Maloji Rao Narsingh Rao vs Sankar Saran And Ors. on 11 April, 1955

Equivalent citations: AIR1955ALL490, AIR 1955 ALLAHABAD 490

JUDGMENT

Brij Mohan Lall, J.

1. On 15-5-1947 Brigadier-General Raj-Rajendra Sardar Maloji Rao Narsingh Rao Shitole instituted a suit in the Court of the District Judge of Gwalior for the recovery of a sum of Rs. 6,92,236-15-0, It was alleged that the late Munshi Iswar Saran of Allahabad had been his agent for a certain purpose and had died without rendering account. His three sons were impleaded as defendants and a decree for the above sum was sought against them. Summonses were served on the defendants on 18-11-1947, but none of them put in appearance in the Gwalior court. An 'ex parte' decree was passed against them on 18-11-1948.

2. On 14-9-1951 the District Judge of Gwalior transferred the decree to the District Judge of Allahabad for execution. On 16-10-1951 an execution application was presented in the court of the Civil Judge at Allahabad for the recovery of a sum of Rs. 8,98,257-7-0 by attachment and sale of certain items of immoveable property situate at Allahabad.

3. The defendants filed an objection on 8-2-1952 in the court of the Civil Judge at Allahabad. They contended that the court of the District Judge of Gwalior was a "foreign court" and its judgment was a "foreign judgment". They pleaded that they had never submitted to the jurisdiction of the District Judge of Gwalior and the said judge was therefore not competent to pass a decree against them and the decree was consequently not executable. Lastly, it was pleaded that the property sought to be attached did not form part of the assets of the late Munshi Iswar Saran.

4. With the consent of the parties, the execution case, including the objection filed 'by the judgment-debtors, was transferred to this Court under Section 24, Civil P. C.

5. The following issues were framed:

1. Whether the court of the District Judge of Gwalior was a foreign court

(a) on the date of the institution of the suit, or

(b) on the date of the decree.

2. If the aforesaid court is held to be a foreign court, did the defendants submit to the jurisdiction of that court? If not, is the decree binding on them?

3. Whether the decree passed by the District Judge of Gwalior on 18-11-1948 is executable in Uttar Pradesh?

4. Whether the properties sought to be attached form part of the assets of the late Munshi Iswar Saran?"

FINDINGS

6. Issue No. 1 : Section 2(6), Civil P. C. defines "foreign judgment" as the "judgment of a foreign court". This definition has remained unaltered at all material times but it is noteworthy that the meaning of the term "foreign court" which forms a component part of this definition has undergone changes from time to time. This term, i.e. "foreign court" has had no less than four different definitions from the date of the suit till now. It is, therefore, necessary to examine all these definitions.

It is true that, for the purposes of deciding this issue, the first two definitions only need be considered. But, in order to appreciate the arguments advanced by the learned counsel on either side on other issues, it will be necessary to refer to the third and the fourth definitions also. Consequently, I propose to scrutinise and examine all the four definitions.

7. The definition of the term "foreign court" is contained in Section 2(5), Civil P. C. This definition stood, on the date of the suit, as follows.

" 'foreign court' means a court situate beyond the limits or British India which has no authority in British India and is not established or continued by the Central Government or the Crown Representative."

8. In order to fully understand this definition, it is necessary to form an idea as to what British India was at that time. The definition of this term, i.e. "British India" is contained in Section 3(5) General Clauses Act (10 of 1897). For different periods the term "British India" meant different territories. For the period commencing from 1-4-1937, and ending with 14-8-1947, the term "British India" meant "All territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces."

Sections 46 and 94, Government of India Act, 1935, enumerated respectively as to what the Governors' Provinces and the Chief Commissioners' Provinces were. The. territory of Gwalior was not "included in either of the aforesaid two descriptions. The entire Gwalior state was ruled by a Maharaja, It will, therefore, follow that the court of the District Judge of Gwalior where the suit in question was instituted was a court situate beyond the limits of British India which had no authority in British India and was not established or continued by the Central Government or the Crown Representative. It was consequently a "foreign court" as the definition then stood.

