

ORIGINAL CIVIL.*Before Fletcher J.*

1916

March 31.

SHAMA KANTA CHATTERJI & Co.

v.

KUSUM KUMARI.*

*Waiver—Jurisdiction—Leave to sue—Letters Patent, 1865, cl. 12—
Estoppel.*

Where the plaintiff in his plaint alleges that portion of the cause of action arises outside the local limits of the Ordinary Original Civil Jurisdiction of this Court and fails to take leave under cl. 12 of the Letters Patent, the defendant may by appearing and pleading waive the objection to the jurisdiction. Where, however, the plaintiff alleges that the whole cause of action arises within the local limits of the Ordinary Original Civil Jurisdiction, thus setting up a complete jurisdiction in the Court, and the defendant is called upon to plead to this and does plead, but it turns out at the trial that the Court had not complete jurisdiction as portion of the cause of action arose within and portion outside the local limits of the Ordinary Original Civil Jurisdiction, the defendant cannot be held bound on the doctrine of estoppel on the ground that he waived the objection of want of jurisdiction.

King v. Secretary of State for India (1) and *Suckan v. Weiner* (2) referred to.

ORIGINAL SUIT

This suit was instituted by the plaintiff firm to recover Rs. 10,456-5-3 pies, for the balance of price of goods sold and delivered to the husband of the defendant together with interest thereon. The plaintiff firm alleged that between the 23rd September, 1911, and the 22nd November, 1913, it had sold and delivered to Thakur Protap Narain Deb, the husband of the defendant, at his request in Calcutta, various goods

* Ordinary Original Civil Suit No. 1387 of 1914.

(1) (1908) I. L. R. 35 Calc. 394. (2) (1901) 17 T. L. R. 494.

and articles of the aggregate value of Rs. 18,807-7-3 pies, against which the said Thakur had paid from time to time to the plaintiff firm the aggregate sum of Rs. 10,930-2-0 pies leaving a balance of Rs. 7,377-5-3 pies for principal and Rs. 2,579 for interest, calculated at the rate of 12 per cent. per annum up to the 19th December, 1914, aggregating to Rs. 10,456-5-3 pies, the amount claimed in the suit. The plaint as presented alleged that the whole of the cause of action arose within the local limits of the Ordinary Original Civil Jurisdiction of this Court. The defendant filed her written statement, in which she pleaded on the merits, and also submitted that part of the cause of action arose outside the local limits of the Ordinary Original Civil Jurisdiction of this Court, and no leave under cl. 12 of the Letters Patent having been obtained, this Court had no jurisdiction to try the case. After filing the written statement, the defendant obtained an order for discovery of the plaintiff firm's documents and took such other steps as were necessary for a trial of the suit. At the trial, the defendant insisted upon her objection that the Court had no jurisdiction to try the case.

Issues were then settled between the parties, and evidence was adduced on both sides, and it was admitted that part of the cause of action had arisen outside the local limits of the Ordinary Original Civil Jurisdiction.

Mr. N. N. Sircar (with him *Mr. B. K. Ghosh*), for the defendant. If it is once conceded part of the cause of action arose outside Calcutta, leave under cl. 12 of the Letters Patent must be taken: *Doyt Narain Tewary v. The Secretary of State for India*(1). The case of *King v. Secretary of State for India*(2) has no application here. The plaint was one in which the

(1) (1886) I. L. R. 14 Calc. 256, 270. (2) 1908) I. L. R. 35 Calc. 394.

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objection to the jurisdiction was not apparent on the face and so we had to file a written statement. Their plaint alleged that the whole cause of action arose in Calcutta. In the circumstances of this case, I was bound to plead and take all necessary steps for the trial of the suit

Mr. C. C. Ghose (with him *Mr. A. K. Ghose*), for the plaintiff firm. I admit leave under cl. 12 of the Letters Patent should have been taken, as part of the cause of action arose outside the limits of the Ordinary Original Civil Jurisdiction of this Court. But the defendant has waived the objection to the jurisdiction of the Court. She filed a written statement in which she took the point of jurisdiction saying part of the cause of action arose outside Calcutta. She could have applied for the trial of the issue as to jurisdiction. She did not do so. She obtained an order for discovery of documents and took other steps for the trial of the suit. The suit has been fought out, the whole of the evidence is now before the Court and the objection to jurisdiction should not be allowed. I rely on the cases of *King v. Secretary of State for India* (1) and *Suckan v. Weiner* (2)

FLETCHER J. This is a suit brought by the plaintiffs' firm to recover Rs. 10,456-5-3 for price of goods sold and delivered to the husband of the defendant. The dealings are alleged to have been taken place between the 23rd September, 1911, and 22nd November, 1913. Certain sums were paid in part payment of the amounts, leaving a balance of Rs. 7,877-5-3 due for principal and Rs. 2,579 for interest, calculated at the rate of 12 per cent. per annum up to the 19th December, 1914, aggregating to Rs. 10,456-5-3, the amount claimed in this suit. Learned counsel for the plaintiff company

