

(1955) 09 MP CK 0005

**Madhya Pradesh High Court (Indore Bench)****Case No:** First Appeal No. 41 of 1952

Manohar Lal

APPELLANT

Vs

Raghunath

RESPONDENT

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**Date of Decision:** Sept. 16, 1955**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 13

**Citation:** AIR 1957 MP 74**Hon'ble Judges:** V.R. Nevaskar, J; S.M. Samvatsar, J**Bench:** Division Bench**Advocate:** Rege, for the Appellant; Chitale, for the Respondent**Final Decision:** Dismissed

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**Judgement**

Nevaskar, J.

Plaintiffs, who are the sons of Diwon Bahadur Chhajuramji, filed this suit on 14-3-1941 for recovery of Rs. 28,000 against the father of Appellant. No. 1 and the rest of the Appellants in the Court of District Judge Ujjain (Gwalior State) on the basis of a foreign judgment obtained by them.

2. The suit was resisted by the Defendants on various grounds and the trial Court framed issues bearing on the questions as to whether the foreign judgment sued upon was ex parte, regarding limitation, as to want of jurisdiction, regarding proceedings being opposed to natural justice and contrary to law in force in Gwalior State, as to Defendants being agriculturists and the Plaintiff having charged compound interest contrary to law and as to competency of a suit for accounts against Manoharlal Appellant No. 1.

3. The trial Court held on evidence that the judgment sued upon was not ex. parte and the claim was clearly within time. He further held that the Court which passed the judgment sued upon, had jurisdiction to do so, both because the Defendants then carried on business in Indore and also because there was submission to

Jurisdiction. It was also found by the trial Court that the judgment was obtained through proceedings which was not opposed to natural justice nor did involve refusal to recognise the law in force in Gwalior State or sustain a claim founded on breach of such law which applied to the case.

4. He held that the suit for accounts of profits of joint family property was competent against Manoharlal.

5. It was also found that no compound interest was included in the claim in suit.

6. He therefore decreed the suit.

7. The Defendants appeal to this Court and the only quest on which is seriously pressed by Mr. Rege in -this appeal is pertaining to award of Rs. 14,000 as interest. He contended that, according to the finding arrived at by the Indore Court on the basis of Commissioner's report, the predecessors interest of the Appellants had realised rents and profits of the whole house for a period between 1920 and 1930. Plaintiffs' half share out of this was Rs. 14,000 and that even computing the interest at 1 per cent, it would not amount to Rs. 14,000. The award of Rs. 14,000 as interest being clearly caused by erroneous calculation is opposed to natural justice.

8. I am unable to appreciate this line of reasoning. The suit is based on a foreign judgment. This judgment is not ex parte. The judgment thus obtained cannot be challenged on the ground of mistake. The appropriate forum where it could have been challenged on the ground of mistake was by way of review or appeal. Foreign Court cannot interfere with the foreign judgment on the ground of mistake Section 13 CPC lays down the grounds on which a foreign judgment can be assailed and mistake as to merits is not considered as one of such grounds. It cannot be said that because there is an error of calculation the proceedings in which that judgment was obtained were opposed to natural justice.

9. The Defendants had full opportunity to have their say and to get any possible mistake corrected. Assuming that there was some mistake as to merits the judgment not having been duly assailed became conclusive.

10. The contention raised by Mr. Rege, therefore, has no force.

11. Point of limitation raised too has no force. The decree was passed on 15-3-1935. The suit was filed on 18-8-1941. The Courts in Ujjain were closed from 2-3-1941 to 17-3-1941 for Holi vacation. The suit therefore filed on 18-3-1941 was rightly held to be within time, period of limitation being six years according to law of Gwalior State then in force.

12. Mr. Rege then tried to faintly argue that the Plaintiffs did not pay full Court-fees in the Indore Court which they were bound to pay in order to make the decree executable there.

13. This point has hardly any substance. The Plaintiffs had paid full Court-fees in Ujjain Court and question regarding any deficiency in payment of Court-fees of a foreign Court has hardly any relevancy.

14. No other point was pressed.

15. The appeal, therefore, has no force. It is accordingly dismissed with costs.

Samvatsar, J.

16. I agree.