9. A change was introduced in the definition of the term "foreign court" by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948, which came into force on 23-3-1948. By this Order the following definition of the term "foreign court" was substituted in place of the old definition, viz.' " 'foreign court' means a court situate beyond the limits of the Provinces which has no authority in the Provinces and is not established or continued by the Central Government."

The term "Provinces" is defined in Section 3(45), General Clauses Act (10 of 1947) and means "a Presidency, a Governor's Province, a Lieutenant Governor's Province or a Chief Commissioner's Province".

10. It has not been contended before me that Gwalior fell under any one of the aforesaid categories. A Maharaja still ruled there. It is true that an Instrument of Accession had been executed by him under Section 6, Government of India Act sometime between 3-6-1947 and 15-8-1947, but the sovereignty' still vested in the Maharaja. Later Gwalior, Indore and several other states formed, with the consent and approval of the Government of India, a union known as the Union of Madhya Bharat with the Maharaja of Gwalior as its Rajpramukh. This new Union acceded to the Government of India on 13-9-1948, i.e. before the decision of the suit.

11. The learned counsel for the parties differed as to the status of the Rajapramukh and the state of Madhya Bharat. Arguments were advanced as to whether or not Gwalior or Madhya Bharat was a sovereign state. I am, however, of the opinion that the political structure of the state of Gwalior or Madhya Bharat is irrelevant for the purposes of determining whether or not the Gwalior court was a "foreign court". This question is to be determined with reference to the definition, cited above, which was in force on the date of the decree.

Since it is nobody's case that Gwalior fell within the definition of a "Province", it is obvious that the court of the District Judge of Gwalior was a "foreign court" within the meaning of the definition (quoted above) which was in force on the date of the decree.

12. The next change in the definition of the term "foreign court" was introduced on 26-1-1950 when the Constitution came into force. The President of India, acting under Article 372(2) of the Constitution, issued the Adaptation of Laws Order, 1950. As a result thereof, the following definition of "foreign court" was substituted in place of the old definition, viz.

> " 'foreign court' means a court situate beyond the limits of the States which has no authority in the States and is not established or continued by the Central Government."

The same Order amended the Code of Civil Procedure also and inserted Section 2(21) which contained the definition of "State". It ran as follows:

> " 'State' means a Part A State or a Part C State, and 'States' means all the territories for the time being comprised within Part A states and Part C States."

13. It will thus appear that Part B States were excluded from the definition of the word "State" by this amendment. Section 1(3) Civil P. C. was also amended with the result that the said Code was extended to all territories but not to the territories of Part B tates. The area comprised in Part B States is mentioned in Schedule I, Part B, Constitution of India, and includes Madhya Bharat. The result, therefore, was that notwithstanding the fact that Madhya Bharat (including Gwalior) became part of the Union of India and notwithstanding the fact that the territories thereof became part of "territory of India" as defined by Article 1(3) of the Constitution, the courts in Madhya Bharat continued to be "foreign courts". It may also be pointed out that although Article 261(3) - to be referred to in greater detail hereafter - permitted the decrees passed after 26-1-1950 by courts in, 'inter alia', Madhya Bharat to be executed "injury part of the territory of India", the definition of "foreign court" was so framed as to make the courts in Madhya Bharat foreign courts. Thus, notwithstanding the political unification of India, the courts in Madhya Bharat were not treated as domestic courts.

14. The next and the last change in the definition of the terra "foreign court" came over on 1-4-1951 when the Code of Civil Procedure (Amendment) Act (2 of 1951) came into force. By this amending Act the Code of Civil Procedure was extended to Part B States also, and the following definition of the term "foreign court" was substituted in place of the definition previously in force, viz.

> " 'foreign court' means a court situate outside India and not established or continued by the authority of the Central Government." It was then, for the first time, that the courts of Madhya Bharat ceased to be foreign courts. This completes the history of the definition of the term "foreign court". The effects of these changes will be discussed hereafter.

15. For the reasons stated above, I hold that the court of the District Judge of Gwalior was a foreign court both on the date of the institution of the suit and on the date of the decree.

