

it, was identical with the latter Act of 1909. That being so, it seems to us that section 565 must be construed strictly and that when the Legislature says that such an order, as is there described, may be made at the time of passing sentence of transportation or imprisonment so as to provide for a certain notification after the release of the convict, it must be taken that the Court's power is limited to the cases there specifically described, and does not extend to cases where the Court, instead of passing that sentence, passes a sentence of whipping.

For these reasons we set aside the order under section 565 of the Criminal Procedure Code.

*Order set aside.*

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## APPELLATE CIVIL.

*Before Mr. Justice Chandavarkar and Mr. Justice Heaton.*

CHANMALAPA CHENBASAPA TENGINKAI (ORIGINAL PLAINTIFF),  
APPELLANT, v. ABDUL VAHAB VALAD MAHOMED HUSEN SAHEB  
KHATIB (ORIGINAL DEFENDANT), RESPONDENT.\*

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August 1.

*Limitation Act (XV of 1877), section 14—Court—Interpretation—Court in British India—Court in a Native State in India not included.*

The word "Court" as used in section 14 of the Indian Limitation Act (XV of 1877) means a Court in British India, and not a Court in a Native State of India.

APPEAL from the decision of Mr. R. G. Bhadbhade, First Class Subordinate Judge, at Dharwar.

Chanmalapa (the plaintiff) lent Rs. 10,000 to Ladsaheb and Mahomedsaheb on a hypothecation bond passed by a letter on the 30th June 1899; and the defendant Abdul Vahab passed to him a letter of security for the debt on the 21st March 1901.

The plaintiff filed a suit to recover the money against all of the three persons in the District Court of Shivmoga (Mysore

\* First Appeal No. 104 of 1909.

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State) on the 29th July 1903. The Court passed a decree in his favour; but it was reversed on appeal by the Chief Court of Mysore on the 26th August 1907, on the ground that the Mysore Court had no jurisdiction to entertain the suit as the cause of action had arisen in British India.

The plaintiff filed the present suit in the Court of the First Class Subordinate Judge at Dharwar on the 29th October 1907, to recover the amount due from the defendant. He contended in his plaint that the time occupied in the litigation in Mysore Court ought to be excluded under the provisions of section 14 of the Limitation Act.

The defendant contended *inter alia* that the claim was barred by limitation.

The Subordinate Judge held that section 14 of the Limitation Act did not apply to proceedings in a foreign Court and that the claim was therefore time-barred.

The plaintiff appealed to the High Court.

*Jayakar*, with *G. S. Mulgaonkar*, for the appellant:—

The term "Court" in the Limitation Act is not expressly restricted to a "Court having jurisdiction in British India or established by Government in British India", nor is a definition of a "foreign Court" given in the Limitation Act as in the Code of Civil Procedure, section 2 (5). "Foreign Court" is defined in the Limitation Act, section 2 (6); and foreign contracts are recognized in section 11. If the legislature had contemplated only British Courts, they would have defined the term as in the Civil Procedure Code. The word "Court" by itself would include a foreign Court, *e. g.*, see Civil Procedure Code (1882), section 13, and Field on Evidence, p. 347, 4th Edition, and *Bababhat v. Narharbhat*<sup>(1)</sup>, *Prithisingji v. Umedsingji*<sup>(2)</sup>. Also in the Evidence Act, though "Court" is not defined, it includes a foreign Court, *e. g.*, see section 41 and the following sections.

Test the question in another way by observing the position foreign Courts occupy in British India. They are recognized for a more important purpose than limitation, *viz.*, for *res*

(1) (1888) 13 Bom. 224.

(2) (1903) 6 Bom. L. R. 98.

*judicata*. Tendency of modern legislation is to regard foreign Courts more and more for the purpose of adjective law, *e. g.*, compare section 14 of the Civil Procedure Code (1908) with section 13 of the Civil Procedure Code (1882). Also for purposes of execution foreign decrees are recognized. In this case there is a treaty with the Mysore Government and a Government Notification recognizing such a right (see *Bombay Government Gazette*, 26th November 1881, part I, p. 589). Suppose, further, that the defendants had won before the Mysore Court and the plaintiff thereafter filed another suit in British India on the same cause of action the defendants could have successfully pleaded *res judicata*; if so, why should not plaintiff rely on the same proceedings for purposes of limitation.

