

(1959) 11 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Miscellaneous First Appeal No. 42 of 1955

Rameshwar Lal, Ram Karan and Others

APPELLANT

Vs

Gulab Chand Puranmal

RESPONDENT

Date of Decision : 03-11-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20

Contract Act, 1872 — Section 49

Displaced Persons (Institution of Suits) Act, 1948 — Section 4

Citation : AIR 1960 Raj 243 : (1960) RLW 185

Hon'ble Judges : K.L. Bapna, J

Bench : Single Bench

Advocate : Hastimal, for the Appellant; Hukam Chand, for the Respondent

Final Decision : Allowed

Judgement

K.L. Bapna, J.—This is an appeal against an order of the learned Civil Judge, Balotra, dated 28-7-1955 directing return of the plaint.

2. The plaintiffs Ramkaran, Bhanwarlal, Ram-eshwar Lal, Ramrakh and Jasraj instituted a suit in the court of Civil Judge, Balotra, on 12-3-1951, against Gulab Chand, a resident of Kanpur, on the following allegations: The plaintiffs Nos. 1 to 4 carried on business at Karachi in the " name and style of Ramkaran Bhanwarlal. Owing to disturbances following the partition of the former Dominion of India the plaintiffs being Hindus had to close their shop at Karachi, which became part of Pakistan, and came to Balotra as displaced persons, and had been living there as such,

It was alleged that the defendant had a shop at Kanpur under the name and style of Nanagram Chauthmal. It was alleged that the plaintiff's firm at Karachi had certain dealings with the Kanpur firm, as a result whereof the plaintiffs were entitled to recover Rs. 5,147/6/6 inclusive of interest on their claim. The grounds on which the suit was instituted in the court of Civil Judge, Balotra, were:

1. That the defendant had agreed to remit the amount at Balotra;
2. That it was the duty of the debtor to find out the creditors who lived at Balotra;
3. That the plaintiffs Nos. 1 to 4 had assigned one-fourth of their claim to Jasraj at Balotra;
4. That the plaintiffs were displaced persons, and entitled to institute the suit where they were residing.

(Paras 8 and 10 of the plaint).

3. The defendant traversed the various allegations in the plaint, pleaded payment of all dues except a sum of Rs. 500/-, and denied that the Court at Balotra had jurisdiction.

4. The learned Civil Judge, after recording the evidence, found against the plaintiffs on all the grounds made out for instituting the suit at Balotra, and by order of 28-7-1955, directed return of the plaint under Order VII. Rule 10, of the CPC for presenting the same in a court of competent jurisdiction.

5. Learned counsel for the plaintiffs contended that a large number of documents had been submitted in the trial court in order to prove that the defendant had agreed to remit the amount due to " the plaintiffs at Balotra, but these were wrongly rejected. He has made an application today explaining why the originals could not be produced in the trial court. It is mentioned in the application that the copies of the documents required to be submitted had been presented along with the plaint accompanied by a list, but the originals were not submitted, because a practice had grown up in the courts of the former Jodhpur State whereby only the copies were submitted to the court, and the originals remained with the lawyer or his client for ready reference, and produced in court whenever necessary.

I find from a reported decision of this Court in Dalu Vs. Juharmal and Another, that that was a kind of practice prevalent in the former Jodhpur State nearabout the period when this suit was instituted. The Civil Rules, which required the original documents to be produced, were framed by this Court in 1952, and I hope the parties are not keeping back the original documents now. I would have remanded the case after admitting the documents, but I am of the view that the lower court had jurisdiction on another ground, which I shall mention hereafter.

6. The second ground that the debtor should find the creditors, and as the creditors were living at Balotra, that court had jurisdiction, has no force. The plaintiffs on their own showing were displaced persons, and while it may be said that the debtor was under an obligation to remit the amount to Karachi, where the plaintiffs' firm existed, the law would not require the debtor to make a search of the creditor, and then to remit the money, for aught we know the plaintiffs might have settled at any other place in India.