16. Issue No. 2: It will be more convenient to split up this issue in two parts. For the present I propose to deal with the first part only, viz. whether the defendants submitted to the jurisdiction of the Gwalior court. The second part viz. whether the decree of the District Judge of Gwalior is binding on them, can more appropriately be discussed with the next issue.

17. The parties are agreed that the judgment-debtors objectors do not reside and none of them has ever resided in the territory of Gwalior or Madhya Bharat. It is, further, common ground between the parties that the judgment-debtors objectors do not own and have never owned any property in the aforesaid territory. There is also agreement between them on the question that the defendants objectors never put in appearance in the court of the jDistrict Judge of Gwalior. They throughout ignored that court and proceedings pending therein. In the circumstances, I have no hesitation in holding that the defendants objectors never submitted themselves to the jurisdiction of the court of the District Judge of Gwaiior.

18. Issue No. 3 and Second Part of Issue No. 2: The question that arises for decision is as to how far the judgment of a foreign court is enforceable against the objectors. Section 13(a), Civil P. C. makes

the judgment of a foreign court binding between the parties, provided, inter alia, it has been pronounced by a court of competent jurisdiction. The law on the question of competence of a court to decide cases against foreigners is contained in the Famous Privy Council case of -- 'Sirdar Gurdyal Singh v. Rajah At Faricl kote', 21 Ind App 171 (PC) (A). The rules laid down by the Privy Council in that case are that a court can exercise jurisdiction over foreigners if they reside within its juris-diction or (residing outside) submit to its jurisdiction, and if neither of these two conditions exists, the decree passed against a foreigner is an absolute nullity outside the country of the forum by which it was pronounced.

Within that country it will be a good decree if there is a special local legislation empowering the court to exercise such jurisdiction. If there is no such special local legislation, the decree will be a nullity even within the countiy in which the court passing it is situate.

19. Mr. Gopinath Kunzru, the learned counsel for the decree-holder, states that Section 18(1)(c), Gwalior (not Madhya Bharat) Civil P. C. contained a provision which conferred jurisdiction on Gwalior courts against absent foreigners. Even if it be so, the decree of a Gwalior court may be executable within the limits of that territory. But I am not called upon in this case to decide whether or not the decree in question is executable in Gwalior. The point that has arisen for decision before me is whether the said decree can be executed in the State of Uttar Pradesh. On this point the Privy Council case says beyond doubt that the decree is a nullity in this State.

20. It remains to see whether there is any other law which takes this case out of the operation of the rules laid down by the Privy Council. The first provision of law to be examined in this connection is Article 261(3) of the Constitution. It runs as follows :--

> "Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law."

The territory of India is defined, as already stated, in Article 1(3) of the Constitution. This definition came into existence when the Constitution came into force on 26-1-1950. Before that date there was no "territory of India" as understood by this definition. Therefore, the decree which was pronounced in this case before 26-1-1950 was not a decree passed by a court situate within the territory of India.

This view is supported by a decision of the Supreme Court in the case of -- 'Janardan Reddy v. The State', AIR 1951 SC 124 (B). In that case the petitioners had approached the Supreme Court with a prayer to grant them special leave to appeal under Article 136(1) of the Constitution against a judgment of the Hyderabad High Court delivered prior to 26-1-1950. This Article empowers the Supreme Court to grant such leave to appeal against any judgment, decree, determination, sentence or order in any cause or matter passed or made "by any court or tribunal in the territory of India". The Supreme Court held that the judgment of the Hyderabad High Court delivered prior to 26-1-1950 was not a judgment by a court in the territory of India. Adopting this view, it is obvious that the cases to which Article 261(3), Constitution of India will apply are the cases decided after 26-1-1950. The present case, as already stated, was decided much earlier than that date, and the

decree-holder cannot, therefore, take advantage of Article 261(3) of the Constitution.

21. The above view, about the interpretation of Article 261(3) of the Constitution, has been taken by almost every High Court in India, and all the cases to be referred hereafter, whether cited on behalf of the decree-holder or the judgment-debtors, contain a discussion of Article 261 of the Constitution and adopt the view that this Article does not apply retrospectively to decrees passed prior to the coming into force of the Constitution.

