

(1928) 09 BOM CK 0020

In the Bombay High Court

Case No : O.C.J. Appeal No. 1 of 1928 and Suit No. 402 of 1927

Sir Tukojirao Holkar

APPELLANT

Vs

Sowkabei Pandharinath Rajapurkar

RESPONDENT

Date of Decision : 11-09-1928

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 3, Order 2 Rule 4, 117

Citation : (1929) 31 BOMLR 7 : (1929) ILR (Bom) 251 : 117 Ind. Cas. 424

Hon'ble Judges : Kemp, J;Fawcett, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Fawcett, J.—This appeal arises out of a suit brought by a lady in Bombay, by name Sowkabei, against the Ex-Maharaja of the State of Indore. The plaint certainly makes serious allegations against the defendant. It alleges, in brief, that she and her daughter were kept mistresses of a cousin of the defendant and were decoyed from Bombay to Indore under the orders of the defendant in 1915. The defendant is there alleged to have made an indecent proposal to the plaintiff and her daughter that the latter should stay with the defendant as his mistress. Upon their refusal, it is alleged, they were cruelly treated and imprisoned in a fort near Indore, where they were kept in confinement until 1926, i. e., for a period of about eleven years. Upon a petition to the Viceroy, they were, it is said, released and they returned to Bombay on April 30 of that year. The plaintiff further alleges that after their seizure the defendant by his agents took forcible possession of the house in which the plaintiff had been residing, and which she says is her property. It is said to have been transferred to the name of the Indore State in the Municipal records, and eventually all the furniture and various valuable articles, including a motor-car, that belonged to the plaintiff are said to have been also seized by the directions of the defendant. The house was restored to her on her return, but the furniture and other articles have not been received back. On these allegations she claims damages, first of all, for the false

imprisonment that she was subjected to, and the personal injury she suffered while under such imprisonment; secondly, damages for the trespass on her immovable property during the time that she was away in Indore; and, thirdly, the value of the articles that were wrongfully converted or misappropriated by or under the directions of the defendant. There are thus three principal causes of action alleged in the plaint. Of these, the first, viz., the false imprisonment and the personal injury suffered were committed primarily in the Indore State, according to the allegations made in the plaint; but there is a statement in the plaint that the decoying of the plaintiff and her daughter from Bombay was part of a plot which ended in their confinement, so that it is said that part of the cause of action for damages for false imprisonment arose in Bombay. The other two causes of action, viz., trespass on immovable property and wrongful conversion of movable property are clearly causes of action arising within the original jurisdiction of this Court. The plaintiff asked for leave under Clause 12 of the Letters Patent in regard to bringing the suit in Bombay, so far as it asked for damages for false imprisonment, on the basis that part of that cause of action arose within this Court's jurisdiction. The plaintiff further asked that, in the event of its being held that that cause of action arose wholly outside Bombay, an order should be made under Clause 14 of the Letters Patent for joining together in this suit the several causes of action that I have mentioned. At the time of filing the plaint leave both under Clause 12 and under Clause 14 was granted by Mr. Justice Blackwell *ex parte*. The defendant filed his written statement on July 18, 1927. There are three principal contentions raised in it. The first is that the defendant was the ruling chief of the Indore State at all material times mentioned in the plaint and therefore the suit against him was not maintainable. The second is that the wrongful acts complained of are alleged to be of the various officers and servants of that State acting under the orders of the defendant, who was the ruling chief of that State, but that as he had abdicated he ceased to be the ruling chief or to represent the Indore State; consequently, it is alleged that the plaint does not disclose any cause of action against him. And, thirdly, it is urged that except the cause of action in regard to trespass and wrongful conversion no part of any of the other causes of action arose within the ordinary original civil jurisdiction of this Court, and, therefore, this Court had no jurisdiction to entertain the suit in respect of any of these causes of action except those for trespass and wrongful conversion. Subsequently there were various proceedings, which ended in December 1927 in a hearing of the question whether an order should be made in favour of the plaintiff as asked for in the plaint under Clause 14 of the Letters Patent. The defendant was, in fact, called upon to show cause why such an order should not be passed, which is the procedure that is contemplated in Clause 14. Mr. Justice Davar held that no sufficient cause for not passing the order prayed for had been shown by the defendant, and on December 12, 1927, passed an order that the leave granted by Mr. Justice Blackwell both under Clause 12 and under Clause 14 should stand. The defendant has appealed against this order to us.

