ORIGINAL CIVIL.

Before Sen J.

ALI MAHOMED EBRAHIM SHAKOOR

v.

ADAM HAJEE PEER MOHAMED ESSACK.*

1939

Mar. 30, 31; *April* 3, 5, 6.

Partnership—*Dissolution of partnership—Register of firms—Entry in register as to place of business—Entry, if a device to confer jurisdiction—Cause of action—Jurisdiction—Letters Patent, 1865, cl. 12—Revocation of leave—Stay of suit—Inconvenience to parties not amounting to injustice, if a ground for stay—Indian Partnership Act (IX of 1932), s. 68.*

A co-partnership firm was registered in Calcutta and the Register of Firms contained a statement that its principal place of business was at Calcutta. In a suit for dissolution of partnership, brought with leave under cl. 12 of the Letters Patent, the defendant pleaded want of jurisdiction on the grounds *inter alia* that the business was carried on at Bantva and that no part of the cause of action arose in Calcutta and applied for revocation of the leave alternatively for stay of the suit.

Held: (i) that under s. 68 of the Indian Partnership Act, the defendant was bound by the statement in the Register of Firms and hence part of the cause of action arose in Calcutta;

(ii) that the entry in the Register, made under the Partnership Act, was not a device for the purpose of conferring jurisdiction and the leave should not be revoked;

Radha Bibee v. *Mucksoodun Doss* (1); *Kalooram Agarwala* v. *Jonisthalal Chakrabarti* (2); *Daulatram Rawatmull* v. *Maharajlal* (3) distinguished;

(iii) that as the expense or difficulties for a trial in Calcutta were not so great for the defendant as to result in injustice being done, the Court should not stay the suit.

Jethabhai Versey & Co. v. *Amarchand Madhavji & Co.* (4) distinguished.

APPLICATION by a defendant for revocation of the leave under cl. 12 of the Letters Patent and alternatively for stay of the suit.

The facts of the case appear sufficiently from the judgment.

*Application in Original Suit No. 1177 of 1938.

(1) (1874) 21 W. R. 204.
(2) (1935) I. L. R. 63 Cal. 435.
(3) (1935) I. L. R. 63 Cal. 526.
(4) [1924] A. I. R. (Bom.) 90.

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S. N. Banerjee and *N. C. Chatterjee* for the petitioner. This Court has no jurisdiction to try the suit, as no part of the cause of action arose within such jurisdiction. Leave granted under cl. 12 of the Letters Patent should be revoked. The business was carried on at Bantva, all the parties ordinarily reside there and the agreement of December 15, 1934, under which the business was carried on, was executed at Bantva. Further, there was a special agreement that all suits relating to disputes of the business should be brought in Bantva or Rajkot.

By the document of February 3, 1936, executed at Bantva, accounts of the business were adjusted. Any suit seeking to set aside the adjustment on the ground of fraud or undue influence must be brought in Bantva.

In *Daulatram Rawatmull* v. *Maharajlal* (1), Panckridge J., in revoking the leave under cl. 12 of the Letters Patent, considered defendants' residence and the nature of the transaction as ingredients for deciding the question. See also *Kalooram Agarwala* v. *Jonisthalal Chakrabarti* (2) and *Radha Bibee* v. *Mucksoodun Doss* (3).

In any event on the balance of convenience this suit should be stayed. All the books are at Rajkot, all the parties belong to Kathiwar. If the suit is tried here, the defendants will be subjected to great inconvenience as will amount to vexation and oppression. But if the suit is brought in the proper tribunal which is accessible to all the parties, the plaintiff will not be inconvenienced. The correct principle was laid down by Marten J. following the English cases in *Jethabhai Versey & Co.* v. *Amarchand Madhavji & Co.* (4).

Sir Asoka Roy, Advocate-General, and *S. B. Sinha* for the plaintiff, respondent. This is a *mala fide* application brought for the purpose of harassing

(1) (1935) I. L. R. 63 Cal. 526.
(2) (1935) I. L. R. 63 Cal. 435.
(3) (1874) 21 W. R. 204.
(4) [1924] A. I. R. (Bom.) 90.

the plaintiff. All the material paragraphs of the petition are verified as based on information, but the source of information has not been indicated. If the Court is satisfied that a partnership existed, then the adjustment of February 3, 1936, is not binding on the partnership as all the partners were not parties to it.

The question to be decided on this application requires meticulous consideration of facts and law and should not be dealt with in an interlocutory application: *Secretary of State for India in Council* v. *Golabrai Paliram* (1).

