REVISIONAL CIVIL

Before Bhandari, C.J.

NAWAB SIR MUZAFFAR ALI KHAN QAZALBASH AND ANOTHER,—*Defendants Petitioners*

versus

L. JAWANDA MAL AND OTHERS,—*Respondents*

Civil Revision No. 200-D of 1952.

1954

August, 11th

Code of Civil Procedure (V of 1908)—Section 20—Expression "Cause of Action", meaning of—Assignment of a debt—whether can be regarded as a part of cause of action.

Held, that expression "cause of action" means the fact or facts which establish or give rise to right of action or the existence of which entitles a party to seek redress in a court of law. The facts which comprise the cause of action are those which must, if traversed, be proved by the plaintiff to enable him to obtain a judgment in his favour.

Held further, that the assignment of a debt is a part of the "cause of action" within the meaning of section 20(c) of the Civil Procedure Code and the assignee can sue on it in the Court having jurisdiction where the assignment took place.

Petition under section 44 of the Punjab Court Act, for revision of the order of Shri Raj Inder Singh, Sub-Judge, 1st Class, Delhi, dated the 2nd April, 1952, ordering that Delhi Courts have jurisdiction notwithstanding the fact that defendants Nos. 1 and 2 are nationals of another country.

MANOHAR LAL SACHDEVA, for Petitioners.

BALKRISHAN, for Respondents.

JUDGMENT

Bhandari, C. J. BHANDARI, C.J. The only point for decision in the present case is whether the Courts in Delhi have jurisdiction to deal with this case.

It appears that early in December, 1946, one Mr. Walaiti Ram Kohli entered into a contract with Nawab Muzaffar Ali Khan Qazalbash, defendant No. 1, and Nawab Zulfikar Ali Khan Qazalbash, defendant No. 2, concerning the purchase of a certain plot of land situate in Lahore for a sum of Rs. 2,63,212. Mr. Kohli paid a sum of Rs. 10,000 by way of earnest money on the 4th December, 1946, and another sum of Rs. 50,000 on later dates. Owing unfortunately to disturbed conditions in the Punjab the transaction could not be completed before the 15th August, 1947, and it has not been completed so far. On the 15th March, 1950, Mr. Kohli assigned his rights to purchase the property to his father, L. Jawanda Mal, within the limits of the civil Courts at Delhi.

On the 18th April, 1950, L. Jawanda Mal brought the present suit for the recovery of a sum of Rs. 10.000 from Nawab Muzaffar Ali Khan and Nawab Zulfikar Ali Khan, defendants Nos. 1 and 2. Mr. Kohli was also impleaded as a defendant.

The defendants raised a preliminary objection at an early stage of the proceedings that the Courts in Delhi had no jurisdiction to deal with

the case as the agreement to sell had taken place at Lahore, as both the contesting defendants are residing in Lahore and as the plot of land which was the subject-matter of the sale is also situate in Lahore. The trial Court held that the debt in question was assigned to the plaintiff at Delhi and that the Courts at Delhi had jurisdiction to deal with the case. The contesting defendants are dissatisfied with the order and have come to this Court in revision.

The learned counsel for the defendants contends that according to International Law it is not within the competence of a Court to deal with a case concerning a transaction which took place in a foreign country, particularly where the defendants are citizens of a foreign country and have not submitted themselves to the jurisdiction of the domestic tribunals. The case of *Gurdyal Singh* v. *Raja of Faridkot* (1), has been cited in support of this contention. In this case *ex parte* decrees for money were made in the territories of the ruling Chief of Faridkot, a State in subordinate alliance with the Government of India, against a person who had been employed by that State within its territories but had, before the suit had been brought, relinquished his employment, had left the State and was then, at the time when he was sued, resident in another State of which he was the domiciled subject. Their Lordships of the Privy Council held that these decrees were a nullity by International Law and could not receive effect in a British Indian Court.

