

avail himself of the benefit of s. 10A. In coming to the conclusion that we have, we do feel that we have helped the Legislature to carry out its object in putting this remedial measure on the statute book. The benefit to the agriculturist would have been largely illusory if he could not have challenged transactions antecedent to the passing of this remedial measure.

We, therefore, hold that the learned District Judge was right in holding that the plaintiff was an agriculturist. The appeal is, therefore, dismissed with costs.

*Appeal dismissed.*

M. W. P.

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APPELLATE CIVIL

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FULL BENCH

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*Before the Hon'ble Mr. M. C. Chagla, Chief Justice, Mr. Justice Gajendragadkar and Mr. Justice Dixit.*

BHAGWAN SHANKAR SURDI (ORIGINAL DECREE-HOLDER), APPELLANT  
*v.* RAJARAM BAPU VITHAL NANAJKAR (ORIGINAL JUDGMENT-DEBTOR), RESPONDENT.\*

*Civil Procedure Code (Act V of 1908), ss. 20, 13—Decree passed by foreign Court in absentem—Unforceability of decree—Subsequent events—Foreign Court ceasing to be foreign—Whether decree becomes enforceable.*

A decree passed by a foreign Court against a person who has not submitted to its jurisdiction can become enforceable by reason of a subsequent event (e. g. the foreign Court ceasing to be foreign), and *Chunilal Kasturchand v. Dundappa Damappa*,<sup>(1)</sup> to the extent that it decides this point, was rightly decided.

*Gurdyal Singh v. Raja of Faridkot*,<sup>(2)</sup> explained.

A decree passed by the Sholapur Court against a resident of Akalkot State was sought to be executed in the Akalkot Court. *Qua* the Akalkot Court the judgment of the Sholapur Court was a foreign judgment passed by a Court not of competent jurisdiction as the judgment-debtor had not submitted to its jurisdiction. The Akalkot Court, therefore, refused to execute the decree. The decree-holder appealed and whilst the appeal was pending the Sholapur Court ceased to be a foreign Court *qua* the Akalkot Court by reason of the merger of the Akalkot State with the Province of Bombay. In appeal:

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\* Second Appeal No. 271 of 1949.

<sup>(1)</sup> (1950) 52 Bom. L. R. 660.

<sup>(2)</sup> (1894) 22 Cal. 222, P. C.

1951

SHIDVIR-  
APPA  
GURUSSAT-  
APPA

*v.*

SHIVALING-  
APPA

BASALING-  
APPA

*Chagla*  
C. J.

1951

Feb. 8

1951

BHAGWAN  
SHANKAR  
v.  
RAJARAM  
BAPU

Chagla  
C. J.

Held, that the decree was not a nullity but merely there was an impediment in the way of its being executed in the Akalkot Court and that impediment having disappeared the decree which was unenforceable till that change came about became enforceable in the Akalkot Court.

SECOND APPEAL from the decision of S. P. Kapse, Esquire, District Judge, Akalkot, confirming the decree passed by S. K. Sabnis, Esquire, Nyayadhis at Akalkot.

Execution proceedings.

One Bhagwan (plaintiff) obtained an *ex parte* money decree for Rs. 1,905-13-6 in the Court of the Joint Second Class Subordinate Judge at Sholapur, on September 13, 1937, against Rajaram (defendant), who was a resident of Mangrul, a village in the Akalkot State, and who did not submit to the jurisdiction of the Sholapur Court. The decree was later transferred to the Court of the Nyayadhis of Akalkot Court, and there an application for execution was filed on June 9, 1945. The defendant opposed the application on the ground that the Sholapur Court was not a Court of competent jurisdiction to pass the decree within the meaning of s. 13 of the Civil Procedure Code. On August 23, 1947, the Nyayadhis Court upheld the objection. The District Judge of Akalkot confirmed that order on June 8, 1948.