22. It is next to be seen whether Sections 43, 44 and 44A, Civil P. C. enable the decree-holder to put the decree in execution in the State of Uttar Pradesh. As already stated, the execution application was made in October 1951, i.e., after the coming into force of the Code of Civil Procedure (Amendment) Act (2 of 1951), After this amendment Section 44 relates to revenue court decrees and is, therefore, inapplicable. Section 43 provides that:

> "Any decree passed by any civil court established in any part of India to which the provisions of this Code do not extend, or by any court established or continued by the authority of the Central Government outside India, may, if it cannot be executed within the jurisdiction of the court by which it was "passed, be executed in the manner herein provided within the jurisdiction of any court in the territories to which this Code extends."

Since the Code of Civil Procedure extended on the date of the execution application to the State of Madhya Bharat, Section 43, as it stood on the date of the execution application, was also inapplicable. But Section 43, as it stood prior to the amendment brought about by Act 2 of 1951, was in the following form: Any decree passed by

(a) a civil court in a Part B State, or

(b) a civil court in any area within Part A State or within Part C State to which the provisions relating to execution do not extend or

(c) a court established or continued by the authority of the Central Government outside India, may, if it cannot be executed within the jurisdiction of the court by which it was passed, be executed in manner herein provided within the jurisdiction of any court in the States."

In view of this section, as it stood prior to the amending Act 2 of 1951, the decree-holder had a right, subject to the safeguards hereinafter mentioned, to put the decree in execution in the State of Uttar Pradesh. Since Act 2 of 1951 repealed this provision and substituted another in its place, the repeal did not take away the right which the decree-holder had acquired prior to the repeal. This right was reserved by Section 6(c), General Clauses Act. But it is to be seen what that right was. The right was that the decree-holder could make an application to any court in the State of Uttar Pradesh for execution. But, at the same time the judgment-debtors had a right to plead that the decree which was being enforced against them was list a decree of a competent court. Section 44, Evidence Act gives a right to a party to show that any judgment which is relevant or which the other party has

proved against him was delivered by a court not competent to deliver it. This right had not been taken away by Section 43, Civil P, C. A similar case was considered in -- 'Sheo Tahal Ram v-. Binaek Shukul', AIR 1931 All 689 (C). In that case a decree had been obtained by a plaintiff in the erstwhile Banaras State against a person who was a resident of Mirzapur within British India. The decree was ex parte and the defendant had not submitted to the jurisdiction of the Banaras court. It was put in execution in Mirzapur under Section 44, Civil P. C. which at that time corresponded to Section 43, as it stood prior to 1951.

It was held by a Bench of this Court that, notwithstanding the provisions of Section 44 which enabled the decree-holder to put the decree in execution the judgment-debtor had a right to plead that the court, which passed the decree was a court without jurisdiction and, if he succeeded in proving that, the decree could not be executed. The Court gave effect to the plea that the Banaras court was a foreign court and it had no jurisdiction to pass a decree against an absent foreigner when the latter had not submitted to its jurisdiction.

The same principle applies here. Therefore, one arrives at the conclusion that, although the decree-holder, by virtue of Section 43, Civil P. C., as it stood prior to the amendment of 1951, could put the decree in execution, the judgment-debtors could successfully plead that the decree sought to be executed against them was not a decree of a competent court and was therefore not executable in the State of Uttar Pradesh.

23. Reference was also made to Section 20 of the Amending Act 2 of 1951. This section repeals certain laws which were in force in Part B States. But, while repealing those laws, it preserves the right which had been acquired by any party under the laws so repealed. This section cannot be availed of by the decree-holder because the laws of Part B States which were repealed did not confer any right on the decree-holder to execute the decree in the State of Uttar Pradesh.

24. I am, therefore, of the opinion that neither Section 6(c), General Clauses Act nor Section 20, Civil P. C. (Amendment) Act (2 of 1951) is of any help to the decree-holder. Nor do Sections 43 and 44, Civil P. C. help him. It was conceded before me that Section 44A, Civil P. C. also cannot be availed of by the decree-holder because Madhya Bharat is not a "reciprocating territory".