Jurisdiction is founded on two grounds. The first ground is the allegation of fact in the plaint that the defendants carry on business in Calcutta, which can only be decided on evidence. The second ground is that part of the cause of action arose in Calcutta and leave under cl. 12 of the Letters Patent was obtained. The partnership was registered in Calcutta and the Register of Firms contained a statement that the principal place of business was at Calcutta and that the parties to the suit were partners. Under s. 68 of the Partnership Act, this statement is conclusive proof of the facts against the partners, which cannot be dislodged by affidavit.

Banerjee, in reply. The entry in the Register of Firms does not represent the real state of things. It is a mere device to enable the plaintiff to file suits in Calcutta and to deal with certain income-tax matters.

S. M. Bose, Standing Counsel, *B. C. Ghose*, *S. C. Bose*, *Sambhu N. Banerjee*, *H. N. Sanyal* and *A. C. Ganguly* for the other defendants.

Cur. adv. vult.

SEN J. This is an application by the defendant No. 6, Hajee Adam Abdul Shakoor, for an order that the leave granted under cl. 12 of the Letters

(1) (1931) I. L. R. 59 Cal. 150.

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Patent of this Court to the plaintiff to institute this suit in this Court be revoked, in the alternative for an order staying the suit. There was a prayer for security for costs; that was abandoned by learned counsel for the petitioner.

This motion arises out of a suit instituted by the plaintiff Ali Mahomed Ebrahim Shakoor against six defendants. They are: (1) Adam Hajee Peer Mohamed Essack, for self, (2) Adam Hajee Peer Mohamed Essack, as Manager of Peer Mohamedi Fund, (3) Ahmed Hajee Peer Mohamed, (4) Abdul Karim Adam, (5) Taiyub Ali Mohamed and (6) Hajee Adam Abdul Shakoor. It will be more convenient, I think, to refer to the defendants by their respective numbers and not by their names which are confusing by reason of the fact that the names of the different defendants are very similar and seem to be a permutation and combination of one another's names.

The defendant No. 1 is the same person as the defendant No. 2. The defendant No. 3 is the brother of the defendant No. 1 and the defendant No. 4 is the son of the defendant No. 1. The defendant No. 5 is the plaintiff's son, and the defendant No. 6 is the manager of the defendant No. 1. It is clear from this statement that the defendants Nos. 1, 3 and 4 are closely related as brothers and son, and the defendant No. 6 is the manager of the defendant No. 1.

The plaintiff's suit is one for the dissolution of a partnership alleged to be existing between him and the five defendants and for accounts. There is a further prayer for a declaration that the document executed by the plaintiff on February 3, 1936, in favour of the defendant No. 1 is void on the ground of fraud, undue influence and similar grounds. It is alleged that the partnership business was carried on at Calcutta.

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The suit was instituted on June 27, 1938. The written statement of the defendant No. 1 was filed on August 10, 1938, and the written statements of the other defendants were filed on November 7, 1938.

On August 22, 1938, the defendant No. 1 applied to this Court for a stay of the suit and for security for costs. In fact that application was similar to the present one in all respects except that there was no prayer for an order to revoke the leave granted under cl. 12 of the Letters Patent. The other defendants did not join in that application, nor were they served with notice of that application.

On December 6, 1938, by consent an order was passed. The plaintiff consented to furnish security. While that application was pending the other defendants were written to by the solicitors of the plaintiff asking them to state their attitude with respect to the application, but no reply was given to this letter.

Thirteen days after that consent order, that is, on December 19, 1938, the present application has been made by the defendant No. 6, who, as I have said, is the servant of the defendant No. 1. In this application it is worthy of notice that the defendant No. 3, who is the brother of the defendant No. 1, has not been served with notice.

On behalf of the petitioner the allegations are briefly as follows: He says that there was no partnership between the defendant No. 1 and the other defendants. He claims that the business belonged to the defendant No. 1 alone and that the plaintiff and the others were servants, who had a share in the profits of the business. His contention is that, under the peculiar law prevailing in the Bantva State where the agreement between the parties was entered into and where all the parties reside, the agreement did not constitute a partnership. This agreement is dated December 15, 1934. It is stated that the head office of the business is at Bantva and

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not at Calcutta, and it is pointed out that there is a term in the agreement whereby the plaintiff agreed that all disputes would be settled at Bantva or Rajkot and that he would not be permitted to institute legal proceedings elsewhere.

