APPELLATE CIVIL.

Before Mr. Justice Varadachariar and Mr. Justice Horwill.

1938, January 11.

SWAMINATHAN CHETTIAR *alias* ARUNACHALAM CHETTIAR (PLAINTIFF), APPELLANT,

v.

V. E. N. K. R. M. V. R. M. SOMASUNDARAM CHETTIAR, AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), sec. 20 (b)—Non-resident foreigner—Cause of action against him arising in British India—Suit against him and others who were not foreigners, but some of whom resided within and others outside the jurisdiction of British Indian Court—Leave to sue all the defendants obtained under sec. 20 (b)—Jurisdiction of the said Court against non-resident foreigner.

C, a non-resident foreigner, on the strength of a rateable distribution order in his favour passed by a British Indian Court, drew a sum of money from the said Court. S and K who claimed to hold a decree against the same judgment-debtor were excluded from the benefits of the said order. S and K took the matter up in revision to the High Court without success. When the matter was pending in the High Court C died. S and K filed a suit under section 73 (2) of the Code of Civil Procedure for reopening the said rateable distribution order. In the said suit they impleaded, as defendants, C's son who also was a non-resident foreigner and a number of others who were also benefited by the said order. Some of the other defendants were also not residing within the territorial jurisdiction of the said Court though residing within British India. Under section 20 (*b*) of the Code, S and K had obtained leave of the Court to file the suit. A decree was passed against C's son and others. C's son filed a suit, out of which the present appeal arose, against S and K for a declaration that the decree obtained by them against him was void and inoperative on the ground that it was his father and not he who drew the money from Court and that he was a non-resident foreigner who had

* Appeal No. 80 of 1936.

not by any act of his own submitted to the jurisdiction of that Court and as such the Court had no jurisdiction to pass a decree against him in an action *in personam*.

Held—(i) So far as the plaintiff was concerned the suit filed by S and K was based on a cause of action which arose in British India since the withdrawal of the sum of money took place in British India. The question of jurisdiction alone was open to the plaintiff and not the one relating to the correctness of the decree.

(ii) In a suit of this kind the Court grants leave to sue under section 20 to include defendants not residing within the local limits of its jurisdiction, and when leave is granted the suit is deemed to have been properly instituted even as against such defendants. It makes no difference for this purpose whether those defendants are residents of British India though outside the local limits of its jurisdiction or they are persons residing outside British India. Some parts of the said section give jurisdiction to British Indian Courts even in actions *in personam* against non-resident foreigners. There is no reason to read clause (*b*) of the said section as limited to persons merely residing outside the limits of the territorial jurisdiction of the Court but within British India.

Girdhar Damodar v. *Kassigar Hiragar*(1), *Massey* v. *Heynes*(2) and *The Duc d'Aumale*(3), relied on.

(iii) The Court had jurisdiction to pass the decree.

APPEAL against the decree of the Court of the Subordinate Judge of Ramnad at Madura in Original Suit No. 43 of 1933.

T. R. Venkatarama Sastri, *T. V. Rajagopalan* and *T. R. Srinivasa Ayyar* for appellant.

M. Patanjali Sastri and *T. K. Sundararaman* for respondents.

The JUDGMENT of the Court was delivered by VARADACHARIAR J.—This appeal arises out of a suit instituted by the appellant in the Sub-Court of Ramnad, for a declaration that the decree

(1) (1893) I.L.R. 17 Bom. 662. (2) (1888) 21 Q.B.D. 330, 334.
(3) [1903] P. 18.

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obtained against him by the present defendants in Original Suit No. 57 of 1922 on the file of that Court was void and inoperative and for an injunction restraining these defendants from executing that decree either in British India or elsewhere. The declaration was sought substantially on the ground that the plaintiff was a non-resident foreigner domiciled in the Pudukottah State and that the Ramnad Sub-Court had no jurisdiction to pass a decree against him in an action *in personam*. The lower Court dismissed the suit. Hence this appeal by the plaintiff.

Original Suit No. 57 of 1922 was a suit instituted by the present defendants, under the provisions of section 73 (2), Civil Procedure Code, seeking to reopen a rateable distribution ordered by the Sub-Court, Tanjore, to the exclusion of these defendants who claimed to hold a decree against the same judgment-debtor. The present plaintiff's father Chidambara Chetti was one of the creditors who on the strength of a decree obtained by him in the Chief Court at Rangoon claimed rateable distribution in the Tanjore Court and drew a sum of Rs. 5,300 odd in April 1914 from the Tanjore Court by way of rateable distribution. Against that order the present defendants had filed a civil revision petition in this Court which happened to be pending for a period of about seven years and was ultimately dismissed; and it was after the dismissal of the revision petition that the present defendants instituted Original Suit No. 57 of 1922 for recovery of their share in the assets which, according to their contention, had been wrongly distributed to the various creditors who were impleaded as defendants in Original Suit No. 57

of 1922. The circumstances which made it possible for the present plaintiff to impeach the jurisdiction of the Ramnad Sub-Court as against him were that his father who drew the money in 1914 died in 1918 while the civil revision petition was still pending in this Court and that the plaintiff who was impleaded as a defendant in Original Suit No. 57 of 1922 did not himself draw the money in question.