The learned counsel for the plaintiff admits the correctness of the general proposition laid down in the decision referred to above but he contends that the question whether the Courts at

(1) (1895) I.L.R. 22 Cal. 222

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Delhi have jurisdiction to deal with this case must be decided with reference to the provisions of section 20 of the Code of Civil Procedure and not with reference to any abstract propositions of law which may be propounded. Two decisions of the Bombay High Court have been cited in support of this contention. In *Chunnilal Kasturchand* v. *Dundappa Damappa* (1), a Division Bench of the Bombay High Court held that the competency of a Court to entertain an action and to pass a decree must be judged by the municipal law of the State when the question arises in a Court within the limits of the State which has constituted the Court which entertains the suit or passes the decree and is not to be judged by applying rules of International Law. In *Bhagwan Shankar* v. *Raja Ram Bapu Vithal* (2), a Full Bench of the Bombay High Court expressed the view that a Court in this country has jurisdiction over a non-resident foreigner although he has not submitted to its jurisdiction provided the cause of action had arisen wholly or in part within its jurisdiction.

The real question which requires determination is whether the cause of action in the present case has arisen wholly or in part within the jurisdiction of the Courts at Delhi. Before I proceed to answer this question it will be necessary to examine the circumstances in which section 20 of the Code of Civil Procedure came to be enacted.

Section 17 of the Code of Civil Procedure, 1882, was in the following terms :—

> "17. Subject to the limitations aforesaid, all other suits shall be instituted in a Court within the local limits of whose jurisdiction—
>
> (a) the cause of action arises, or

(1) A I R. 1951 Bom. 190
(2) A.I.R, 1951 Bom. 125

(b) all the defendants, at the time of commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain ; or

(c) any of the defendants, at the time of commencement of the suit, actually and voluntarily resides, or carries on business or personally works for gain :

Provided that either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation II.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

The expression "cause of action" was somewhat ambiguous as it was not clear whether it meant the whole cause of action or any part of the cause of action and in the year 1888 the Legislature amended section 17 by adding another Explanation which ran as follows :—

"*Explanation III.*—In suits arising out of contract, the cause of action arises

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within the meaning of this section at any of the following places, namely :—

(i) the place where the contract was made ;

(ii) the place where the contract was to be performed or performance thereof completed ;

(iii) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable."

As pointed out by Mulla in his Commentary on the Code of Civil Procedure this Explanation made it clear that in suits on contracts " cause of action " meant the whole or any part of the cause of action but it was still not clear that it meant the same in other suits. When the Code was amended in the year 1908 the Legislature inserted the words " wholly or in part " after the words " cause of action " in order to declare in an unambiguous language that all suits may be instituted where the cause of action has arisen wholly or in part.

Two questions now arise for decision, namely—

(1) What is the meaning of the expression "cause of action"? and

(2) Can the assignment of a debt be regarded as a part of cause of action?

It is not easy to give a satisfactory definition of the expression " cause of action ", but it may perhaps be defined as being the fact or facts which

establish or give rise to a right of action or the existence of which entitles a party to seek redress in a Court of law. The facts which comprise the cause of action are those which must, if traversed, be proved by the plaintiff to enable him to obtain a judgment in his favour. This expression came up for interpretation in the well-known case of *Read* v. *Brown* (1). In that case the plaintiff brought an action in the Mayor's Court as assignee of a debt alleged to be due in respect of the price of goods sold and delivered to the defendant by the assignor. The sale and delivery had taken place without the city of London, but the debt had been assigned in writing to the plaintiff pursuant to section 25, subsection 6, of the Judicature Act, 1873, within the city of London. It was held that the assignment of the debt was part of the cause of action, and that the cause of action having arisen in part within the city of London there was no ground for a prohibition. In explaining the meaning of the expression "cause of action" Pollock, B., observed as follows :—

> "The expressions 'cause of action' and 'part of the cause of action' have long been judicially defined as meaning respectively the material facts and any material fact in the case for the plaintiff."

In dealing with the same matter Lord Esher, M. R., observed :—

> "What is the real meaning of the phrase 'a cause of action arising in the city.' It has been defined in *Cooke* v. *Gill* (2), to be this: every fact which it would be

(1) (1889) 22 Q.B.D. 128
(2) L.R. 8 C. P. 107.

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necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. It has been suggested to-day in argument that this definition is too broad, but I cannot assent to this, and I think that the definition is right. If that is so, the question arises whether the plaintiff, in order to be entitled to succeed in his action, would not be bound to prove the assignment to him of the debt : not merely whether he would be bound to prove it in an action in the Mayor's Court, but whether he would be bound to prove it in any court in which he might sue, and whether an allegation of the assignment might not have been traversed by the defendant. I cannot bring myself to entertain a doubt that the assignment is a fact which the defendant might traverse ; and if that be so, the plaintiff would be bound to prove it."