25. On the contrary, the judgment-debtors can take advantage of Section 6(c), General Clauses Act. They can argue that the Amending Act 2 of 1951 has repealed the definition of 'foreign Court' and has substituted a new definition bringing the Gwalior court to the level of a domestic court, as distinguished from a foreign court. They can claim that under Section 6(c), General Clauses Act they retain the right which they formerly, possessed, viz., that of treating the decree passed by the Gwalior court as a nullity. This was a vested right of which they could not be deprived. The judgment-debtors had not put in appearance in the Gwalior court because they felt secure that, as the law then stood, the." decree passed by that court would be a nullity.

If it is now held that that decree has become final and binding, it will mean that they have been denied an opportunity of meeting the decree-holder's claim on merits. Obviously it could not have been the intention of law to bring about such drastic -changes and to deprive the judgment-debtors

of the valuable right of meeting the decree-holder's claim on merits. I am, therefore, of the opinion that the right to treat the decree as a nullity, which has been described in some of the cases to be discussed hereafter as an immunity from the decree, has been kept intact by virtue of Section 6(c), General Clauses Act.

26. It was next argued that Section 6(c), General Clauses Act will apply if a right has been taken away by the repeal of an Act but will not apply if it has been taken away by an Act of State. It was contended that the accession of Madhya Bharat to India and the unification of India as a re-suit of the Constitution have brought about the end of the aforesaid immunity and therefore Section 6(c), General Clauses Act will not apply. This contention is incorrect.

As has been pointed out above, the courts in Gwalior or Madhya Bharat continued to be foreign courts notwithstanding the accession of Madhya Bharat to India and notwidistanding the unificaion of India brought about by the Constitution. In spite of the unification of India and accession. of Madhya Bharat to India the court in Gwalior continued to be a foreign court and the judgment-debtors' right of immunity from the decree of the Gwalior court remained intact. It was because of the Code of Civil Procedure (Amendment) Act (2 of 1951) that the Gwalior court ceased to be a foreign court, It is, therefore, obvious that the right of treating the decree as a decree of domestic court which the decree-holder now puts forward is a right given by the repeal of an Act and not by an Act of State. This aspect of the case appears to have been overlooked in most of the rulings cited by the learned counsel for the decree-holder which shall. be discussed hereafter.

27. The learned counsel for the decree-holder cited the case of -- 'Lachmeshwar Prasad v. Keshwar Lal', AIR 1941 FC 5 (D). What was decided by their Lordships of the Federal Court in that case was that, if the law changes during the pendency of an appeal, the appellate court can take notice of the change and can mould the relief so as to conform to the amended law. But this case is no authority for the proposition that an execution court can ignore a decree passed by a trial court and can say that, in view of the altered circumstances, the decree which was a nullity on the date on which it was passed has become a valid and good decree afterwards.

28. The next case cited by the learned counsel for the decree-holder was the Full Bench case, of -- "Bhagwan Shankar v. Rajaram', AIR 1951 Bom 125 (E). It approved of an earlier Bombay decision in the case of -- "Chunnilal Kasturchand v. Dundappa Damappa', AIR 1951 Bom 190 (F). In the Full Bench case a decree was passed by a court at Sholapur in Bombay Presidency (within British India) against a resident of Akalkot (a native State). Later on Akalkot merged in the Bombay Presidency. The question that arose for decision was whether that decree could be executed within the jurisdiction of Akalkot court after merger. In that case also the judgment-debtors had not submitted themselves to the jurisdiction of the court which had passed the decree. The Full Bench of the Bombay High Court held that Section 20(c), Civil P. C. was a special local legislation within the meaning of the term as used by their Lordships of the Privy Council in the aforesaid case 21 Ind App 171 (PC) (A) that the decree, though passed against an absent foreigner by the Sholapur court, was executable within the jurisdiction of the country in which that forum was situate and that since the territorial jurisdiction of that State had been enlarged so as to include the territory of the former native State, the decree could be executed.