It has not been disputed that the plaintiff is a non-resident foreigner and has not by any act of his own submitted to the jurisdiction of the Ramnad Sub-Court. As against the plaintiff's contention, it has been urged by the defendants that the cause of action on which Original Suit No. 57 of 1922 was founded, viz., the withdrawal of the money by way of rateable distribution, undoubtedly arose in British India and it has been contended that it is now well settled that even as against a non-resident foreigner, the Courts in British India have jurisdiction *in personam* in suits based upon a cause of action arising in British India ; see *Girdhar Damodar* v. *Kassigar Hiragar*(1) referred to with approval by the Privy Council in *Annamali Chetty* v. *Murugasa Chetty*(2). *See* also *Rambhat* v. *Shankar Baswant*(3). Whatever the validity of a decree passed in such circumstances may be, when such a decree is impugned in a foreign Court, it is admitted by the learned Counsel for the appellant that in the present suit which was also instituted in a British Indian Court we can only consider whether according to the Municipal Law in force in British

(1) (1893) I.L.R. 17 Bom. 662. (2) (1903) I.L.R. 26 Mad. 544. (P.C.).
(3) (1901) I.L.R. 25 Bom. 528.

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India the Ramnad Sub-Court had jurisdiction to decree Original Suit No. 57 of 1922 against the present appellant.

Learned Counsel for the appellant seeks to answer the defendant's argument by drawing a distinction between his clients' liability as the son or legal representative of his father and his client's personal liability and he contends that the Ramnad Sub-Court had no jurisdiction to pass a *personal* decree against his client as it has done in Original Suit No. 57 of 1922. It seems necessary in dealing with this contention to emphasise the distinction between the question of the existence of jurisdiction and that of the correctness or otherwise of the decree passed in the suit. It is admitted that if the Court had jurisdiction over the present plaintiff in Original Suit No. 57 of 1922, it is not open to us in this suit to examine the correctness or otherwise of the decree passed in that suit. In this view the learned Counsel for the appellant rightly refrained from pressing before us many of the issues raised in the lower Court in the present case which really bear on the merits of the decision in Original Suit No. 57 of 1922 and are not strictly relevant to the question of jurisdiction. Bearing this distinction in mind, it is difficult to accede to the contention urged by the learned Counsel for the appellant. The only cause of action relied on in Original Suit No. 57 of 1922 was the withdrawal of money from the Court in British India under the rateable distribution order. It therefore cannot be held that the suit was not based on a cause of action arising in British India. Assuming for the moment that the proper decision for the Court to have given in

Original Suit No. 57 of 1922 as against the present plaintiff would only have been a decree limited to the joint family properties or the assets of the father Chidambara in the hands of the appellant, this is obviously a question relating to the correctness of the decree and not a question of jurisdiction.

Learned Counsel suggested to us at one stage of his argument that the plaintiff's capacity in his character as legal representative or son of his father is so wholly different from his individual capacity that we should hold that though in his character as his father's son or representative he might have been properly impleaded in Original Suit No. 57 of 1922, he must be dealt with as not a party at all in his individual capacity and he invoked the analogy of the position of a trustee in relation to his personal estate and to the trust estate respectively. But when we drew his attention to the line of cases in this country under section 47 of the Civil Procedure Code holding that even a person who is sued as a representative is a party to the suit within the meaning of section 47 when he is claiming that certain properties belonging to him in his personal right are not to be attached in execution of a decree obtained against him as legal representative, learned Counsel admitted that the analogy of a trustee was not a true analogy. We are therefore unable to accept the appellant's contention that so far as he was concerned Original Suit No. 57 of 1922 was not founded on a cause of action which arose in British India.

