

## ORIGINAL CIVIL.

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Before Buckland J.

PADAMPAT SINGHANYA

v.

NARAYANDAS JHUNJHUNWALLA.\*

1931

May 21.

*Jurisdiction—Trust—Moneys deposited with firm carrying on business both outside and within jurisdiction—Where payment may be demanded—Code of Civil Procedure (Act V of 1908), s. 92—Letters Patent (Calcutta), 1865, cl. 12.*

Section 92 of the Civil Procedure Code overrides clause 12 of the Letters Patent, and the High Court has no jurisdiction to try a suit instituted under that section when no part of the subject-matter of the trust is situate within the jurisdiction of the Court, although the defendants may all reside or personally work for gain or carry on business within the jurisdiction.

Where moneys stand to the credit of one person in the books of another, it would be open to the former, apart from any special contract, to demand payment wherever the person with whom the money was deposited was carrying on business.

CERTAIN disputes amongst the members of a firm named Chimanlal Matilal were referred to the arbitration of one Gourishankar Bagdi. After all other matters in dispute had been settled, the parties agreed that a certain sum, brought in by one member and placed with the firm of Bansilal Aberchand Rai Bahadur, at Madras, to the credit of Bagdi, should be used in the creation of a trust for the benefit of the *Rajputana Vidya Prachârinî*. The object of the last named society was to open schools in Rajputana. Seven trustees were appointed by the deed of trust and they were directed to open an office, for the *Vidya Prachârinî*, at Bombay or some other suitable town or village where the trustees thought desirable to have the office.

A conflict and deadlock between the trustees led to the suit, of which the other relevant facts appear from the judgment.

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*A. K. Roy, Standing Counsel* (with him *K. P. Khaitan* and *R. N. Sircar*) for the plaintiffs. Section 92 (2) of the Civil Procedure Code does not take away the rights given by clause 12 of the Letters Patent. Since the defendants all dwell in Calcutta or carry on business in Calcutta, this Court has jurisdiction.

Further, the money was deposited, at Madras, with a firm also carrying on business in Calcutta. In fact, the money was paid into Court, and it cannot be said that the fund remained in Madras for ever.

*S. N. Banerjee* (with him *S. C. Bose*) for the defendants. Suits relating to trusts are now expressly governed by section 92 of the Civil Procedure Code. Clause 12 of the Letters Patent, on the other hand, deals with general suits and not with suits relating to trusts. Sub-section (1) of section 92 of the Code lays down that some portion of the subject-matter of the trust must be within jurisdiction; and sub-section (2) makes it clear that all the condition of sub-section (1) must hold good. [The subject-matter is not the right to sue and the money was at Madras at the time of the institution of the suit.

*A. K. Roy*, in reply. If the debtor chooses to pay in Calcutta, he has treated the money as being in Calcutta. The right to recover the fund was the subject-matter of the trust.

Also, the firm of *Bansilal Aberchand* carry on business in Calcutta and payment could be demanded from them here.

BUCKLAND J. This is a suit instituted by five plaintiffs, as trustees under a deed of trust, executed on 7th August, 1928, by *Gourishankar Bagdi*, against two of their co-trustees and a firm of the name of *Bansilal Aberchand Rai Bahadur*, for accounts of the trust, for the defendant firm to be directed to pay the amount held in deposit, for the settlement of a scheme, and for such orders and directions as may be necessary and proper.

The facts necessary to be stated are not many, for the only defence preferred by learned counsel at the hearing on behalf of the 1st and 2nd defendants is that this Court has no jurisdiction to entertain the suit and all other defences have been abandoned. Since the suit was instituted, the firm of Bansilal Aberchand Rai Bahadur has paid the money into Court and been dismissed from the suit.

A copy of the deed of trust is annexed to the plaint and is admitted. After certain recitals the document recites that Gourishankar Bagdi had deposited a sum of Rs. 1,10,000 with the firm of Bansilal Aberchand Rai Bahadur, who are described as carrying on business at 433, Mint Street, Cowcarpet, Madras, and that the money stands in their books to the credit of Gourishankar Bagdi, and after further recitals the document states that, for the purpose of giving effect to the wishes of the parties concerned, Gaurishankar Bagdi nominates seven named persons, as trustees who shall constitute the first Board of Trustees. The settlor then goes on to convey unto the trustees and to their successors the sum of Rs. 1,11,334-8-6, being the balance of the fund including interest, after paying the expenses of the trust deed, standing to his credit in the books of the firm of Bansilal Aberchand Rai Bahadur to hold such sum in trust for the uses and purposes set out in the document.

