
(1918) 01 CAL CK 0060
In the Calcutta High Court

The Bengal Provident and Insurance Company Ltd.	APPELLANT
Vs	
Kamini Kumar Choudhury	RESPONDENT

Date of Decision : 03-01-1918

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20(c), 21

Citation : AIR 1919 Cal 1014 : 44 Ind. Cas. 694

Hon'ble Judges : Richardson, J;Beachcroft, J

Bench : Division Bench

Judgement

1. This is a Rule issued at the instance of the petitioner (The Bengal Provident and Insurance Company Limited) calling upon the opposite party (Kamini Kumar Choudhury) to show cause why the decree of the District Judge of Noakhali, dated the 11th July 1916, should not be set aside or why such other order should not be made as to this Court may seem fit. The matter arises out of a suit brought by the opposite-party upon two policies of life insurance issued by the petitioner Company to his father Ram Gour Choudhury now deceased. It appears that Ram Gour Choudhury the assured, sent proposal forms for those policies from some place in the Chittagong District to the head office of the Company at Calcutta and that the policies were made out in that office and thence despatched to the assured. The assured subsequently died at Baspara in the District of Noakhali and this suit was instituted in the Court of the Local Munsif at Feni in that district. Objection was taken at the trial that the Court at Feni had no jurisdiction. That objection, however, was overruled and a decree was made in favour of the plaintiff. The case then went on appeal to the District Judge who agreed with the learned Munsif on the question of jurisdiction, but for reasons into which we need not enter, has set aside the decree of the Trial Court and has remitted the case to that Court with certain directions.

2. The sole point taken before us in support of the Rule, is the point of jurisdiction. The question is whether the Munsif's Court at Feni is a Court within the local limits of whose jurisdiction the cause of action in this case has in part

arisen within the meaning of Clause (c) of Section 20 of the present Civil Procedure Code. The learned District Judge has held that inasmuch as the assured died within the jurisdiction of the Feni Court and the death of the assured was a part of the cause of action, therefore, a part of the cause of action has arisen at Feni and the Court there has jurisdiction. The learned Pleader for the petitioner contests that view. He has argued that Clause (c) of Section 20 must be construed with reference to an explanation which found place in Section 17 of the Code of 1882 but which has not been reproduced in the present Code. Under that section every suit not previously provided for was to be instituted in the Court within the local limits of whose jurisdiction either the cause of action arose or certain other conditions were fulfilled to which we need not now refer. At the end of the section there was an Explanation III dealing particularly and especially with suits arising out of contract. It is said for the petitioner that if the provisions of that explanation be read into the present Code and applied to the present case then the Feni Court had no jurisdiction, and in this connection reference is made to the decision of the Allahabad High Court in *Salig Ram v. Chuba Mal* 11 Ind. Cas. 712 : 34 A. L.J. 1160. It may be doubted whether that decision goes as far as is now, contended. Speaking for myself upon the point as it is put to us, I cannot suppose it justifiable to interpret the language of the Code now in force by reading into it a repealed explanation from the repealed Code.

3. In the case of *Bank of England v. Vagliano* (1891) A.C. 107 : 60 L.J.Q.B. 145 : 64 L.T. 353 : 39 W.R. 657 : 55 J.P. 676 Lord Herschell dealt in a well-known passage with the interpretation of modifying Statutes. His observations were cited at length by Lord Macnaghten in the case of *Norendra Nath Sarcar v. Kamalbasini Dasi* 23 C. 563 (P.C.) : 23 I.A. 18 : 6 Sar. P.C.J. 667 : 6 M.L.J. 71 : 12 Ind. Dec. (N.S.) 374. which turned upon the meaning of Section 111 of the Indian Succession Act.

4. The Court designated by Clause (c) of Section 20 of the present Code is the Court within the local limits of whose jurisdiction "the cause of action wholly or in part arises." It appears to be well settled that the expression "cause of action" (especially when part of the cause of action is also referred to) means the whole cause of action, or every fact which must be either admitted or proved before the plaintiff can succeed. *Doya Narain Tewary v. Secretary of State* 14 C. 256 : 7 Ind. Dec. (N.S.) 170; *Dobson v. Bengal Spinning and Weaving Co.* 21 B. 126 : 11 Ind. Dec. (N.S.) 86; *Sashagiri Row v. Nawab Askur Jung* 27 M. 494. The cases cited were decided under Clause 12 of the Letters Patent which gives the High Court original jurisdiction in all cases other than the case of suit for land, "if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction." That provision bears a close analogy to Clause (c) of Section 20 and I can see no reason why the similar language of Clause (c) should not be similarly interpreted. If then in relation to suits generally, the term "cause of action" in Clause (c) means the whole cause of action, it would be

difficult to give it a more restricted meaning for the purposes of the clause in relation to suits arising out of contract.

5. In the case before us, it is not disputed for the petitioner that the death of the assured is a part of the cause of action, using the term in the sense indicated, and as authority for that proposition the learned Pleader for the opposite-party has cited the case of *Cailland v. Champion* (1797) 7 T.R. 205 : 101 E.R. 933 though he is unable to refer us to any more recent case precisely in point. Confining myself, therefore, to the language of the existing Code, I can see no escape from the conclusion that the death of the assured being a part of the plaintiff's cause of action and the death having taken place in British India within the Feni jurisdiction, a part of the cause of action arose there and the Feni Court has jurisdiction. In other words I am not satisfied that the contention upon which the petitioner relies, can be supported. The question, however, may be one of some importance to Insurance Companies and if it were necessary for us to express a final opinion upon it, I might have preferred to take time for consideration. It is sufficient perhaps without actually deciding the question to say that the Rule may be disposed of on another ground.

6. The present Code contains a new provision, Section 21, which runs as follows: "No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice." Now it is not disputed that the objection here was taken in the Trial Court at the earliest possible opportunity and before the issues were settled. But it is contended for the opposite party that the petitioner has not shown that the trial of the suit at Feni has led to any failure of justice. The lower Appellate Court was as much bound as we are, by the Rule enacted in Section 21. No attempt seems to have been made there to show that the Company had been prejudiced in any way by the case being tried at Feni or that the disposal of the suit had been prejudicially affected on the merits. The petition on which this Rule was issued, is entirely silent upon this question. In fact the learned Pleader for the petitioner has candidly admitted that the point had not occurred to him till it was raised in the course of the argument. There is apparently no reported case in which this provision has been applied but there are several cases decided upon the analogous provision in Section 11 of the Suits Valuation Act which may serve to show the intention and the object of the Legislature in the present connection, for example *Dinesh Chunder Roy v. Sarnamoyi Debi* 1 C.W.N. 136; *Hamidunnissa Bibi v. Gopal Chandra Malakar* 24 C. 661 : 1 C.W.N. 556: 12 Ind. Dec. (N.S.) 1110; *Raghunath Charan Singh v. Shamo Koeri* 31 C. 344; *Govinda Menon v. Karunakara Menon* 24 M. 43 and *Wahidullah v. Kanaya Lal* 25 A. 174 (F.B.) : A.W.N. (1902) 222. The effect is to confer a qualified or conditional jurisdiction on the Court in which the trial actually takes place. In the circumstances, having regard to Section 21 and to the fact that evidence has been taken at length in the Feni Court, in my opinion, this is not a case in which we should interfere in

the exercise of our revisional jurisdiction.

7. The result is that the Rule will be discharged with costs. We assess the hearing fee at two gold mohurs.

Beachcroft, J.

8. I agree that the Rule should be discharged, not on the ground that the Court at Feni had jurisdiction, as to which I express no opinion, but because Section 21 applies to the case.