The plaintiff appealed to the High Court. The appeal came up for hearing before a division bench consisting of Chagla C. J. and Gajendragadkar J. on January 19, 1951. In the meantime the Akalkot State had merged with the Province of Bombay and it was contended in the appeal that in view of the merger the Sholapur Court was no longer a foreign Court *qua* the Akalkot Court and, therefore, the decree had become executable by the latter Court. The division bench referred the appeal to a full bench with the following observations:

CHAGLA C. J. The appellant before us obtained a money decree in the Joint Second Class Subordinate Judge's Court at Sholapur. This decree was transferred to the Court of Nyayadhis, Akalkot. The darkhast for the execution of the decree was presented on the 9th June 1945 and it was dismissed by the District Judge at Akalkot. It is from that order that this appeal is preferred.

The judgment-debtor was a foreigner *qua* the Court at Sholapur which passed the decree, and his contention was that

as he had not submitted to the jurisdiction of that Court the Sholapur Court was not a competent Court as far as Akalkot was concerned and, therefore, the Akalkot Court could not execute a foreign judgment within the meaning of s. 13 of the Civil Procedure Code. This contention was upheld by the District Judge, Akalkot. Mr. Chitale before us controverts both the findings of the Court below.

His first contention is that inasmuch as Akalkot has now merged with the State of Bombay the judgment-debtor is no longer a foreigner *qua* the Sholapur Court and, therefore, the Sholapur Court which passed the decree was a competent Court and there is no bar against the execution of the decree under s. 13, and his second contention is that the judgment-debtor submitted to the jurisdiction of the Sholapur Court, and even though he might be a foreigner by submitting to its jurisdiction, he made the Sholapur Court a competent Court for the purpose of s. 13. In support of the first argument Mr. Chitale relied upon a judgment of a divisional bench of Mr. Justice Rajadhyaksh and Mr. Justice Shah in *Chunilal Kasturchand v. Dundappa*.<sup>(1)</sup> The facts of that case were very similar to the facts before us and the view that found acceptance with both the learned Judges was that although a Court may not be a competent Court *qua* a particular judgment-debtor, if the status of the judgment-debtor alters by subsequent events and the judgment-debtor is no longer a foreigner *qua* that Court, the decree of that Court can be executed. It appears on a perusal of both the judgments that emphasis was laid on the fact that the Court that passed the decree had jurisdiction as judged by municipal law. In this case also it is not disputed that the Sholapur Court had jurisdiction judged by municipal law. But the difficulty which seems to present itself is this that although the Sholapur Court had jurisdiction under the municipal law, it is quite clear that under private international law it had no jurisdiction to pass a decree against a foreigner who had not submitted to the jurisdiction of that Court. It seems to be equally clear on the authorities that the decree which a Court passes against a foreigner who has not submitted to its jurisdiction is a nullity. Therefore, the question that arises is whether a decree which is a nullity can cease to be a nullity and can become executable by reason of political events supervening. On the one hand we have the view taken by the two learned Judges that the judgment-debtor had no substantive

1951

BHAGWAN  
SHANKAR  
v.  
RAJARAM  
BAPU  
Chagla  
C. J.

<sup>(1)</sup> (1950) 52 Bom. L. R. 660.

1951

BHAGWAN  
SHANKAR

v.

RAJARAM  
BAPUChagla  
C. J.

right in the decree passed against him being a nullity and that right could be taken away by reason of subsequent events. On the other hand it is suggested that no event that subsequently transpires can possibly affect the nature of a decree which must be determined at the date when it was passed. If a decree is a nullity, it must continue to remain a nullity, whatever may subsequently happen. It is also suggested that the right given to a person to ignore the summons of a foreign Court would become entirely illusory if after exercising that option and refusing to submit to the foreign Court he finds himself bound by a decree passed by that Court by reason of political changes in his country or in the country in which the foreign Court was situated. Mr. Gokhale suggests that the judgment to which we have just referred deserves reconsideration.

Therefore we will refer to the full bench the following question :

"Whether a decree passed by a foreign Court against a person who has not submitted to its jurisdiction can ever become enforceable by reason of any subsequent event; and whether *Chunilal Kasturchand v. Dundappa*,<sup>(1)</sup> to the extent that it decides this point, was rightly decided."