The next important allegation of the petitioner is that all accounts between the plaintiff and defendant No. 1 have already been settled and that on February 3, 1936, the plaintiff executed a document evidencing this settlement of account and terminating the agreement. This document, it was alleged, was executed at Bantva. This is the document which was challenged on the ground of fraud and undue influence. The petitioner alleges that no fraud or undue influence was exercised, and that the circumstances all indicate that the plaintiff willingly and with full knowledge of all the facts executed this document.

It is said that pursuant to this document the plaintiff was given a sum of over Rs. 3,00,000 which he accepted. The contentions of the petitioner are :— firstly, that the entire cause of action in this suit arises outside the jurisdiction of this Court; secondly, that the plaintiff contracted that he would not be entitled to bring any suit except in the Bantva and Rajkot Courts. On these grounds it is contended that this Court has no jurisdiction to entertain this suit. Thirdly, it is said that, even if this Court has jurisdiction to entertain this suit on the footing that part of the cause of action has arisen here, the leave granted should be revoked or the suit should be stayed inasmuch as the suit has been brought here with intent to make it impossible for the defendants to defend the suit. It is pointed out that all the books are at Bantva, all the witnesses reside there, and that the suit could be most conveniently tried at Bantva or Rajkot. The contention is that this suit has been brought here deliberately with the object of making it impossible for the defendants to carry on their defence.

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On behalf of the plaintiff respondent the contention is that there was a partnership and that the partnership was registered at Calcutta. It was further pointed out that Calcutta was the principal place of business of the partnership. On this ground it is argued that this Court has jurisdiction to try this suit. It is contended further that the deed of partnership does not contain any clause which precludes the plaintiff from suing in this Court. Lastly, it is said that this suit can be conveniently tried here and that this application is a *mala fide* one made for the purpose of harassing the plaintiff.

The first thing to remember in an interlocutory application like this is that matters of difficulty and importance which require a meticulous consideration of facts and law and which are best determined upon the evidence of witnesses who have been subjected to cross-examination should be decided at the trial of the suit and not in the application. I do not consider that it is necessary to go into the facts in detail or to decide finally whether the plaintiff's allegations of fraud are justified or whether they are themselves fraudulent. What has to be decided on this application is whether any part of the cause of action has arisen within the jurisdiction of this Court and if so whether the leave granted under cl. 12 of the Letters Patent should remain. Upon the materials before me and as at present advised I have no hesitation in coming to the conclusion that the plaintiff has shown that a part of the cause of action has arisen within the jurisdiction of this Court. There is a register which is kept in accordance with the terms of the Partnership Act. In that register it is stated that all the parties are partners and that the principal place of business of the partnership firm is at No. 1, Amratala Lane, Calcutta. Under s. 68 of the Partnership Act it is laid down that the statements contained in the Register of Firms shall as against any person by whom or on whose behalf such statements have been made be conclusive proof

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of any fact therein stated. The defendants say that this entry was made merely to enable the plaintiff to file suits in the Small Causes Court at Calcutta and to deal with certain income-tax matters and that it does not represent the real state of things. I am extremely doubtful whether the defendants can be allowed to say this in view of the provisions of s. 68 of the Partnership Act. In any case for the purposes of this application the register of firms is sufficient evidence to establish that there was a partnership business, that the plaintiff and the defendants were all partners in this business and that the principal place of business of the firm was at Calcutta. This suit is for a dissolution of this partnership, therefore this Court has jurisdiction to try this suit.

On behalf of the petitioner it is said that the plaintiff has already by a document of February 3, 1936, given up his rights. The plaintiff says that this document was brought about by fraud. This question must be decided in the suit and cannot be decided upon affidavits on an application of this nature.

Next the petitioner relies upon the clause in the partnership agreement of December 15, 1934, which he says debars the plaintiff from suing in any other Court except the Courts at Bantva and Rajkot. The translation of this document furnished by the petitioner is not on affidavit. On behalf of the plaintiff there is a translation which is supported by an affidavit. After perusing this translation I cannot say that by this document the plaintiff has divested himself of his right to bring a suit of the nature of the present one in this court.

