

*Reasons for the Report of the Lords of the  
Judicial Committee of the Privy Council on  
the Appeal of Sri Vikrama Deo Maharaju-  
lugaru, Maharaja of Jeypore, v. Gunapuram  
Deenabandhu Patnaick and others, from an  
Order of the Governor of Fort St. George  
at Madras in Council; delivered the 19th  
December 1904.*

Present at the Hearing :

THE LORD CHANCELLOR.

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by The Lord Chancellor.*]

This is an Appeal by the Maharaja of Jeypore against the decision of the Governor of Madras in Council rejecting the claim of the Maharaja to have his suit determined under circumstances that may be shortly stated.

In the year 1892 a suit was instituted in the Court of the Agent to the Governor at Vizagapatam on behalf of the Maharaja, then a minor, for the purpose of establishing his right to resume possession of certain villages. On the 23rd March 1893 the Defendants applied to the High Court of Madras for an Order that the said suit should be removed from the Court of the Agent and transferred to some other Court, and no opposition being made to such application by the parties who represented the Plaintiff, an Order was made transferring the suit to the District Court of Vizagapatam. The suit then became Original Suit No. 4 of 1893 on the file of that Court, and on the 1st December

1893 the said Court gave judgment dismissing the suit, on the ground that no sufficient evidence had been given to establish the Plaintiff's case, and that Judgment was not appealed from. On the 29th March 1900 the High Court of Madras decided that it had no jurisdiction to order the transfer of a suit from the Court of the Governor's Agent to the District Court of Vizagapatam, and that the consent of the parties to the transfer could not cure that defect of jurisdiction. On the 27th October 1900 the Maharaja presented his plaint to the Court of the Governor's Agent against the present Respondents for the same cause of action as was alleged in the former suit, stating the grounds on which he contended that the District Judge had no jurisdiction to decide the suit, and that the decision itself was a nullity. The plaint was rejected on the 8th December 1900, apparently on the ground that the decision upon the former suit precluded any further proceeding upon the same cause of action. From this an Appeal was presented to the Governor in Council, who rejected the Appeal on the ground that it would be inexpedient, and would set a bad example and encourage a multitude of suits for the same cause of action.

Their Lordships are of opinion that the former decision of a Court adjudged by the High Court to be without jurisdiction cannot be treated as *res judicata* against the claim of the Maharaja to have his rights decided by a Court of competent jurisdiction, and that the decision of the Governor in Council, affirming the decision of the District Court, cannot be supported. The legal right to bring a suit, and to have it determined by the proper Court created for the purpose of determining such suits, cannot be barred upon the considerations of policy or expediency which are urged by the Judgment under appeal.

Their Lordships have already humbly reported to His Majesty as their opinion that the Appeal ought to be allowed and consequential directions given, but their Lordships reserved their reasons, and also the question of the costs, as to which the parties were to be at liberty to apply to their Lordships for directions.

Mr. Bonnerjee, who appears for the Appellant, now asks their Lordships to direct that the costs both here and below be costs in the cause, and their Lordships direct accordingly.

In the meantime the money deposited by the Appellant in the Privy Council Office as security for costs should be repaid to him.

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