There are one or two other grounds advanced in the Court below and also suggested before us

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in support of the defendants' contention that the Ramnad Sub-Court was competent to deal with Original Suit No. 57 of 1922 against the present plaintiff. In the view we have taken above it will be sufficient to deal with these other contentions briefly. One of them is that the plaintiff was one of the partners in the T.A. Firm or family business carried on by his father Chidambara and that the plaintiff's liability for refund of the money drawn by Chidambara under the rateable distribution order was therefore a personal liability and not merely the liability of a son or legal representative. There is certainly some evidence to support the contention that in relation to the T.A. Firm the plaintiff was more than a mere joint family member interested in the business. Admittedly in 1916 the plaintiff was adjudicated insolvent along with his father in respect of the debts due by the T.A. Firm. This could only have been on the footing that he was personally liable for those debts as a partner and his liability was not merely that of a member of a joint Hindu family. At one stage a doubt was raised whether the plaintiff had attained majority at all in 1914 so as to impose upon him a personal liability to refund the money withdrawn by his father under the rateable distribution order; but in view of the affidavit filed by him during the insolvency proceedings we are unable to accept the appellant's suggestion that he had not attained majority in 1914. If therefore plaintiff's father should be held to have withdrawn the money under the rateable distribution order as one of the members of the firm in which the plaintiff was also a partner, the cause of action was one which accrued both

against the plaintiff and his father and in that sense Original Suit No. 57 of 1922 was as against the present plaintiff a suit founded on a cause of action which arose in British India. Alternatively, learned Counsel for the respondents contended that even if that suit was not as against this plaintiff founded on a cause of action that arose in British India, the Court had full jurisdiction in that suit by reason of the provisions of section 20 (*b*) of the Code of Civil Procedure. As already stated, that suit was instituted against a number of defendants who had obtained rateable distribution under the same order and, as some of the defendants in that suit (including the present plaintiff) were not resident within the limits of the territorial jurisdiction of the Ramnad Court, leave was obtained under section 20 (*b*) of the Code to implead them in that suit. There can be no doubt that as against most of the defendants to that suit that suit was properly instituted in the Ramnad Court. In these circumstances, learned Counsel for the respondents contends that if in a suit of that kind the Court grants leave to include defendants not resident within the limits of its jurisdiction, the suit must be deemed to have been properly instituted even as against the latter defendants and that it makes no difference for this purpose whether those defendants are residents of British India though outside the local limits of the Court's jurisdiction or they are persons residing outside British India. This contention receives some support from the reasoning of SARGENT C.J. in *Girdhar Damodar* v. *Kassigar Hiragar*(1). If in respect of some parts

(1) (1893) I.L.R. 17 Bom. 662.

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of section 20 the Code is to be construed as giving jurisdiction to British Indian Courts even in actions *in personam* as against non-resident foreigners, there is no reason to read clause (*b*) of section 20 as limited to persons merely residing outside the limits of the territorial jurisdiction of the Court but within British India. The analogy of Order XI, rule 1 (*g*), of the English Supreme Court Rules relating to service outside jurisdiction also supports the respondents' contention. It is obvious that that clause of the English rule refers to non-resident foreigners. The considerations justifying the recognition of jurisdiction in the English Courts even as against non-resident foreigners in cases falling under that clause are indicated in the judgment of WILLS J. in *Massey* v. *Heynes*(1). From the decision in *The Duc d'Aumale*(2) it is clear that in cases falling under that clause it is immaterial that even the cause of action did not arise in England. The danger that by obtaining leave a plaintiff may bring before the English or the British Indian Court a person against whom the domestic Court could not reasonably exercise jurisdiction is sufficiently guarded against by the provision insisting upon the leave of the Court being obtained in such cases ; and, as we have already indicated, Original Suit No. 57 of 1922 was instituted with the leave of the Court. Any argument as to whether the leave was or was not properly granted in the particular circumstances is not one which can be advanced in a separate suit attacking the validity of the decree passed in that suit. We

(1) (1888) 21 Q.B.D. 330, 331. (2) [1903] P. 18.

accordingly agree with the decision of the learned Subordinate Judge that the contention that as against the present appellant the decree in Original Suit No. 57 of 1922 is void for want of jurisdiction fails.

The learned Counsel for the appellant suggested another argument based on the insolvency proceedings against the plaintiff and his father. It appears that the adjudication was annulled as the result of a scheme of composition. Relying on that circumstance, the learned Counsel contended that the present claim should be regarded as not enforceable by a regular suit and must have been proved in the insolvency itself as a debt. He did not however seriously insist on that contention when it was pointed out to him that before the annulment of that insolvency, the present claim could not have been regarded as a debt proveable in the insolvency. As stated already, Chidambara had withdrawn the money under an order of Court which denied the present defendants' claim to rateable distribution. There was at that stage no relationship of debtor and creditor between Chidambara and the present defendants nor could it be said that any liability had come into existence till in Original Suit No. 57 of 1922 the Court made a decree on the ground that the distribution made under the rateable distribution order was improper. There is accordingly no force in the contention based upon the insolvency proceedings.

The appeal fails and is dismissed with costs.

G.R.