1888 APRIL 17. APPELLATE CIVIL. 13 B. 221.

good title until the sale is set aside in due course of law—*Abul Munsoor* v. *Abdool Hamid* (1). Article 12 of sch. II of the Limitation Act would, therefore, apply to the suit if no fraud were alleged. See *Vishnu Keshav* v. *Ramchandra Bhaskar* (2). The fact that the plaintiff alleges that the sale took place in consequence of the fraud of the defendant No. 1 would make, not art. 144, but art. 95, applicable to the case. See *Parekh Ranchor* v. *Bai Vakhat* (3). Article 95 would give the plaintiff three years for his suit from the time when the fraud became known to him. It is clear that the fraud now alleged became known to him before the confirmation of the sale, for he applied to the Mamlatdar to have the sale set aside on the ground of that very fraud. The sale was nevertheless confirmed. The suit, therefore, not being brought within the period prescribed by art. 95, is barred; and it is unnecessary for us to consider the question of jurisdiction raised with reference to the provisions of cl. (*c*) of s. 4 of Act X of 1876.

We reverse the order of remand passed by the Assistant Judge, and restore the decree of the Subordinate Judge with costs.

Order reversed.

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13 B 224.

[224] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

BABABHAT (*Original Plaintiff*), *Appellant v.* NARHARBHAT AND OTHERS (*Original Defendants*), *Respondents.**

[24th April, 1888.]

Res judicata—*Foreign Court—Judgment of a Native Court—Civil Procedure Code (Act XIV of* 1882), *s.* 13, *expl. VI—Meaning of the words "a Court of jurisdiction competent to try such subsequent suit."*

The words in s. 13 of the Code of Civil Procedure (Act XIV of 1882), "a 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.

Reading expl. VI with the earlier part of s. 13, the term "Court of competent jurisdiction" includes a foreign competent Court.

The plaintiff sued as the adopted son of C. to recover certain property in British territory. The defendants disputed plaintiff's adoption. The plaintiff relied on a decree of a Native Court which he had obtained against defendant No. 2 in a suit for possession of certain other property belonging to C. and situate within the territorial jurisdiction of the Native Court. In that suit the question of plaintiff's adoption had been raised and decided in plaintiff's favour. In the present suit both the lower Courts, without attaching any weight to this decree of the Native Court, held that the plaintiff's adoption was not proved, and dismissed the suit.

Held, on second appeal, that the question of plaintiff's adoption was *res judicata* as between him and defendant No. 2, the judgment of the Native Court being one on the merits and conclusive between the parties within the territory of the Native State.

[R., 24 B. 86 (87); 35 B. 139=12 Bom. L.R. 977=8 Ind. Cas. 645; **Doubted**, 6 Bom. L.R. 98 (102).]

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* Second Appeal No. 283 of 1886.

(1) 2 C. 98. (2) 11 B. 130. (3) 11 B. 119.

1888
APRIL 24.
APPELLATE CIVIL.
13 B. 224.

SECOND appeal against the decree of E. M. Fulton, Acting District Judge of Belgaum, in appeal No. 135 of 1885.

This suit was instituted by the plaintiff as the adopted son of one Chimanbhat, deceased, to recover possession of certain lands, in the Belgaum district belonging to his adoptive father. He alleged that the defendants Nos. 1 and 2 had taken wrongful possession of the property in dispute, and had let it on lease to defendant No. 3.

The defendants contended (*inter alia*) that the plaintiff was not the adopted son of Chimanbhat.

[225] It appeared that Chimanbhat was possessed of some other property in the Native State of Kurundvad, in the Southern Maratha Country, and that to recover this property the plaintiff had filed a suit, as his adopted son, against defendant No. 2 in the Huzur Divani Court at Kurundvad. In that suit, as in the present, the plaintiff's title by adoption was contested; but the Court found his adoption proved, and passed a decree in his favour on 13th May, 1880.

The plaintiff filed a certified copy of this decree in the present suit, and relied on it in support of his title.

Both the lower Courts did not attach any weight to the decree of the Kurundvad Court, and held that the plaintiff was not the adopted son of Chimanbhat. The suit was, therefore, dismissed.

The plaintiff thereupon preferred a second appeal to the High Court.

Daji Abaji Khare, for the appellant.—The lower Courts have not given due weight to the decree of the Kurundvad Court. It is binding on defendant No. 2. He was a party to the suit in which the decree was passed. As regards the other defendants, it is strong, though not conclusive, proof of plaintiff's adoption. Section 14 of the Civil Procedure Code shows that a foreign judgment can be relied on as a bar under certain conditions.