The second question raised by Mr. Chitale as to whether the judgment-debtor submitted to the jurisdiction of the Sholapur Court need not be considered by the full bench. If the bench approves of the view taken by Mr. Justice Rajadhyaksha and Mr. Justice Shah, then Mr. Chitale is entitled to succeed. If, on the other hand, the full bench reverses the decision, then the second point will have to be considered and the appeal will come back to us for determination of that issue.

The reference was heard on February 8, 1951, by a full bench consisting of Chagla C. J., Gajendragadkar and Dixit JJ.

M. G. Chitale, for the appellant.

B. N. Gokhale, for the respondent.

M. G. Chitale. The decree under execution is not absolute nullity. It is a good decree so far as the Court which pronounced it is concerned. The competency of the Sholapur Court has to be determined according to the municipal law which is contained in s. 20 of the Code of Civil Procedure, 1908. That Court had jurisdiction to pass the decree as the cause of action arose within its limits, See *Gurdyal Singh v. Raja of Faridkot*.<sup>(2)</sup>

<sup>(1)</sup> (1950) 52 Bom. L. R. 660.

<sup>(2)</sup> (1894) L. R. 21 I. A. 171 at p. 185.

See also *Girdhar Damodar v. Kassigar Hiragar*,<sup>(1)</sup> *Rambhat v. Shankar Baswant*,<sup>(2)</sup> and *Gaekwar Baroda State Railway v. Habib Ullah*.<sup>(3)</sup>

The Sholapur Court having jurisdiction *qua* itself to pass the decree, the next question is can the Akalkot Court say that the decree is a nullity *qua* itself after it has ceased to be a foreign Court? My submission is that it cannot do so because there is nothing inherently wrong with the decree. The decree was validly passed but merely there was an impediment in the way of its execution in foreign territory. As soon as the territory ceases to be a foreign territory as a result of the merger, the impediment is removed and the decree becomes executable.

[Dixit J. The decree was not executable when the darkhast was filed in the Akalkot Court. Why should the judgment-debtor lose his right of opposing the execution because of the subsequent merger?]

Once it is agreed that the decree was not an absolute nullity but that there was only an impediment in the way of its execution, the liability of the judgment-debtor arises as soon as that impediment disappears. If the judgment-debtor had come to Sholapur even before the merger, he could have been arrested in execution of the decree. So also if he had any property there, that could have been proceeded against. The judgment-debtor was immune only in a foreign territory and that immunity goes as soon as the territory ceases to be foreign.

*B. N. Gokhale.* My submission is that the decree was absolute nullity at its inception. Internationally speaking it had no existence and the Akalkot Court was justified in not giving effect to it. Subsequent events could not change the nature of the decree and it remained unenforceable at all times by all the foreign Courts. The Akalkot Court refused to execute it not because of any impediment to its execution but because it was a nullity. The fact of merger would not change the character of the decree.

[*Gajendragadkar J.* The judgment-debtor had only a procedural right to oppose execution of the decree in a foreign territory. That right was taken away by the merger.]

I submit that the judgment-debtor had a vested right of disobeying the decree and the merger cannot take away that right. It does not merely bring about a change in the status of the judgment-debtor, as is suggested in *Chunilal Kasturchand v. Dundappa Damappa*.<sup>(4)</sup>

<sup>(1)</sup> (1893) 17 Bom. 662.

<sup>(2)</sup> (1933) 56 All. 828.

<sup>(3)</sup> (1901) 25 Bom. 528.

<sup>(4)</sup> [1950] Bom. 640.

1951

BHAGWAN  
SHANKAR

v.

RAJARAM  
BAPU

Chagla  
C. J.

1951  
 BHAGWAN  
 SHANKAR  
 v.  
 RAJARAM  
 BAPU  
 Chagla  
 C. J.

[Chagla C. J. Can the Akalkot Court refuse to recognise the decree even after it has ceased to be a foreign Court?]