This case is clearly distinguishable on facts. Had the district of Allahabad merged in the state of Gwalior and had it become the territory of Gwalior, this ruling would have been applicable. This ruling is no authority for the proposition that the decree can be executed in the court which was outside the jurisdiction of the territory in which the court passing the decree was situate.

The present one is a converse case. Here the decree is sought to be executed not within the State in which the court passing the decree was situate but in a different State. Moreover, the two States still retain their separate existence. The present case is not a case of merger. Gwalior State has at no stage merged with the State of Uttar Pradesh. I am, therefore, of the opinion that this decision is clearly distinguishable and does not help the decree-holder.

29. The next case relied upon by the learned counsel for the decree-holder was a Full Bench decision of the High Court of Rajasthan in -- 'Radhey-shiam v. Firm Sawai Modi', AIR 1953 Raj 204 (G). In that case a decree had been passed by a court situate in Jaipur State against a defendant who was a resident of Dholpur State. The defendant had not submitted to the jurisdiction of the court passing the decree. The decree was passed against an absent foreigner and was therefore a nullity on the date on which it was passed. Later on both the States merged in the State of Rajasthan and became part of one State. Their Lordships expressed themselves at p. 208, second column, para. 11, as follows:

> "In our opinion, the courts at Dholpur and the courts at Jaipur arc now courts of the same State and if a decree passed by a Jaipur court is executable within the jurisdiction of the Jaipur court it cannot be held to be inexecutable at Dholpur if it is transferred by the Jaipur court to the Dholpur court for execution under the provisions of the Civil Procedure Code. Both Dholpur and Jaipur are parts of the same State and it would be absurd to regard a decree executable in one district of the State not executable in its other district."

It would, therefore, follow that the ratio of the decision was that the two different States had become part of one State, or, to put it in the language of their Lordships, different districts of the same State. Such is not the state of affairs in the present case. Here Madhya Bharat and Uttar Pradesh continue to be two different entities. This ruling is thus clearly distinguishable,

30. Another authority relied upon by the learned counsel for the decree-holder was the case of -- 'Patel Kala Bochar v. Patel Mohan Bhagwan', AIR 1953 Sau 16 (H). That case is exactly similar to the Rajasthan case just discussed. In that case the decree had been passed by a court situate in Vala State against a defendant who was a resident of Bhavnagar State. On the date of the decree the defendant was a non-resident foreigner and the decree was one which could not be executed against him outside the jurisdiction of the State whose court had passed the decree. But later on both the States had merged in the State of Saurashtra and had become different districts of the same State. For the reasons already stated, this case is also distinguishable.

31. Another case on which reliance was placed by the learned counsel for the decree-holder was that of -- 'Dominion of India v. Hiralal', AIR 1950 Cal 12 (I). In that case a decree had been passed by the

Munsif of Jamalpur on 15-5-1947. Jamalpur was a part of British India on the date on which the decree was passed. As a result of the partition of the country, Jamalpur fell within Pakistan. After 15-8-1947, the decree-holder sought to execute the decree against the judgment-debtor in Calcutta. The decree was held not excutable. The reason given by the Court was that Pakistan was not a "reciprocating territory" and since no notification had been made permitting the execution of decrees of one Dominion in the other, the decree-holder could not put the decree in execution against the judgment-debtor. Incidentally, it was remarked that the crucial date on which the status of a court is to be looked at is the date of the execution of a decree. It was held that notwithstanding the fact that the court of the Munsif of Jamalpur was a domestic court on the date on which the decree was passed it had become a foreign court on the date on which the decree was sought to be executed.

32. Before commenting on this case, it is necessary to refer to another very similar case which followed it. This latter case is reported in -- -- 'Saidul Hamid v. Federal Indian Assurance Co., Ltd., New Delhi', AIR 1951 Pun 255 (J). In this case the decree was passed by the commercial Subordinate Judge, first class, Lahore on 27-6-1947 i. e., before partition. It was sent for execution to Delhi. A learned single Judge of the Punjab High Court who decided this case followed the Calcutta case and held that, notwithstanding the fact that the court which passed the decree was a domestic court on the date of the decree, it had become a foreign court since then and, since no notification had been made under Section 44A, Civil P. C., permitting the execution of decrees of one Dominion in the other, the decree could not be executed.