Gokuldas Khandas Parekh, for respondent No. 1:—A foreign judgment affecting land in foreign territory cannot affect land in British territory. Defendant No. 1 was not a party to the decree of the Kurundvad Court. That Court has no jurisdiction to try the present suit. It is, therefore, not "a Court of jurisdiction competent to try the subsequent suit" within the meaning of s. 13 of the Civil Procedure Code. (Refers to Story on Conflict of Laws, s. 591, and to *Bhavanishankar Shevakram* v. *Parsadri Kalidas* (1)). The decree is, therefore, not conclusive between the parties.

Daji Abaji Khare, in reply:—Explanation VI to s. 13 of the Code shows that a foreign Court is included in the term [226] "competent Court" as used in the first paragraph of the section. All that the section requires is that the Court which decided the former suit should have concurrent jurisdiction to try the subsequent suit. The law laid down in s. 13 is based on the principles enunciated in the *Duchess of Kingstons' Case* (2). Refers to *Misir Ragho Bardial* v. *Sheo Baksh Singh* (3); *Krishna Behari Roy* v. *Bwojeshrari Chowdhranee* (4); *Bholabhai* v. *Adesang* (5); *Ranchordas* v. *Bapu Narhar* (6).

JUDGMENT.

BIRDWOOD, J.—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

(1) 6 B. 292. (2) 2 Smith's L.C. 778. (3) 9 C. 439=9 I.A. 197.
(4) 2 I.A. 283. (5) 9 B. 75. (6) 10 B. 439.

1888 APRIL 24. APPELLATE CIVIL. 13 B. 224.

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 (Ex. No. 3) is filed in this case; and, under expl. VI of s. 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 s. 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 [227] 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 expl. 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 s. 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 s. 13 of the Code of Civil Procedure of 1877 being wide enough to include a foreign competent Court; (Fields Law of Evidence, 4th ed., p. 347); see also *Kandasami Pillai* v. *Moidin Saib* (1). 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 s. 13 "a Court of jurisdiction competent to try such subsequnet 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 expl. VI and to restrict to an inconvenient extent the application of the rule laid down in the *Duchess of Kingston's Case* (2), which, previously to the passing of the Code of 1877, (in ss. 12 and 13 of which it was embodied) had been adopted by the Courts in India, independently of the provisions of s. 2 of Act VIII of 1859, and applied in a great many [228] cases. See *Misir Ragho Bardial* v. *Sheo Baksh Singh* (3). We think

(1) 2 M. 337. (2) 2 Smith's L. C. 778. (3) 9 C. 439=9 I. A. 197.

1888
APRIL 24.
APPEL-
LATE
CIVIL.
13 B. 224.

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* (1). 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 judgement 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.

Decree varied.

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13 B. 229.

[229] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

SHIVRAM (*Original Plaintiff*), *Appellant v.* SAYA (*Original Defendant*) *Respondent.** [24th April, 1888.]

Registration—Priority—Registration Act (III *of* 1877), *s.* 50, *not retrospective in its operation—Meaning of the words "duly registered" in the section—Act VIII of* 1871 *s.* 50—*Contest between instruments executed before Act III of* 1877 *which are not both optionally registrable—Vendor and purchaser—Purchaser omitting to take possession—Fraud—Estoppel.*

Section 50 of the Registration Act (III of 1877) has no retrospective effect. The words "duly registered" in that section mean duly registered under that Act, and not under any prior Act.

The section has no application to cases where the contest is between an unregistered instrument whenever executed and a registered instrument executed before the Act came into force. It applies only to cases where the registered instrument is subsequent to the Act.

A. sold certain land to B, by a sale-deed 15th July, 1871. The deed was optionally registrable, and was not registered. A. continued in possession after the date of the sale.

A. sold the same land to the plaintiff by a deed of sale dated 1st February, 1872 The deed was registered, its registration being compulsory. It was unaccompanied with possession.

In 1882, B. obtained possession of the land from A.'s sons and sold it to the defendant by a sale-deed dated 14th October, 1882. This deed was registered and accompanied with possession.

In 1883, the plaintiff sued for possession of the land in dispute, relying on his registered deed of sale of 1st February, 1872. The defendant relied on his vendor's sale-deed of the 15th July, 1871.

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* Second Appeal No. 251 of 1886.

(1) 9 B. 75.