(1) (1908) I. L. R. 35 Calc. 394. (2) (1901) 17 T. L. R. 494.

has frankly admitted in conducting the case, as presented, that the plaint alleges that the whole of the cause of action arose within the local limits of the Ordinary Original Civil Jurisdiction of this Court. That is manifest both from the statement in paragraph 1 and in paragraph 6 of the plaint. The plaintiff alleges in both paragraphs that the whole of the cause of action arose within the local limits of the Ordinary Original Civil Jurisdiction of this Court. The defendant thereupon has submitted that part of the cause of action arose outside the local limits of the Ordinary Original Civil Jurisdiction and no leave under clause 12 of the Letters Patent was obtained by the plaintiffs. The defendant has pleaded both on the merits and jurisdiction; first of all, on the merits, and, secondly, she pleaded want of jurisdiction in the Court to try this suit on the ground that a portion of the cause of action arose outside the local limits of the Ordinary Original Civil Jurisdiction of this Court, and therefore this Court has no jurisdiction to try this case without the leave of the Judge of the Court having been obtained under clause 12 of the Charter. Those objections the defendant has insisted upon down to the trial. The following issues were settled between the parties: (i) What goods were supplied by the plaintiffs to the defendant's husband and what is the fair and reasonable prices thereof? (ii) Are the plaintiffs entitled to claim interest on the value of the supplied? (iii) The plaintiffs not having taken leave under clause 12 of the Letters Patent, is the suit maintainable in this Court? (iv) Has the defendant waived the objection mentioned in issue No. (iii)? I have no doubt that the prices of the goods were fair and reasonable; the prices charged may have been a little higher than could have been obtained elsewhere; but the deceased must have known from time to time what prices he was being charged for these goods.

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and he must be taken to have approved of these prices. The first issue I decide in favour of the plaintiff Co. The second issue raised the question as to the agreement to pay interest. A member of the plaintiff firm has spoken about an express agreement by the Raja to pay interest on the amount in arrear. That evidence about the agreement to pay interest has been contradicted by the Dewan of the Raja and I think the Dewan's evidence ought to be accepted in preference to that of the plaintiff's man. The bill or draft of the promissory notes that was presented on the death of the Raja for signature by the executor shows that the claim for interest was not put forward. I cannot believe the plaintiff's story about the express agreement to pay interest at the rate of 12 per cent per annum. The third question is about the question of jurisdiction. There is a class of cases of which the case of *King v. The Secretary of State for India* (1) and the case of *Suckan v. Weiner* (2) have been cited as examples where the Court has jurisdiction to try the case if the whole of the cause of action has arisen within the local limits of the Ordinary Original Civil Jurisdiction or the consent of a Court being obtained when a portion of the cause of action arises outside the local limits of the Ordinary Original Civil Jurisdiction. There are two classes of these cases: one where the plaintiff in his plaint alleges that portion of the cause of action arises outside the local limits and fails to take leave of the Court and the case comes on for trial. There is another class of cases where the plaintiff in his own plaint alleges that the whole cause of action arises within the local limits of the Ordinary Original Civil Jurisdiction, but it turns out at the trial that portion of the cause of action arose within and portion outside the local limits of the Ordinary Original Civil

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Jurisdiction. In the first case the defendant may by appearing and pleading waive the objection to the jurisdiction. But where the plaintiff sets up a complete jurisdiction in the Court to try the case and the defendant is called upon to plead to this, if it turns out that the Court had not complete jurisdiction, obviously the defendant cannot be held bound on the doctrine of estoppel on the ground that he waived the objection of want of jurisdiction. The defendant could not waive a fact that he did not know of and when the plaintiff alleges that his cause of action arose within the local limits of the Ordinary Original Civil Jurisdiction the plaintiff would be bound for the purpose of pleading to assume that the statement is true. That seems to me the result of the cases cited in the argument: Now, what has happened in this case? It is not denied that a portion of the cause of action arose outside the local limits of the Ordinary Original Civil Jurisdiction of this Court. If we accept that the goods were in fact delivered to the defendant's husband at Harrison Road, the receiving office of the East Indian Railway Co., that does not get over the difficulty in this case, namely, that part of the cause of action arose outside the local limits of the Ordinary Original Civil Jurisdiction of this Court. The whole thing is unfortunately a mistake committed by the attorney in not drawing the plaint in a proper manner. It seems to me quite clear that in the present case the Court has no jurisdiction to try this suit. That being so, the present suit fails and must be dismissed with costs on scale No. 2.

A. K. R.

Attorney for the plaintiff Company: *R. N. Sircar.*

Attorneys for the defendant: *Kar, Mehta & Co.*

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