

LETTERS PATENT APPEAL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice
LeRossignol.

JAWAHAR SINGH (PLAINTIFF) Appellant,

1925

versus

Nov. 26.

E. D. SASSOON & Co., KARACHI (DEFENDANT)
Respondent.

Letters Patent Appeal No. 155 of 1924.

*Civil Procedure Code, Act V of 1908, section 20 (c)—
Jurisdiction—Decree obtained at Karachi—transmitted to
Amritsar for execution and property attached there in execu-
tion thereof—Suit in Amritsar Court for declaration that
the decree was obtained by fraud and for an injunction res-
training decree-holders from executing the decree against
plaintiff's property at Amritsar—Competency of Amritsar
Court to hear the suit—Cause of action.*

The defendants obtained a decree at Karachi against the plaintiff's firm. It was transmitted for execution to the Court of the Senior Subordinate Judge at Amritsar, and in execution thereof certain immoveable property belonging to the plaintiff was attached. The plaintiff then brought the present suit at Amritsar for a declaration that the decree was inoperative as it was obtained by fraud and for an injunction restraining the decree-holders from executing the decree against his property at Amritsar. It was contended on behalf of the decree-holders that the Amritsar Court had no jurisdiction to entertain the suit.

Held, that the cause of action in the suit consisted of two parts, one of which arose at Karachi where the decree sought to be impeached as fraudulent was passed, and the other at Amritsar where the property of the plaintiff was attached; and that therefore the Amritsar Court had jurisdiction to entertain and determine the suit, *vide*, section 20 (c) of the Code of Civil Procedure.

Banke Behari Lal v. Pokhi Ram (1), *Jawahir v. Neki Ram* (2), *Khushali Ram v. Gokul Chand* (3), and *Kedar*

(1) (1902) I. L. R. 25 All 48.

(2) (1914) I. L. R. 37 All. 189.

(3) (1917) I. L. R. 39 All. 607.

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& Co.*Nath Mukerjee v. Prosonna Kumar Chatterjee* (1), followed.*Umrao Singh v. Hardeo* (2), distinguished.*Appeal under clause 10 of the Letters Patent from the judgment of Mr. Justice Harrison, dated the 31st March 1924.*

DEV RAJ SAWHNEY, for Appellant.

J. M. MACKAY, for Respondent.

The judgment of the Court was delivered by :—

SIR SHADI LAL C. J.—On the 26th March, 1918, Messrs. E. D. Sassoon and Company obtained a decree for a certain sum of money against the firm of Nidhan Singh-Jawahar Singh in the Court of the Additional Judicial Commissioner, Karachi. The decree was transmitted for execution to the Senior Subordinate Judge of Amritsar, and in execution thereof certain immoveable property belonging to the judgment-debtors was attached.

The plaintiff, Jawahar Singh, has brought the present suit for a declaration that the decree is inoperative as it was obtained by fraud, and for an injunction restraining the decree-holders from executing the decree against his property in Amritsar. The question for determination is whether the Amritsar Court has jurisdiction to entertain the suit. Now, section 20, Civil Procedure Code, lays down, *inter alia*, that a suit shall be instituted in a Court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises. The cause of action in the present case consists of two parts, one of which arose at Karachi where the decree sought to be impeached as fraudulent was passed, and the other at Amritsar where the property of the plaintiff was attached. The Amritsar Court has, therefore,

(1) (1901) 5 Cal. W. N. 559. (2) (1907) I. L. R. 29 All. 418.

jurisdiction to entertain and determine the suit. This rule has been laid down in *Banke Behari Lal v. Pokhi Ram and another* (1), *Jawahir v. Neki Ram* (2), *Khushali Ram v. Gokul Chand* (3) and *Kedar Nath Mukerjee v. Prosonna Kumar Chatterjee* (4).

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The learned counsel for the decree-holders contends that in the cases cited above the suit was brought by a judgment-debtor, but that the present action was brought by the plaintiff as a third party on the allegation that he was not liable under the decree. Now, we have carefully considered the allegations in the plaint, and we are of opinion that, though that document is not artistically framed, the substance of the plaintiff's claim is that, while under the decree as it stands he is liable for the payment of the money, there are various reasons why the decree should be held to be inoperative as against him. The suit must, therefore, be treated as one brought by a judgment-debtor; and, as a material portion of the cause of action, namely, the attachment of his property, arose at Amritsar, he is entitled to ask the Amritsar Court to determine the suit.

If the suit had been *solely* for setting aside the decree obtained at Karachi, the Amritsar Court would not have been competent to entertain it. The only cause of action in that case would have been the obtaining of the decree by fraud, and, as it arose in Karachi, no Court other than the Karachi Court would have been competent to hear the suit. Such a suit belongs to the category exemplified by the judgment in *Umrao Singh v. Hardeo* (5), but, as pointed out above, the plaintiff in the present case

(1) (1902) I. L. R. 25 All. 25. (3) (1917) I. L. R. 39 All. 607.

(2) (1914) I. L. R. 37 All. 189. (4) (1901) 5 Cal. W. N. 559.

(5) (1907) I. L. R. 29 All. 418.

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seeks two reliefs : (1) a declaration that the decree is inoperative on the ground of fraud, and (2) an injunction for the protection of his property against attachment and sale in execution of that decree; and we consider that the second prayer cannot be ignored for the purpose of determining the jurisdiction of the Court. It is, therefore, clear that part of the cause of action arose at Amritsar, and the suit is consequently cognizable by the Senior Subordinate Judge of Amritsar.

For the aforesaid reasons we accept the appeal, and setting aside the judgment of the Single Bench as well as that of the Subordinate Judge we remit the case to the latter for disposal in accordance with law. Costs of this appeal shall be costs in the cause.

A. N. C.

Appeal accepted.