2. Mr. Mulla on his behalf has raised three main contentions. The first; is that to bring a case within the four corners of Clause 14 there must first of all be at least one cause of action which the defendant admits has arisen within the original jurisdiction of this High Court, but he has adduced no authority for this proposition and there is nothing in Clause 14 to support it. On the contrary the remarks of their Lordships of the Privy Council in *Chand Kour v. Partab singh* I.L.R (1888) Cal. 98. distinctly go against such a contention. There, among other things, it is pointed out that the cause of action in a plaint has no relation whatever to the defence which may be set up by the defendant, it depends almost entirely upon the allegations in the plaint. In any case, the causes of action for trespass on immovable property and wrongful conversion of movable property as stated in paragraphs 6 and 7 of the plaint clearly arose in Bombay, assuming, as the Court must for the purpose of determining the point, that the allegations there made are true, and it would be impossible for the defendant to deny that these causes of action did so arise. I do not, therefore, think that there is anything substantial in this objection.

3. The second point taken was that if any of the several causes of action, which are under consideration, is a cause of action "for land," then Clause 14 cannot avail the plaintiff. I may here give the terms of Clause 14 :?

And We do further ordain that, where plaintiff has several causes of action against a defendant, such causes of action not being for land or other immovable property, and the said High Court shall have original jurisdiction in respect on one such causes of action, it shall be lawful for the said High Court to call on the defendant to show cause why the several causes of action should not be joined together in one suit, and to make such order for trial of the same as to the said High Court shall seem fit.

There are three possible constructions of the words "such causes of action not being for land or other immovable property" in this clause. First of all, (a) they may mean "none of such causes of action being for land or other immovable property," or (b) they may mean "such causes of action not being all for land or other immovable property," or (c) they may be equivalent to saying "excluding any cause of action which is for land or other immovable property." There appears to be no reported authority upon this point, except the remark of the Honourable the Chief Justice, Sir Amberson Marten, in *Hatimbhai Baasanally v. Framroz Eduljee* I.L.R (1926) Bom. 516: 29 Bom. L.R. 498 about this clause, and my remark about it at page 573 of the same case. The Chief Justice's remark may be said to favour the first construction (a) and mine might be said to favour the second construction (b), but each of these remarks is obiter without the point being argued before us.

4. It would have been easy for the draftsman to have substituted the words "including one" for the word "being" in this phrase, so that it would run, "such causes of action not including one for land or other immovable property," if the construction (a) was what was meant, or he might have said "any such causes of

action" instead of "such causes of action" so that it would run "any such causes of action not being for land or other immovable property." On the other hand, it may be said that he would have inserted the word "all" after the word "being," if the construction (b) was meant. It seems to me that no conclusive answer can be obtained as to the real meaning of these words from such considerations. On the other hand, it seems to me that the natural interpretation of this clause would be that they are intended merely to qualify the words "several causes of action" that appear just before them, as if the clause had run "where plaintiff has several causes of action other than causes of action for land or other immovable property against defendant." That is to say, in considering Clause 14 any cause of action which is one for land or other immovable property must be excluded. If the sole cause of action within jurisdiction is one for land, or if the sole cause of action outside the jurisdiction is one for land, then Clause 14 will have no operation. In the present case this construction will not affect the plaintiff's right to ask for leave under Clause 14, as besides the one for trespass stated in para. 6 of the plaint, she has the cause of action for wrongful conversion of furniture, of, stated in paras 7 and 8, and that cause of action is clearly not one for land or other immovable property. The word "several" in the expression "several causes of action" of course means "separate," be that the fact of there being only two causes of action which come under consideration is immaterial.

