

(1936) 02 BOM CK 0004

In the Bombay High Court

Case No : O.C.J. Appeal No. 36 of 1935 and Suit No. 1543 of 1934

Prahlad Madhoba Ruikar

APPELLANT

Vs

Aboobaker Abdul Rehman and Co.

RESPONDENT

Date of Decision : 28-02-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 1

Citation : AIR 1936 Bom 313 : (1936) 38 BOMLR 535

Hon'ble Judges : Rangnekar, J; John Beaumont, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Beaumont, Kt., C.J.—This appeal raises a short question of jurisdiction. The plaintiffs are entitled to a mortgage created by defendants Nos. 1 to 5. The mortgage is on property situate outside British India, and defendants Nos. 1 to 5 reside outside British India. But the mortgage was executed in Bombay. Under the decision of this Court in *Hatimbhai v. Framroz Dinshaw* I.L.R.(1926) 51 Bom. 516 : SC 29 Bom. L.R. 498, by which we are bound, a suit to enforce a mortgage is not a suit for land within the meaning of Clause 12 of the Letters Patent, and if that is so, it is clear that the plaintiffs are entitled to bring their suit against defendants Nos. 1 to 5, the cause of action having arisen in Bombay. Defendant No. 6, who is the present appellant, claims a charge on the property, that charge arising under a decree of a Court outside British India. His contention is that as his interest in the property arises outside British India, and the property is situate outside British India, and he resides and carries on business outside British India, the Court has no jurisdiction against him under Clause 12 of the Letters Patent. If he is right, it is obvious that no mortgage of property outside British India could be enforced in this Court, because the mortgagor would only have to create a charge in favour of somebody outside British India, and the chargee could not be brought before the Court, and unless all parties interested in the equity of redemption are before the Court, the Court cannot make a

mortgage decree. Order XXXIV, Rule 1, of the Civil Procedure Code, requires all persons interested in the equity of redemption to be before the Court. It seems to me that the true view is that where a person procures a charge on a property which is mortgaged and that mortgage is capable of being enforced in this Court, the person taking that charge: necessarily confers on the mortgagees a right of action against him, and as that right of action arises on a mortgage made within the jurisdiction of this Court, the cause of action must be taken to arise within the jurisdiction of this Court. I think, therefore, that the judgment of the learned Judge was right, and the appeal must be dismissed with costs.

Rangnekar, J.

2. The question raised in this appeal is not free from difficulty. Upon the whole, however, I have reached the conclusion that the judgment appealed from must be affirmed. This is a suit to enforce a mortgage which, under the ruling in Hatimbhai's case, which is binding on this Court, is not a suit for land, but a suit in personam to recover a debt. The appellant does not reside or carry on business in Bombay, and that being so, the only question is whether a part of the cause of action has arisen within jurisdiction. Now the plaintiffs' case is that the mortgage was executed in Bombay. Under Order XXXIV, Rule 1, of the Civil Procedure Code, all persons interested in the equity of redemption are necessary parties, and must be joined in a suit to enforce a mortgage. The plaintiffs say in their plaint that the appellant claims to have a charge on the property, and they pray that a declaration to establish their mortgage against all the defendants should be granted. On these facts it is difficult to see how a part of the cause of action has not arisen within the jurisdiction of this Court. It is not disputed that leave to sue has been granted. I think, therefore, the Court had jurisdiction to try the suit as against defendant No. (5. I agree that the appeal should be dismissed with costs.