*Qua* that Court the decree was a nullity at the start and it continues to be so for all the time to come. As it had no international validity, the Akalkot Court could refuse to take its cognisance even after the merger.

The next point is that the municipal law of a State cannot make exception to the private international law. See *Cheshire on Private International Law* (3rd ed.) at p. 143. If that argument were accepted even the Sholapur Court would have jurisdiction to pass the decree.

[Chagla C. J. It is too late to advance that argument.]

*M. G. Chitale*, was not called upon in reply.

CHAGLA C. J. The question referred to this full bench is whether a decree passed by a foreign Court against a person who has not submitted to its jurisdiction can ever become enforceable by reason of any subsequent event, and whether *Chunilal Kasturchand v. Dundappa*,<sup>(1)</sup> to the extent that it decides this point, was rightly decided. The facts material for the decision of that question are set out in the referring judgment and it is not necessary to repeat them. We have heard well considered arguments advanced both by Mr. Chitale and by Mr. Gokhale and after carefully considering them we are of the opinion that *Chunilal Kasturchand v. Dundappa*<sup>(1)</sup> was rightly decided, and we will briefly indicate why we have come to that conclusion.

The decree which was passed in this case was passed by the Sholapur Court and it was exercising jurisdiction upon a non-resident foreigner. But the Sholapur Court had the right to exercise jurisdiction upon a non-resident foreigner because s. 20 of the Civil Procedure Code confers such jurisdiction. See section 20 (c) clearly contemplates that a Court in British India may entertain a suit against a non-resident foreigner if the cause of action has accrued within jurisdiction wholly or in part, and for the purpose of this full bench we are assuming that the suit filed by the plaintiff was properly filed, that the Sholapur Court had jurisdiction to entertain it, and that the decree passed by the Sholapur Court was a decree passed by a competent Court and the decree was a valid and binding decree. It is perfectly true

<sup>(1)</sup> (1950) 52 Bom. L. R. 660.

that ordinarily Courts all over the world exercise jurisdiction only against persons who are within their jurisdiction and whom they can reach with the arm of the law. It would be futile for a Court to assume jurisdiction when it cannot issue process against the party against whom it is seeking jurisdiction. But special laws make exceptions and one of the exceptions is to be found in s. 20 (c) where, as we said before, the Legislature has conferred upon the Courts in India the right to proceed against non-resident foreigners although they are not within reach of the processes of that Court. Therefore, we have clearly this position that the decree passed by the Sholapur Court was not a nullity. It is equally true that if the defendant, who was a citizen of Akalkot and, therefore, a foreigner *qua* the Sholapur Court, did not submit to the jurisdiction of the Sholapur Court and did not acquiesce in the jurisdiction, then the decree passed by the Sholapur Court could not be enforced when it was transferred for execution to the Akalkot Court. The true view of the matter is not that the decree was a nullity, but its enforcement or executability was limited to the Sholapur Court, and it could not be executed or enforced in a foreign territory because the defendant had not submitted to the jurisdiction of the Sholapur Court. The principle of private international law which is embodied in s. 13 (a) is that a Court will not enforce the judgment of a foreign Court if that judgment is of a Court which is not a competent Court, and for the purpose of the competency in private international law a Court is never competent when it passes a judgment against a non-resident foreigner who has not submitted to its jurisdiction. Therefore, as far as this particular decree was concerned, as the defendant, we are assuming, did not submit to the jurisdiction of the Sholapur Court, *qua* the Akalkot Court, the judgment of the Sholapur Court was a foreign judgment passed by a Court not of competent jurisdiction and, therefore, the decree could not be executed in the Akalkot Court so long as the Sholapur Court continued to be a foreign Court. But once it is conceded that the decree was not a nullity and it was valid and binding as far as the Sholapur Court was concerned, then there is no difficulty, with respect, in understanding and appreciating the judgment which we have to consider in this full bench, because if the character of the Akalkot Court changes and if the status of the defendant alters because of that fact, then the impediment which was initially there in the decree being enforced in the Akalkot Court disappears and

1951

BHAGWAN  
SHANKAR

v.