5. This construction is, I think, supported by the state of the law in England in 1865, when Clause 14 was for the first time inserted in our Letters Patent. The Judicature Act, 1873, was not then in force; but Section 41 of the Common Law Procedure Act, 1852, enacted that "causes of action of whatever kind, provided they be by and against the same parties, and in the same rights, may be joined in the same suit," except in actions of replevin and ejectment. This latter exception shows the probable origin of the qualification under consideration; but it does not necessarily imply construction (a) rather than (c).

6. The connection between the Letters Patent and the Code of Civil Procedure, 1859, is well-known. Sections 8 to 10 of the latter show that there was no restriction on other causes of action being joined with a "claim for recovery of land," except that the Court might u/s 9 order separate trials to be held. This state of the law distinctly favours construction (c).

7. Under Order II, Rule 4, of the Civil Procedure Code, which u/s 117 and Order XLIX applies to this High Court, leave can be given for other causes of action to be joined even with a suit for the recovery of immovable property. Under Clause 44 of the Letters Patent Clause 14 is subject to this provision. The present is, however, not a suit for recovery of immovable property, for (as I have already mentioned) the plaintiff alleges that the property has been returned to her, so that no such leave is necessary in this case.

8. Having regard to these considerations, I think the Court should lean towards construction (c). Even, however, if construction (a) is adopted, the case would fall under Clause 14, if the prayer for relief as to trespass to the house was

struck out, or dropped, and a separate and brought in respect of that cause of action. But such a proceeding would be opposed to Order II, Rule 3, of the Civil Procedure Code, which also applies to this High Court. So far as both the alleged trespass and the alleged wrongful conversion are causes of action arising within the jurisdiction of this Court, they can be joined together by the plaintiff, without any leave of the Court. Clause 14 should, under ordinary rules of construction, be construed, as far as possible, consistently with the provisions of Rules 3 and 4 of Order II.

9. In this view, it is unnecessary to consider whether the cause of action for trespass is a cause of action for land or other immovable property within the meaning of Clause 14. But I may say that, if that question did arise, I should be inclined to hold that in view of no question of title apparently arising, it could not be said to be a "suit for land." I, therefore, overrule this contention.

10. The third objection is that Clause 14 does not contemplate a cause of action where there is an entire absence of jurisdiction of the usual kind, viz., the case of a foreigner not residing or carrying on business within the local limits of the Court's jurisdiction and no part of the cause of action having arisen within those limits.

11. The clause does not say anything like this, but it is contended that it must be read subject to the ordinary presumption that the Legislature did not intend to violate any rule of international law or comity (cf. Maxwell's Interpretation of Statute Section 6th Edn pp. 149 and 262). Mr. Mulla, in arguing this, relied strongly upon the Privy Council case of (1895) ILR 22 222 (Privy Council) In that case it was held by the Privy Council that jurisdiction, being properly territorial and attaching, with certain restrictions, upon every person permanently or temporarily resident within the territory, does not follow a foreigner, after his withdrawal thence, living in another State; and that no territorial legislation can give jurisdiction, which a Court of a Foreign State ought to recognise, over an absent foreigner owing no allegiance to the State so legislating. Mr. Mulla contends that, if this Court assumed jurisdiction in the present case in regard to the alleged false imprisonment, it would be going against the principles laid down in that case.

12. I think that this contention really confuses two things, viz., (a) the right of this Court to act under Clause 14 in regard to joinder of causes of action in a suit, and (b) the pleas of want of jurisdiction, which a defendant may be able to set up in respect of a cause of action allowed under Clause 14 to be joined in the suit with a cause of action which is within jurisdiction. The mere fact that defendant may succeed in any such plea does not deprive the Court of jurisdiction to pass an order under Clause 14.