The principle of section 14 of the Limitation Act as explained in *Mathura Singh v. Bhawani Singh*<sup>(1)</sup> applies equally to proceedings before a foreign Court. The inclusion of such proceedings under section 14 would also seem to be in conformity with the principle laid down in *Sheth Kahandas v. Dahiabhai*<sup>(2)</sup>. Cf. Mitra on Limitation, p. 724.

*Weldon*, with *A. G. Desai*, for respondent:—

The expression "Court" in section 14 of the Limitation Act means a Court in British India. The word being a "general" word the ordinary rule of construction should be applied in construing its meaning, namely, that where a general word occurs in an Act in various places where its meaning must from the context be confined to a particular meaning then that word must be taken to be used everywhere in its particular or restricted meaning unless there is clear case made out to the contrary, *Blackwood v. The Queen*<sup>(3)</sup>, *The Queen v. Blane*<sup>(4)</sup>. In the Limitation Act itself which can apply only to British India the expression occurs in over a dozen places where its meaning can only be "Court" in British India, *e. g.*, in this very section itself. Another argument in favour of this contention is based on the fact that Courts do not *ipso facto* recognise extra territorial Courts. For example, judgments and decrees of foreign Courts would not

(1) (1900) 22 All. 248, 253.

(2) (1879) 3 Bom. 182.

(3) (1882) 8 A. C. 82, 91.

(4) (1849) 13 Q. B. 709.

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be recognised in British India save for express enactments in the Codes and Acts, *e. g.*, Civil Procedure Code, 1882, sections 13 and 229 B., see also *Bababhat v. Narharbhat*<sup>(1)</sup>.

CHANDAVARKAR, J. :—The only question argued on this appeal is one of limitation, and it is whether the words “a Court of first instance” and “a Court of appeal”, in section 14 of the Indian Limitation Act, include a foreign Court, such as one in a Native State, falling within that description.

The question has arisen under the following circumstances. The appellant brought a suit and obtained a decree against the respondent in the Court of the District Judge of Shivmoga in the Native State of Mysore. On appeal to the Chief Court of that State, the decree was reversed and the suit dismissed, on the ground that the Court at Shivmoga had no jurisdiction, as the cause of action had arisen in British India.

The appellant then filed this suit in the Court of the First Class Subordinate Judge at Dharwar. The suit was on the face of it barred by limitation, but the appellant, relying on section 14 of the Limitation Act, claimed to exclude, from the period prescribed by that Act for the suit, the time during which he had been prosecuting with due diligence, the civil proceeding in the Courts in the Mysore State.

The Subordinate Judge has held that the word “Court” in that section means a Court in British India, and not a Court in a Native State.

Mr. Jayakar, appearing for the appellant, contends that, as there is no definition of the word “Court” in the Limitation Act, it must be construed in the wide sense in which it is used in that section so as to include “a foreign Court”; and he relies on the judgment of Muttuswamy Iyer, J., in *Parry and Co. v. Appasami Pillai*<sup>(2)</sup>. That judgment went up in appeal and was reversed on another ground, the appellate Court not thinking it necessary to decide the question arising under section 14 of the Limitation Act.

All legislation is primarily territorial, and a limit must be placed upon the general sense of a word used in a statute with

(1) (1889) 13 Bom. 224.

(2) (1880) 2 Mad. 407, 410.

reference to that principle of law, unless there is something in the language or object of the statute which compels the Court to interpret the word in its wide sense; *Cooke v. Charles A. Vogeler Company*<sup>(1)</sup>. As was said by this Court in *Shidlingapa v. Karisbasapa*<sup>(2)</sup>, "the words of a statute, though to be given their grammatical sense, are to be construed also with reference to the general purpose of the statute." Following that canon of construction, our Court held in *Queen-Empress v. Bapuji Dayaram*<sup>(3)</sup>, that the words "any Court", in section 258 of the Civil Procedure Code of 1882, meant only "any Civil Court."