7. The third ground that the assignment of a part of the debt made a part of the

cause of action to arise at Balotra is also, in my opinion, untenable. My attention has been invited to a Division Bench authority to the contrary Abdul Gafoor v. Sensmal, (S) AIR 1955 Raj 53. After a careful consideration of that judgment and with great respect to the learned Judges who decided the above case, I still stick to the opinion expressed by me in Mistrimal v. Moda 1951 Raj LW 433, which is also a Division Bench case. I confess that if an assignment were to be treated as forming part of a cause of action for the purpose of giving jurisdiction, the defendant could be compelled to defend the suit at I the choice of the plaintiffs and this would cut at the basic principle underlying Section 20 C. P. C.

8. The contention that the plaintiffs were displaced persons and could institute a suit in the court having jurisdiction over the place where they had come to reside, must however be accepted. Rameshwar, one of the plaintiffs, has come in the witness box, and has stated that the plaintiffs were carrying on business at Karachi for about 15 years when the two Dominions of India and Pakistan came into being, and as a result of this division of the former Dominion of India, they had to close their business, and come to India as displaced persons in 194S, and settle at Balotra. He admitted that he was born at Balotra, and had ancestral property there. Three other witnesses were produced in support of what Rameshwar said, but only one Hemraj is important who stated that the plaintiffs carried on business at Karachi in the name of Ramkaran Bhanwarlal for about 14 years till they had to leave the place on account of the creation of Hindustan-Pakistan.

The evidence led by the defendants also proves that the plaintiffs carried on business at Karachi, and left the place on the creation of Pakistan, (vide statement of Mukandas). This witness, however, said that the plaintiffs also lived at Balotra, and had some business there, and further he produced a letter Ex. A. 1 which mentioned that while the plaintiffs had business at Karachi, they had their head office at Balotra. It is contended on behalf of the defendant that if the head office of the plaintiffs was at Balotra, they should not be said to be displaced persons. The other contention raised is that it had not been proved that every one of the four persons, i.e. plaintiffs 1 to 4, lived at Karachi, and had to leave the place because of the creation of Pakistan.

The relevant provisions of the Rajasthan Displaced Persons Ordinance, 1949, and the Displaced Persons (Institution of Suits) Act, 1948 (Act No. 47 of 1948) have been examined by me in a reported case Rameshwar and Others Vs. Jethabhai, In the present case, it stands proved that the plaintiffs carried on business at Karachi in the name and style of Ramkaran Bhanwarlal. The document Ex. A 1 also mentions this fact, and on top of the letter head are the words printed "Subject to Karachi Jurisdiction". It also mentioned the Head Office Balotra, but that is of no consequence if the plaintiffs carried on business at Karachi and wanted that every dispute relating to the business was to be settled at Karachi.

It is also proved that they had to close their business and come to India because of the creation of Pakistan. It was on account of the danger to their lives and

property, if they continued to live in Pakistan, that they had to close their business. They, therefore, were fully within the four-corners of the definition of "displaced person". It is immaterial that they had their ancestral property at Balotra, and may be visiting that place as someone would go to hill-station for a holiday. Section 4 of Act No. 47 of 1948 permits a displaced person to institute a suit in a Court within the local limits of whose jurisdiction the displaced person resides at the time of the institution of the suit. The plaintiffs lived at Balotra at the time of the institution of the suit, and, therefore, the court at Balotra had jurisdiction to entertain the suit;

9. As a result, the appeal is allowed and the order of the lower court dated 28-7-1955, is set aside. The learned Civil Judge will re-entertain the plaint, and proceed further according to law. As the plaintiffs have been led into not producing the original documents earlier owing to certain misunderstanding, they will be permitted to produce the documents in original referred to in their application to this Court. A list of these documents will be sent to that court. I will not allow to the plaintiffs costs in this Court, as they had taken a large number of pleas which have not been found to be tenable.