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mentioned in the plaint, specifically performed by the 3rd defendant.

Direct the 3rd defendant to execute a conveyance to the plaintiff in terms of the said contract within 3 months from this date and to deliver possession to the plaintiff of the property forming the subject-matter of the contract on receiving the amount of the purchase-money payable thereunder.

Plaintiff to have the costs of hearing of this suit both before and after the review, from the 3rd defendant, except the costs of the review which shall fall on the plaintiff. The costs which the 3rd defendant is hereby adjudged to be liable to pay shall be the ordinary costs payable by a party added after the filing of the suit.

Liberty to apply.

Attorneys for the plaintiff—*Messrs. Malvi, Hiralal and Mody.*

Attorneys for the defendants—*Messrs. Tyabji, Dayabhai and Company.*

ORIGINAL CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batchelor.

1904.
October 3.

VAGHOJI KUVERJI (DEFENDANTS), APPELLANTS, *v.* CAMAJI BOMANJI (PLAINTIFFS), RESPONDENTS.*

Letters Patent clause 12—Suit for land—Jurisdiction—Leave of Court—Cause of action—Title—Appeal from order discharging summons.

The plaintiffs asked for a declaration that they were entitled to exclusive possession and enjoyment of a *talao* situated outside the jurisdiction of the Court and that the defendants had no right in or to the same. They also sought an injunction to give effect to that declaration and further prayed that it might be declared that they were the exclusive owners of the *talao*.

Held, that the suit was a suit for land and that under the circumstances the Court had no jurisdiction to entertain it.

Held, also, that an appeal lies from an order dismissing a Judges summons to shew cause why leave granted under clause 12 of the Letters Patent should not be rescinded and the plaint taken off the file.

* Appeal No. 1350, suit 716 of 1903.

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Hadjee Ismail Hadjee Hubbeeb v. *Hadjee Mahomed Hadjee Joosub*(1) applied.

Under section 12 of the Letters Patent leave is only required when the cause of action has arisen in part within the local limits of the ordinary original jurisdiction of the High Court; in every other case either the Court has no power to grant leave or it is unnecessary to obtain it.

A Court of Equity in England only assumes jurisdiction in relation to land abroad, when as between the litigants or their predecessors some privity or relation is established on the ground of contract, trust or fraud, but in no case does a Court of Equity entertain a suit, even if the defendant is within the limits of its jurisdiction, where the purpose is to obtain a declaration of title to foreign land.

Though it is a general principle that the title to land should ordinarily be determined by the Court within the limits of whose jurisdiction it lies, it is, no doubt, open to the Legislature to disregard that principle. But the Courts certainly would not lean towards a construction involving that result, where the words of the Legislature are fairly capable of a meaning in conformity with the general principle. The phrase "suit for land" in section 12 of the Letters Patent is by no means limited to a suit for the recovery of land: the expression is not to be read with a technical limitation, which had never been associated with it.

APPEAL from an order by Russell, J., dismissing a Judges summons calling upon the plaintiff to shew cause why leave granted under the Letters Patent clause 12 should not be rescinded and the plaint taken off the file.

On the 19th November, 1903, the plaintiffs filed a suit against the defendants in the High Court asking for a declaration that they were entitled to the exclusive possession of a *talao* situated in the Thána District and that the defendants had no right to the said *talao*. They further prayed that the defendants might be restrained by injunction from drawing off the water of the *talao* or interfering with the plaintiffs' enjoyment of or control over it. The prayers in this suit are fully set out in the judgment of the Court.

The plaintiffs, *ex-parte*, obtained leave under the Letters Patent clause 12 to file this suit in the High Court, Bombay, and on 1st February, 1904, the defendants obtained a Judges summons calling upon the plaintiffs to shew cause why the leave granted should not be rescinded and the plaint taken off the file.

(1) (1874) 13 Ben. L. R. 9.

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The summons came on for argument before Mr. Justice Russell, who, after hearing counsel for the plaintiffs and defendants, passed an order on the 14th April, 1904, dismissing the summons without prejudice to the contentions of the parties at the hearing.

From this order the defendants appealed.

Donald for the appellants:—The order passed by Russell, J., is a judgment as defined by clause 15 of the Letters Patent and an appeal therefore lies.