13. But besides this I think it would also be premature to decide this question of jurisdiction at the present stage. Mr. Mulla's argument is all on the basis of the defendant being an absent foreigner who has not submitted to the jurisdiction of

this Court, in regard to this claim for damages for false imprisonment; but it cannot, I think, be said that the defendant will necessarily be absent if this cause of action is allowed to be joined and tried in the But. At present he is not absent. He has appeared before us, although under protest, in order to urge objections as to this leave being granted under Clause 14 and to the jurisdiction of the Court generally. The charges that are brought against the defendant in the plaint, as I have already remarked, are of a serious nature, and there has been considerable publicity about them given in the public press. In these circumstances, I should myself have thought that the defendant, if he has a good defence, would welcome the opportunity that this suit affords him of appearing and repudiating the charges made against him; all the more because he will have the advantage, so far as I can see, that for the plaintiff to succeed she must show that there has been a tort committed in Indore which is not only wrongful under English law, but also wrongful under the law of the State of Indore. I may refer in this connection to the conditions on which Courts in England exercise jurisdiction in personam regarding torts committed abroad, which will be found in Halsbury's Laws of England, Vol. VI, Article 369 at page 248, and in Dicey's Conflict of Laws, 3rd Edition, Rule 188 at page 694. Then again, I see that the defendant's written statement is signed by the Legal Kemembrancer of the Holkar State as his constituted attorney, and it seems probable that the authorities of the Indore State would assist the defendant in his defence. Therefore, there is ground, in my opinion, for thinking that possibly the defendant may adopt, what seems to me, the more manly procedure of submitting to a Court of superior jurisdiction and having the matter tried in this suit. Consequently, I am not prepared to make the assumption upon which Mr. Mulla's argument is based. But, even supposing that the defendant does remain absent and does not submit to the Court's jurisdiction, then there are other points which may affect the Court's jurisdiction even on the basis of the law laid down as to foreigners. decision in Gurdyal Singk exception in regard to special found in I.L.E. 22 Cal. 222, at "a decree pronounced in absentem by a Foreign Court, to the jurisdiction of which the defendant has not in any way submitted himself, is by International Law an absolute nullity. He is under no obligation of any kind to obey it, and it must be regarded as a mere nullity by the Courts of every nation, except (when authorised by special local legislation) in the country of the forum by which it was pronounced." An instance of such special local legislation will be found in Ashbury v. Ellis [1893] A.C. 339. where it was held that the New Zealand Legislature had the power to subject to the tribunals of that country persona who were neither by themselves nor by their agents present in the colony; and in this connection a question may possibly arise whether Clause 14 does not, in fact, form legislation of this kind, having the authority of the Crown and Parliament at its back. Clause 14 by its terms necessarily contemplates cases where the other causes of action are not within the original jurisdiction of this Court, and there is nothing in the clause to limit such causes of action to those arising within the extraordinary original civil jurisdiction of this Court that is mentioned in Clause 13, that is to say, a cause of

action which has arisen within the limits of the Bombay Presidency proper, or within the jurisdiction of some Court outside that Presidency, but subject to its superintendence. Certainly, it has not been given that narrow construction in previous cases, for instance, in *John George Dobson v. The Krishna Mills, Ltd.* I.L.R (1910) Bom. 564, : 12 Bom. L.R. 988. the cause of action regarding what is there called "claim (c)" arose either at Beawar in the Ajmere Scheduled District, or in Manchester in England. And then a further thing to be borne in mind is that the Privy Council case of *Gwrdyal Singh v. Raja of Faridkot* deals mainly with the question of a British Court recognising a Foreign Court's judgment. There is a distinction between that question and the question whether the judgment of a Court regarding an absent foreigner is valid within the territory in which that Court is situate. That is a distinction which has been pointed out by this Court in *Rambhat v. Shankar Baawant* I.L.R(1901) Bom. 528: 3 Bom. L.R. 82. and which is referred to in *Srinivasa Moorthy v. Venkata Varada Ayyangar* I.L.R (1906) Mad. 239.