Turning now to the Limitation Act, its preamble shows that the "Courts" to which it applies are Courts in British India, not foreign Courts. The word must be read in that restricted sense, or else the absurdity would follow that the Legislature intended to provide a "law relating to the limitation of suits, appeals, and certain applications" for Courts outside its jurisdiction. And if that is the restricted meaning of the word as used in the preamble, the same meaning must be attached to the word where it occurs in the enacting portions of the Act, unless the enactment is itself so clear and unambiguous as to show that the Legislature intended a departure from that meaning in the case of any particular section of the Act. Neither expressly nor by necessary implication has the Legislature made any such purpose apparent in the Limitation Act. The implication is rather the other way. Section 11 of the Act relates to a "suit on foreign contracts"; and Article 117 to Schedule I of the Act provides a period of limitation for a suit upon "a foreign judgment." Whenever, therefore, the Legislature intended anything relating to a foreign State to be brought in, it has provided for it by express language. It is a fair inference from it that, had the Legislature intended to include a foreign Court in the word "Court" in section 14, it would have said so.

In this connection we must examine the scheme of the Code of Civil Procedure with reference to foreign Courts, because that

(1) (1901) A. C. 102.

(2) (1887) 11 Bom. 599, 601.

(3) (1886) 10 Bom. 288.

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Act and the Limitation Act are in *pari materia*; both are laws of procedure. The Code does not define the word "Court," and that for the obvious reason that it applies primarily to the Courts on whom the Code is binding. But it defines "a foreign Court"; and wherever it intended that any section of the Code should apply to any judgment or proceeding of that Court, it has said so in distinct terms, as, for instance, in sections 13 and 44.

By section 13 of the Code, the judgment of a foreign Court is placed on the same footing as that of a Court to which the Code applies, not in all but only in some cases and for a certain purpose. That judgment is conclusive as to any matter "directly adjudicated upon" but only upon certain conditions, one of which is that it must be a judgment "given on the merits of the case." Where it is not so given, the foreign Court is not recognised by the Code as being on the same footing with Courts in British India, to which the Code applies. A judgment of a foreign Court, dismissing a suit on the ground that it has no jurisdiction to try it, is not a judgment on the merits. If a foreign Court, which has dismissed a suit for want of jurisdiction, is not equivalent to a Court to which the Code applies, so far as its judgment dismissing the suit is concerned, it follows that the Legislature did not intend the word "Court" to include a foreign Court in cases to which such judgments relate.

Again, by section 10 of the Code it is enacted that no Court shall try a suit, in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, where such suit is pending in the same or any other Court in British India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of British India established or continued by the Governor General in Council and having like jurisdiction, or before His Majesty in Council. Then there is an "explanation" added that "the pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action." There was, strictly speaking, no necessity for this explanation, because the words of the section restrict its scope in plain language to Courts which exclude a foreign Court. Therefore

the fact that it is added as an "explanation" to the section is important. Had the Legislature intended the word "Court" to mean any Court, whether British Indian or foreign, it would have called that a *proviso* or an *exception* which it has called an "*explanation*." The explanation must, therefore, be regarded as having been added *ex majore cautela*, and it throws light on the intention of the Legislature that the word "Court" should not include a "foreign Court" unless it has that meaning given to it expressly or by necessary implication in the Code.

Section 41 of the Indian Evidence Act, on which Mr. Jayakar relies in support of his argument, relates to judgments *in rem*, which are judgments of all competent Courts, including foreign, in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction. The word "competent Court" in that section includes a foreign Court, because of the well-known rule of law that such judgments are of "ubiquitous authority and universally conclusive." (Story on the Conflict of Laws Ch. XV; and Hukm Chând on *Res Judicata*, pp. 603 to 606.) This section in the Evidence Act supports the conclusion that the word "Court", occurring in a statute excludes a foreign Court, unless by express language or by necessary implication the statute includes it, or some well-known rule of law warrants the wider sense.

For these reasons, we are of opinion that the word "Court" in section 14 of the Limitation Act does not include a foreign Court. The decree must, therefore, be confirmed with costs.

*Decree confirmed.*

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