throughout.

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