14. Thirdly, there is a possibility of the contention being raised and succeeding that there has been a waiver or submission to jurisdiction, which prevents such an objection to the Court's jurisdiction being raised by the defendant. It cannot, therefore, I think, be said to be clear that this Court will have no jurisdiction in respect of the cause of action for false imprisonment, so as to justify our holding either that this is a case not falling within the terms of Clause 14 or that in the exercise of our judicial discretion leave should be refused under that clause. No doubt, the Court should be cautious about allowing such causes of action to be joined with a cause of action within jurisdiction. But the present is certainly an exceptional case, and I will content myself with saying that there are reasons which, in my opinion, justify the order of the Court below. It is to be noted that the cause of action regarding false imprisonment is connected with the other cause of action, viz., the wrongful conversion that arose within jurisdiction. It is not a case of an entirely independent cause of action which is sought to be dragged in and tried with one that arises within jurisdiction. Nor do I think that the leave that has been given will unduly prejudice the defendant if he defends the claim for damages on its merits, especially as he apparently has the assistance of the Indore Durbar.

15. I cannot hold, therefore, that the Judge in the Court below has failed to exercise his judicial discretion properly in the present case.

16. Some comments have been made on some remarks that the learned Judge made in the course of his judgment about the plaintiff not having any reasonable prospect of redress, if she is left to a suit in the Indore State. I think the learned Judge clearly in those remarks was acting, as he properly could, in an interlocutory matter of this kind, merely on the assumption that the allegations in the plaint were true. I need scarcely add that supposing that the defendant does submit to the jurisdiction of this Court, then he need not for one moment fear that he will not receive an impartial hearing by any Judge of this Court,

whatever may be the general impressions that have arisen from the Bawla murder case that has been mentioned in the pleadings and in the reasons given by the learned Judge for his order. I think, therefore, that that order was correct and should be confirmed, subject to the defendant's right to raise such pleas as tire open to him about this Court having no jurisdiction to entertain the suit, so far as it relates to the cause of action for false imprisonment and personal ill-treatment. In this view of the case it is unnecessary to go into the contention that Mr. Billimoria for the plaintiff has raised, viz., that there had, in fact, been a waiver by the defendant of his objection to the Court's jurisdiction, through his having taken certain action, which was unnecessary if he merely intended to object to the jurisdiction of the Court. I think that is a question that can best be left to the trial Court, which both in regard to that and in regard to any question of jurisdiction that arises will have before it fuller materials to dispose of the issues than this Court has at the present interlocutory stage. I would, therefore, dismiss the appeal with costs.

17. As a consequential order, we extend the time that was fixed for the defendant to file a supplemental written statement under Mr. Justice Davar's order of December 12, 1927, to October 10, 1928, but this will be without prejudice to the right of the defendant to make any application that he thinks fit to the proper Court or Judge that the question of jurisdiction should be tried as a preliminary issue before the filing of any further written statement.

Kemp, J.

18. The facts of the case have been set out in the judgment of my brother Fawcett.

19. The plaint shows three causes of action, namely, for trespass, conversion, and wrongful imprisonment, The causes of action for the first two rose wholly within the jurisdiction. It is immaterial, except for the purpose of considering the question of a joinder under Order II, Rule 4, whether the cause of action for trespass was in effect a cause of action "for land or other immovable property." The land was in Bombay and the trespass took place in Bombay. As the plaintiff does not seek to establish her title by way of a suit for trespass the suit is not one for land. In *Hatimbhai v. Framros Dinshawm* (1926) Bom. L.R. 498 I was prepared to extend the expression "suits for land" to cases of trespass where, as in *Vaghoji v. Gamaji* I.L.R (1904) Bom. 249:6 Bom. L.R. 958. and *Sudamdih Goal Co., Ld, v. Empire Goal Co., Ld.*I.L.R (1915) Cal. 942. the question of title was sought to be established. But anything beyond the decision that a suit for sale under a mortgage of lands outside the jurisdiction was not a suit for land that can be suggested from my judgment is merely "obiter dicta."