I shall now deal with the next contention urged on behalf of the petitioner, namely, that even if this Court has jurisdiction to try this suit leave should be refused on the ground of balance of inconvenience or on the ground that the plaintiff has brought this suit *mala fide* in this Court merely to harass the

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defendant. Certain cases were cited in support of this contention. They are *Radha Bibee* v. *Mucksoodun Doss* (1); *Kalooram Agarwala* v. *Jonisthalal Chakrabarti* (2) and *Daulatram Rawatmull* v. *Maharajlal* (3). In my opinion these decisions can be distinguished from the circumstances of the present application. In *Radha Bibee's* case (*supra*) a widow was suing for maintenance. The entire cause of action arose outside the jurisdiction of this Court. The widow sought to invoke the jurisdiction of this Court by praying for an order that a charge may be declared upon certain Calcutta property for her maintenance. In the other cases the suits were on promissory notes. The entire cause of action was outside Calcutta. The plaintiff brought the suits in this Court depending upon assignments of the promissory notes made within the jurisdiction of this suit obviously for the purpose of creating jurisdiction. In all these cases it will be seen that the jurisdiction of this Court was sought to be attracted by a device and it was held that when the subject matter of a suit is outside the jurisdiction of this Court the plaintiff should not be allowed to bring a suit in this Court by the adoption of such devices. The decisions in *Kalooram Agarwala's* case (*supra*) and *Daulatram Rawatmull's* case (*supra*) were not followed in another case, *Radhika Mohan Ray* v. *Bhabani Prasanna Lahiri* (4) on the ground that if the view of the earlier cases were adopted it would strike at the root of negotiability. I am not concerned with the question of negotiability in this case. It is quite clear, however, that in all these cases jurisdiction did not exist until jurisdiction was attracted by the adoption of a device for the express purpose of conferring jurisdiction on this Court.

In this case the position is quite different. The plaintiff relies not upon any device; he relies upon

(1) (1874) 21 W. R. 204.
(2) (1935) I. L. R. 63 Cal. 435.
(3) (1935) I. L. R. 63 Cal. 526.
(4) (1936) I. L. R. 63 Cal. 908.

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facts which were in existence long before this suit was ever contemplated. He relies upon the entry in the register kept under the Partnership Act. It cannot be said that this entry was made with the object of giving the plaintiff an opportunity of bringing the suit in this Court. I am of opinion, therefore, that the cases cited by learned counsel on behalf of the petitioner do not help him.

Learned counsel for the petitioner then relied upon the case of *Jethabhai Versey & Co.* v. *Amarchand Madhavji & Co.* (1). In that case certain principles were laid down upon which the Court would be justified in ordering a stay of the suit. In my opinion the facts of the present case do not fall within the scope of those principles. It was said there:—

> If the Court taking all the facts into consideration, comes to the conclusion that a plaintiff in commencing an action in this country has not done so on account of any legitimate advantage which a trial in this country will give him, but for purposes entirely foreign to that legitimate purpose, then, apart from any question as to expense or inconvenience, in my opinion, not only has the Court jurisdiction, but it is its duty to stay the proceedings.

Again there is the following passage:—

> As I have already pointed out, in order to justify a stay it is, as a rule, necessary that something more should exist than a mere balance of convenience in favour of proceeding in some other country. In my opinion it must be proved to the satisfaction of the Court that either the expense or the difficulties of trial in this country are so great that injustice will be done in this sense, that it will be very difficult, or practically impossible, for the litigant who is applying for stay to get justice in this country.

It may be that in this case many of the witnesses are residents of Bantva. It may also be true that some documents are at Bantva. But I do not think that it can be said that if the suit were tried here it would be so inconvenient for the defendant as to result in injustice being done.

I shall next take up the contention of the respondent that this application is *mala fide*. In my opinion, this contention is not groundless. As I have said before, there was an application by the defendant No. 1 a very few days before the present one which was almost in identical terms. The only

(1) [1924] A. I. R. (Bom.) 90, 95.

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substantial difference between that application and the present one is that there was no prayer for revoking the leave granted under cl. 12 of the Letters Patent. It is curious that the other defendants did not join in that application. It is also curious that this prayer for revocation of leave was not made then although all the facts which are now relied upon were well known to the defendant No. 1 at that time. It is also curious that the other defendants although they were written to by the plaintiff did not care to disclose what their attitude was in respect to that application.

A further fact which raises a suspicion in my mind is that the defendant No. 3, who is a brother of defendant No. 1, has not been given notice of this application, nor has he joined in this application. The suggestion made by the petitioner that this has been done deliberately so that the defendant No. 3 may come up with another application is not without foundation.

In these circumstances, I consider that this application should be refused. I, accordingly, dismiss it with costs. The costs will be as of a defended action. There will be only one set of costs.

Application dismissed.

G. K. D.