

(1940) 02 PAT CK 0012
In the Patna High Court

Sampat Lal and Others

APPELLANT

Vs

Kaluram Brijmohan and Others

RESPONDENT

Date of Decision : 07-02-1940

Acts Referred:

Citation : AIR 1940 Patna 444

Hon'ble Judges : Rowland, J;Chatterji, J

Bench : Full Bench

Judgement

Rowland, J.—The appellants are plaintiffs whose plaint was returned on 5th May 1939 for presentation to the proper Court on the ground that the Subordinate Judge of Saran in whose Court the suit had been instituted had no territorial jurisdiction to entertain it. The correctness of that order is the only point for consideration in the appeal. The facts leading up to the suit are that the plaintiffs along with the pro forma defendants are residents in the district of Saran carrying on cloth business in the town of Chapra and that they had transactions with the defendants first party who reside and ordinarily do business in Bombay. The plaintiffs and the defendants first party executed in 1935 a simple mortgage bond hypothecating some immovable properties in the district of Saran for the payment of debts due from them to the defendants first party. Thereafter the defendants first party brought a mortgage suit on the original side of the High Court at Bombay, obtained a preliminary decree ex parte and through their attorneys sent to the plaintiffs a notice which the latter received on 15th March 1939 intimating that the High Court at Bombay would be moved on 21st March 1939 for certain reliefs in the matter of sale of the mortgaged properties.

2. The plaintiffs filed the present suit on 17th March 1939. The prayer is for a declaration that the decree obtained at Bombay is illegal, fraudulent and a nullity and is liable to be set aside and for an order to set aside the decree. There was also a prayer for interim injunction, but that has been disallowed by the Court below and is not pressed for in this appeal.

It is contended that the Bombay High Court had no territorial jurisdiction and

therefore the decree obtained there is a nullity. The contention was based on the fact that the present plaintiffs, defendants of the mortgage suit, did not reside in Bombay, nor according to them did the cause of action wholly or in part arise in Bombay. The suit being on a mortgage should, it is said! have been instituted in the Court having territorial jurisdiction in the place where the mortgaged property is situated.

3. These matters are not sufficient to give a cause of action for a suit instituted in Chapra unless some event taking place within that district is a part of the cause of action. As for the question whether the Bombay High Court had territorial jurisdiction, that is not a matter which can be canvassed here except in a suit which the Court has jurisdiction to entertain. Therefore the point for decision here is not whether the Bombay High Court had territorial jurisdiction over the previous suit, but whether the plaintiffs have set up a cause of action entitling them to sue in Chapra; and it is argued that they have such a cause of action arising out of two matters, first, that as stated in para. 5 of their plaint the plaintiffs received a notice on 15th March 1939 from the attorneys of the first party defendants; secondly, that the decree was obtained by fraudulent suppression of summons and this must be considered to be done in Chapra because the summons if it had been duly served ought to have been served in Chapra.

4. It seems to me that the receipt of notice on 15th March 1939 from the attorneys for the defendants is no part of the cause of action for the suit at all and cannot possibly change the venue of the trial. The cause of action set up for the suit was the fraudulent obtaining of the decree and this was a matter which was done in Bombay. As for the suppression of the process, the plaint gives no particulars as to how, when or where this was done. It was, we may suppose, the duty of the Bombay High Court to cause a notice to be sent for service on the plaintiffs in Chapra. By what contrivance this duty was not fulfilled has not been at all disclosed in the plaint. Whether the fraud was committed in Bombay by not issuing any notice at all or whether the notice was made away with on the way to Chapra or whether it was suppressed through the process-serving staff in Saran district, all is in the air. It is impossible to say that the plaintiffs have in their plaint made any definite allegation which can constitute a cause of action arising in the Saran district. It may be pointed out that this is not a case in which execution has been taken out by attachment of any property or any similar overt act or issue of process within the district in which the suit is instituted. Whatever has been decided in cases of that kind may therefore be distinguished from the case before us.

5. Here, I would follow the decisions in *Umrao Singh v. Hardeo* (1907) 29 All 418; *Dua dyal v. Munna Lall* AIR (1914) All 93 and in this Court in *Benares Bank Ltd. v. Surendra Narain Singh* AIR (1924) Pat 831 and hold that the place where the plaintiffs' cause of action arose was Bombay and the Subordinate Judge was right in directing the plaint to be returned for presentation to the proper Court.

The appellant should pay the costs of the contesting respondents.

Chatterji, J.

6. I agree.