The money, I was informed, was paid to Bansilal Aberchand Rai Bahadur in Madras, and it is not contested that the firm has, and had at all material times, a place of business in Calcutta at 401/7A, Upper Chitpur Road. Nor is it denied that all other defendants reside or carry on business in Calcutta within the jurisdiction of this Court.

This is a suit under section 92 of the Code of Civil Procedure, which provides that, in the circumstances stated at the beginning of the section and with the consent in writing of the Advocate-General, a suit may be instituted "in the principal

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“civil court of original jurisdiction or in any other court empowered in that behalf by the Local Government, within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate.” Sub-section (2) lays down that, save as therein stated, “no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.” It is contended that no part of the subject-matter of the trust was within the local limits of the jurisdiction of this Court at the time when the suit was instituted and that, in consequence, this Court has no jurisdiction. This contention was met, in the first place, by Mr. Roy, on behalf of the plaintiffs, by the argument that, though the section authorises suits in courts within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, it does not exclude the provisions of clause 12 of the Letters Patent, with which it is not inconsistent, and that inasmuch as the defendants all reside or work for gain within the local limits of this Court, this Court nevertheless has jurisdiction. I find considerable difficulty in acceding to that argument. The words “within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate” must, in my judgment, apply both to “the principal civil court of original jurisdiction” and to the words “or in any other court empowered in that behalf by the Local Government.” If the words referring to the situation of the subject-matter of the trust apply only to “any other court empowered, *etc.*,” the jurisdiction of the principal civil court of original jurisdiction is governed exclusively by considerations not to be found in this section, which does not appear to me to be what was intended. In my view, the words in the section, referring to the subject-matter of the trust, are referrable to both courts mentioned. If

that view is correct, this section must be taken as overriding clause 12 of the Letters Patent, which permits a suit to be instituted in this Court if the defendants at the time of the commencement of the suit shall dwell or carry on business or personally work for gain within the local limits of its ordinary original jurisdiction, for otherwise one would have to ignore the mandatory provisions of sub-section (2).

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Mr. Roy has, however, further contended that the subject-matter of the trust is situated within the local limits of this Court. This is a question which is no easier to solve than the other, and in connexion with neither is there any authority to assist me in forming a conclusion. On behalf of the defendants, it is contended that, as the money was paid in Madras to the firm of Bansilal Aberchand Rai Bahadur, it was in Madras at the time of the institution of the suit, when no part of the subject-matter of the trust was situate within the jurisdiction of this Court. It is, however, admitted that this firm was carrying on business in Calcutta at the time when this suit was instituted. What was settled by the deed was the money standing to the credit of Bagdi in the books of the firm of Bansilal Aberchand Rai Bahadur. I apprehend that where monies stand to the credit of anybody in the books of another it would be open to such person, apart from any special contract, to demand payment wherever the person with whom the money was deposited was carrying on business, and indeed, it is not contended that the trustees would not have been entitled to call upon Bansilal Aberchand Rai Bahadur to pay the money in Calcutta. What, therefore, was settled, was money standing to the credit of Bagdi in the books of the firm which was recoverable from Bansilal Aberchand Rai Bahadur in Calcutta, and in these circumstances no attention need be paid to the original payment in Madras, which took place before the execution of the

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trust deed. This leads to the conclusion that the subject-matter of the trust was situate within the local limits of this Court when the suit was instituted, and I, therefore, hold that this Court has jurisdiction to entertain the suit.

There is no dispute as to the form which the order should take and there is no need for any account. Messrs. Bansilal Aberchand Rai Bahadur have paid the money into Court where it now is and where it will remain pending the further orders of Court, and all that is necessary to direct is that a scheme should be framed for the purpose of giving due effect to the wishes and intentions of the settlor as expressed in the deed of trust of the 7th August, 1928, and there will be a reference to the Registrar or such officer as he may appoint to frame a scheme. Costs of all parties as between attorney and client to be paid out of the trust funds now in Court.

Attorneys for plaintiffs: *Khaitan & Co.*

Attorneys for defendants: *N. C. Bose & Co.;  
Dutt & Sen.*

S. M.