RAJARAM  
BAPUChagla  
C. J.

1951  
 BHAGWAN  
 SHANKAR  
 v.  
 RAJARAM  
 BAPU  
 Chagla  
 C. J.

the decree which was unenforceable till that change came about becomes enforceable and executable in the Akalkot Court. This is not in any way violating private international law. Private international law remains the same. But under the circumstances of the case the Sholapur Court no longer being a foreign Court *qua* the Akalkot Court, the question of private international law does not arise at all. The decree is then being executed under the municipal law and clearly under the municipal law the decree is executable as it has been passed by a Court of competent jurisdiction.

Some difficulty has been caused by reason, with great respect, of the language used by the Privy Council in *Gurdyal Singh v. Raja of Faridkot*.<sup>(1)</sup> But when one analyses the particular passage on which reliance has been placed, the position is made clear. Their Lordships of the Privy Council stated (p. 238.):

“In a personal action, to which none of these causes of jurisdiction apply, a decree pronounced *in absentem* by a Foreign Court, to the jurisdiction of which the defendant has not in any way submitted himself, is by International Law an absolute nullity.”

Emphasis is placed upon the expression used by the Privy Council, viz., that the decree is an absolute nullity. But the Privy Council goes on in the next sentence to qualify what it has said before and this is what their Lordships say (p. 238):

“He is under no obligation of any kind to obey it, and it must be regarded as a mere nullity by the Courts of every nation, except (when authorised by special local legislation) in the country of the forum by which it was pronounced.”

Therefore, the decree is not an absolute nullity. Something which is an absolute nullity can never be enforced in any part of the world under any circumstances. But the Privy Council itself contemplates that such a decree can be enforced in the forum by which it was passed provided special local legislation authorises that forum, and, therefore, in one sense the decree is a nullity in a limited sense. The other way of putting the same idea is that the decree is a valid decree, but it is not enforceable in Courts other than Courts where it was passed by reason of private international law. Therefore, once the position is made clear that the decree is not an absolute nullity, or, with respect to their Lordships, not even a nullity, but merely there is an impediment in the way of its being executed, then

<sup>(1)</sup> (1894) 22 Cal. 222.

no difficulty arises in coming to the conclusion to which, again with respect very rightly, Mr. Justice Rajadhyaksha and Mr. Justice Shah came.

Then there is one other point with which also the judgment has dealt and that is that a vested right was created in the defendant by reason of s. 13 (a) of the Code; a similar provision existed in Akalkot before merger and that vested right has been taken away and reliance is placed on s. 5 of the Merger Order. That clause, as rightly pointed out by both the Judges, only refers to vested rights which have been affected by repeal of any legislation which was in operation in the merged States. In this case, although the Civil Procedure Code of Akalkot has been repealed, s. 13 (a) has taken its place in identical terms and, therefore, whatever prejudice has been caused to the defendant has not been caused by the repeal of any legislation. The prejudice has been caused by an Act of State which altered the status of Akalkot and also altered the status of the defendant and made Akalkot Court a municipal Court and made the defendant a citizen, whereas Akalkot Court before was a foreign Court and the defendant was a foreigner.

The result, therefore, is that we answer the question in the affirmative.

*Answer accordingly.*

M. W. P.

## APPELLATE CRIMINAL

*Before Mr. Justice Rajadhyaksha and Mr. Justice Vyas.*

THE STATE *v.* AKBARALLI TAYEBALLI.\*

*Bombay Essential Commodities and Cattle (Control) Act (Bom. XXII of 1946), s. 4 (1)—Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle (Control) (Enhancement of Penalties) Act (Bom. XXXVI of 1947), ss. 2 (1), 3†—Enhancement of*

\* Criminal Appeal No. 747 of 1950.

† The sections ran as follows:  
*Enhanced penalties for contravention of orders under Act XXIV of 1946 and Bom. XXII of*

*1946.—2 (1) Notwithstanding anything contained in the Essential Supplies (Temporary Powers) Act, 1946, whoever contravenes*