The meaning which has been assigned to the expression " cause of action " in India is more or less the same as has been assigned to it in England.

The question now arises whether the assignee of a contract is at liberty to bring a suit at the place where the assignment has been made or, in other words, whether the assignment itself is a part of the cause of action. The most important decision on this point is reported as *Shivji Ram and others* v. *Hem Raj and Nandu Ram and another* (1). In this case the plaintiff brought a

(1) 57 P.R. 1900.

suit at Dera Ismail Khan against the defendants on a *hundi* drawn and payable at Karachi, but endorsed to him by two of the defendants, at Dera Ismail Khan. Some of the defendants, i.e., the drawer and the acceptor and some of the indorsers, contended that the Court had no jurisdiction as the *hundi* was drawn and payable at Karachi. A Full Bench of the Chief Court held that when a plaintiff sues the drawer, acceptor and subsequent indorsers the cause of action arises out of the original contract which in this case was the *hundi*, and that that having been made and being payable at Karachi, the Dera Ismail Khan Court had no jurisdiction to hear the suit. This decision was given in the year 1900 and was concerned merely with the construction of section 17(a) and Explanation III of the Code as far as that section was concerned. The conclusions arrived at by the learned Judges were not based on precedents. Nevertheless, the decision was followed in *M/s. Dalsukh Nathmal* v. *Motilal-Bal Chand* (1), and *Jupiter General Insurance Co. Ltd. and others* v. *Abdul Aziz* (2). In the latter decision it was held that the words "cause of action" so far as suits on contract are concerned include the making of the contract and the performance or completion of performance of the contract and the payment of money under the contract. According to the learned Judges the meaning of the expression "cause of action" in the section in question when applied to suits based on contract, should be ascertained by a consideration of the meaning of the expression in the past in the course of the development of such legislation in India and the case-law thereon, and not by reference to any English decision on the construction of any statutes. On the other hand, the decision of 1900 has been expressly or impliedly dissented from on more than

(1) A.I.R. 1938 Nagpur 262
(2) A.I.R. 1924 Rangoon 2

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one occasion. In *Dilbagh Rai* v. *Walu Ram and another* (1), Bhide, J., observed that that ruling could not help the petitioner as it was given under the old Code of Civil Procedure. In *Seth Wadhumal* v. *Malik Noor Ahmad* (2), it was held that a *bona fide* voluntary assignment affords a valid cause of action to the assignee to sue his assignor in the Court within whose jurisdiction the assignment is made. The learned Judges cited with approval the observations of their Lordships of the Privy Council in *Joseph Trimble* v. *George Hill* (3), and expressed the view that these observations applied equally to the interpretation of the words used in clause (c) of section 20 of the Code of Civil Procedure. The observations were as follows :—

> "Their Lordships think the Court in the Colony might well have taken this decision (*Diggle* v. *Higgs*) as an authoritative construction of the statute. It is the judgment of the Court of appeal, by which all the Courts in England are bound, until a contrary determination has been arrived at by the House of Lords. Their Lordships think that in Colonies where a like enactment has been passed by the legislature, the Colonial Courts should also govern themselves by it. * * * * * It is of the utmost importance that in all parts of the Empire where English Law prevails, the interpretation of that law by the Courts should be as nearly as possible the same."

(1) A.I.R. 1933 Lah. 940
(2) A.I.R. 1933 Sind. 179
(3) (1879) 5 A.C. 342.

In *Manepalli Magamma* v. *Manipalli Sathiraju* (1), a Division Bench of the Madras High Court held that the assignment of a promissory note by the payee is a part of the " cause of action " within the meaning of section 20(c) of the Code of Civil Procedure and the assignee can sue on it in the Court having jurisdiction where the assignment took place. A similar view has been taken in *Official Receiver of the Estate of Mohandas Chatandas* v. *Naraindas Lotaram and others* (2), and *Harnathrai Brijraj* v. *Churamoni Shah and others* (3).

I find myself in respectful agreement with the view expressed in *Dilbagh Rai* v. *Walu Ram and another* (4), *Manepalli Magamma* v. *Manepalli Sathiraju* (1), and other similar decisions

As the plaintiff in the present case is an assignee of the rights of Mr. Kohli and as the assignment took place in Delhi, I am of the opinion that the Courts of Delhi have jurisdiction to deal with this case. The order of the trial Court must, therefore, be upheld and the petition dismissed with costs.