33. Both these cases can be dealt with together. They are no longer good law in view of a later pronouncement of their Lordships of the Supreme Court in -- 'Kishori Lal v. Shanti Devi', AIR 1953 SC 441 (K). In that case a wife had obtained an order under Section 490, Criminal P. C. against her husband for the payment of a certain amount of maintenance to her from the court of a magistrate at Lahore. This order was obtained before the partition of the country. Their Lordships of the Supreme Court held that, even after partition, this order could be enforced. Their Lordships observed at p. 442 as follows:

> "An order which was good and competent when it was made and which was passed by a tribunal which was domestic at the date of its making and which could, at that date, have been enforced in an Indian Court, does not lose its efficacy by reason of the partition."

In view of this principle, I have no hesitation in saying that the view taken by the learned Judges who decided the Calcutta and Punjab cases is no longer good law and does not help the decree-holder.

34. Another case relied upon by the learned counsel for the decree-holder was that of -- 'Dalel Singh v. Sm. Dhan Devi', AIR 1953 Pun 24 (L), In that case the decree had been passed by the Nabha High Court and it was sought to be executed in British India. Falshaw J., who decided that case, relied on the Bombay Full Bench case of AIR 1951 Bom 125 (E). As already stated, that case was totally inapplicable because there the decree was sought to be executed within the territory of the State

whose court had passed the decree. The case before Falshaw J, was a converse case. The learned Judge remarked that the Bombay case was a "sufficient authority for the proposition that the State of affairs at the time of the execution of the decree is to be taken into consideration" (pp. 26-27).

As already stated, this principle has been negatived by their Lordships of the Supreme Court. I am, therefore, of the opinion that this case also carries no weight.

35. The next case relied upon by the learned counsel for the decree-holder was a Full Bench case of -- 'Brajmohan Bose v. Kishorilal Kishanlal' (S) AIR 1955 Madh-B 1 (M) which approved of an earlier decision of that Court reported in -- "Firm Lunaji Narayan v. Purshottam Charan', AIR 1953 Madh-B 225 (N). In the Full Bench case the decree had been passed in 1941 by a court situate at Kasganj in Uttar Pradesh against a defendant who was a resident of Gwalior State and who had not submitted to the jurisdiction of that court. The decree was transferred on 8-2-1950 to a court in Gwalior for execution and it was held executable. The learned Judges relied on the Bombay Full Bench case of AIR 1951 Bom 125 (E) which, as already stated, was a converse case and was therefore distinguishable. Again in para. 40, p. 12 of the judgment, it was held that the validity of the decree was to be determined by reference to the law in existence on the date the Court was called upon to execute the decree. This is just contrary to what the Supreme Court has held in the afore said case of AIR 1953 SC 441 (K).

Next, it was stated in para. 42 that: "When the sovereign who protected the defendant merged his territories and agreed that his subjects should be treated as subjects of the sovereign in whose territory this decree was passed, the immunity which was attached to the person by reason of the defendant being a subject of different sovereign completely disappeared."

This statement, again, is inapplicable to the facts of the present case because there has been no merger. This Full Bench case is, therefore, distinguishable.

36. The next case relied upon by the decree-holder was that of -- 'Ramdayal v. Shankarlal', AIR 1952 Hyd 80 (FB) (O). This case is also based on the case of AIR 1951 Bom 125 (E) which, as already stated, is distinguishable. The question before the Full Bench was whether the court of Special Judge, Akola, was a court established by the Hyderabad Government. The learned Judges stated on p. 84 as follows;

> "The first thing to be considered in this connection is that due to the accession of this State to the Indian Union there has been a change of status. This State (Hyderabad) is now an integral part of the Indian Union and it is no longer a foreign territory or State. Therefore the question referred to us, viz., 'whether the Special Judge's court of Akola is a foreign court, or a court of the Hyderabad State' need not be considered in detail as all the courts of this State have become courts of the Indian Union. As such, the Akola court being a part of the Indian Union the contention that it is a foreign court can no longer hold ground."