20. Now Order II, Rule 3, of the CPC permits the joinder of several causes of action against the same defendant and the suit here for trespass not being a suit for the recovery of immovable property, which in the present case was restored to the plaintiff in 1926, Rule 4 of the same Order has no application, Under Rule

3, therefore, the causes of action for the conversion and the trespass may be joined. It remains to consider whether the plaintiff may join the third cause of action for wrongful imprisonment, which it is contended was outside the jurisdiction, to either of the two causes of action.

21. Clause 12 of the Letters Patent deals with two classes of suits, (1) for land or other immovable property, (2) all other suits. Clause 14 deals with the joinder of causes of action. It only applies to the joinder of a cause or causes of action outside the jurisdiction with one within the jurisdiction. As to causes of action within the jurisdiction they can be joined under Order II, Rules 3 and 4. Clause 14 does not apply to any cause of action which is for land or other immovable property. In the view I take of its construction the intention is to permit causes of action other than any cause of action for land or other immovable property to be joined if one of them is within the jurisdiction. In other words Clause 14 does not deal with a cause of action for land or other immovable property. Therefore, the cause of action for false imprisonment not being one for land or other immovable property, may be joined to the cause of action for conversion which in its turn may under Order II, Rule 3, be joined with the cause of action for trespass. Indeed, if the cause of action for trespass be not one for land or other immovable property it may under Clause 14 be joined to the cause of action for false imprisonment.

22. The next objection raised by counsel for the appellant is that Clause 14 is not intended to violate the rule of international law which makes all legislation territorial. Where the language of an Act is unambiguous effect must be given to it and it is not the province of the Courts to give any other construction to it than that which it clearly bears. The Legislature may by special legislation purport to violate the rule of international law limiting legislation to territorial limits and in such a case the Courts must give effect to it. It is not, however, for us to say in this appeal what the intention of the Legislature in this respect in framing Clause 14 was. Clause 14 merely speaks of joinder of causes of action in general terms and that is all we have to determine whether these causes of action may be joined in this suit. Any question whether the joinder of the cause of action for false imprisonment violates any rule of international law is a matter for the trial Judge.

23. It may be that some part of this cause of action accrued within the jurisdiction. We have not the admitted or proved facts before us and cannot decide on assumptions. Nor are there any words in Clause 14 which say that the causes of action must be admitted before Clause 14 can be applied. Plaintiff says in her plaint that she was induced to submit herself to the custody of the defendant's officer sent to bring her to Indore on the false representation that her presence was required at Indore. There apparently she first realised she was actually in confinement. The restraint may be illegal from the start though assisted by a pretence that it originally is not so. A man may be induced to enter a jail on the pretext that it is the only available place to temporarily house him

and later on he may discover that his incarceration is real and not innocuous, as he originally thought. Moreover, the restraint may be none the less an illegal one although not strict or at first apparent to the person detained. Or the plaintiff here may have obeyed an order she did not dare to refuse. The assumption of control over her would be the commencement of the imprisonment; and detention through the exercise of moral force is sufficient to found an action for damages. The evidence in the Bawla case shows to what extent moral force could, at any rate recently, be applied against the subjects of Indore State by some of those connected with the late administration.

24. There may further be?although I do not say there is?a question of estoppel by submission by the defendant to the jurisdiction. Such a question was discussed in the Duff Development Company, Limited v. Government of Kelantan (1924) 40 T.L.R. 566. where, although no suit can lie against an independent sovereign (and in the appeal before us the appellant cannot now aspire to that status), the Courts discussed the question whether the independent sovereign in that case had, as a matter of fact, submitted to the jurisdiction. The Court was not competent otherwise to try the execution proceedings in that case. If submission to the jurisdiction cannot affect the matter where the Court is incompetent than cadit quaestio raised and discussed in that case.

25. It is impossible wholly to ignore the inference to be drawn from the compulsory?though ostensibly voluntary?abdication of the defendant. No prohibition has been placed on his reentry into Indore State and the influence which he so recently enjoyed may still remain.

26. I agree that the appeal should be dismissed.