It is obvious that the learned Judges were labouring under the impression that after 26-1-1950 all courts in the Indian Union were domestic courts. This assumption, it may be pointed out with respect, is incorrect. I have pointed out above that, notwithstanding the creation of the Indian Union, courts in Part B States continued to be foreign courts till 31-3-1951. This case also is no authority for holding that the decree-holder can execute the decree in the State of Uttar Pradesh.

37. The next case cited on behalf of the decree-holder was that of -- 'Moosakutty Hajee v. Pylotu Joseph', AIR 1952 Trav-C 89 (P). It is not necessary to discuss the facts of this case because it was overruled by a Full Bench of that Court in -- 'P. C. Vareed v. Gopalbai Bahubai Patel', AIR 1954 Trav-C 358 (Q). In this Full Bench case a decree had been parsed by a court in Coimbatore in the State of Madras on 24-10-1949 against a defendant who was a resident of Cochin and who had not submitted to its jurisdiction.

It was held that after 26-1-1950 the decree could not be executed in the courts of Travancore-Cochin. This case supports the view that a decree which was a nullity on the date on which it was obtained continues to be so notwithstanding political changes and redistribution of territories.

38. Another case which supports this view is that of -- 'Firm Shah Kantilal v. Dominion of India', AIR 1954 Cal 67 (R). In that case the court of Okhamandal in the erstwhile Baroda State had passed a decree against the Dominion of India as owning the East Indian Railway. The said defendant had never submitted to its jurisdiction. After the date of the decree the State of Baroda merged with the Bombay Presidency. The decree was then sought to be executed in Calcutta. It was held that it was not excutable. In this case also the test applied was as to what was the nature of the decree on the date on which it was passed. It was held that if it was not executable as that date it could not be executed subsequently.

39. Another case which lays down the - same principle is that of -- 'Premchand v. Danmal', AIR 1954 Raj 4 (S). There a decree had been passed by a court at Kurnool, which is in Andhra State and which at that time formed part ot Madras State. The defendant was a resident of Sirohi, a State in Rajas than. In other words, he was an absent foreigner and had not submitted to the jurisdiction of the court which passed the decree. When an attempt was made to execute the decree against him in the State of Rajasthan it was held that the decree was not executable.

40. The case of -- 'Subbaraya Setty and Sons v. S. K. Palani Chetty and Sons', AIR 1952 Mys 69 (T) also lays down the same principle. In that case a decree had been passed on 28-3-1949 by a court in Coimbatore in Madras Presidency against a defendant who was a resident of Arsikere in Mysore State. He had not submitted to the jurisdiction of the Coimbatore court. It was held that the decree could not be executed, notwithstanding the fact that Mysore State had become part of the Indian Union.

41. As a result of all these authorities, I have come to the conclusion that the decree passed by the District Judge of Gwalior against the defendants-objectors on 18-11-1948 was a nullity and could not be executed in Uttar Pradesh and that the judgment-debtors had a right to question the decree on

the ground that the court passing it was not a court of competent jurisdiction. This right of the judgment-debtors had remained intact notwithstanding the facts that Gwalior and Madhya Bharat have acceded to the Indian Union, that since the coming into force of the Constitution Gwalior and Madhya Bharat have become part of the Indian Union and that courts in Gwalior have long ceased to be foreign courts.

The validity or otherwise of a decree is to be judged with reference to the date on which it was passed and if it was a nullity on that date it cannot be made a valid and executable decree by reason of subsequent events. The judgment-debtors, who never submitted to the jurisdiction of the court which passed the decree, can still treat the decree as a nullity. I hold that it cannot be executed against them.

42. Issue No, 4: Parties were not called upon to lead evidence on this issue. No finding is therefore recorded thereon,

43. As a result of the findings on issues Nos.

1, 2 and 3, the objection is allowed with costs. The execution application is dismissed.