The foundation of this suit is a question of title and as the land to which the question refers lies wholly outside the jurisdiction of the Court this Court can have no jurisdiction to try the suit. Therefore no leave is necessary in this case nor has the Court power to grant it. It is admitted for the purpose of this suit that the defendants at the time of the commencement of this suit were dwelling within the limits of the original jurisdiction of the High Court and the only objection to the jurisdiction is that the suit is one for land.

Lowndes with *Strangman* for the respondents:—The order passed in this suit is not a final judgment as contemplated by the Letters Patent and so no appeal can lie from it. This is not a suit for land as it does not ask for delivery of land and the Court is precluded by authority from giving to the words any other meaning than this. We rely on *Yenkoba* v. *Rambhaji*[1], *Holkar* v. *Dadabhai Cursetji*[2], *Sorabji* v. *Rattonji*[3].

JENKINS, C. J.—The plaintiffs, after setting forth their title to, and possession of, a certain *talao* situate beyond the local limits of this Court's original jurisdiction, allege that the defendants have recently been molesting them in their possession and enjoyment of the *talao*, and have been threatening to restore certain connections, and have been giving out that they the defendants are entitled of right to the *talao* and to water therefrom for the purposes of their own land, and in particular have so given out to persons who would otherwise have become the lessees, farmers or purchasers of the plaintiffs' lands by reason whereof the plaint-

(1) (1872) 9 Bom. H. C. R. 12. (2) (1890) 14 Bom. 353.
(3) (1898) 22 Bom. 701.

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iffs have suffered damage. The plaint alleges that the defendants reside at Girgaum and on that ground claims this Court has jurisdiction, and the plaintiffs thereby pray as follows:—

"(*a*) That it may be declared that the plaintiffs are entitled to the exclusive possession and enjoyment of the said *talao* in plot No. 14 of *survey* No. 27 and to control the water connections therefrom.

(*b*) That it may be declared that the defendants have no right in or to the said *talao* or to take water therefrom through the said connections.

(*c*) That the defendants, their servants and agents may be restrained by the injunction of this Hon'ble Court from molesting the plaintiffs in their possession and enjoyment of the said *talao* and from in any way interfering with the said stop-cock or other contrivance the plaintiffs may hereafter adopt for cutting off the connections between the said *talao* and the lands of the defendants.

(*d*) That it *may be declared that the plaintiffs are the owners* of the land bearing survey No. 66 (3) and the said tank and the said water connections therewith and that they have the exclusive right to manage and maintain the said tank as a private charity.

(*d* 1) That the defendants may be restrained from proceeding with the said suit No. 243 of 1903 in the First Class Subordinate Judge's Court at Thána pending the disposal of the present suit or until the further order of this Hon'ble Court and that if necessary but not otherwise the said suit may be transferred to this Hon'ble Court for trial or such other order may be made in the premises as to this Hon'ble Court may seem meet.

(*e*) That the defendants may be ordered to pay the costs of this suit, and

(*f*) That the plaintiffs may have such further and other relief as the case may require."

On the 4th of February 1904 the defendants obtained a Judges summons calling on the plaintiffs to show cause "if any why the leave to bring this suit given to them under clause xii of the Letters Patent should not be rescinded and why the plaint should not be taken off the file and returned to them and why the said plaintiffs should not pay the costs of and incidental to this summons as also the costs incurred up to date herein by the said defendants."

On that Mr. Justice Russell made the following order: "I do order that the said Judges summons be and the same is hereby dismissed without prejudice to the contentions of the parties at the hearing."

From this order the present appeal has been preferred, and we have in the first place to decide whether the appeal will lie.

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Before Mr. Justice Russell the defendants questioned the Court's jurisdiction on two grounds, alleging 1st that the suit was one for land outside the jurisdiction, and secondly that they did not dwell within the jurisdiction, and the note of judgment with which we have been furnished shows that on the first point Mr. Justice Russell was of opinion that the plaintiffs were "really seeking a remedy *in personam*, and in such case the leave was properly granted."

But on the question of residence he came to no determination, stating that at the trial the defendants might be able to show that they were not residing within the jurisdiction at the institution of the suit. And it was on this last ground apparently that he discharged the summons without prejudice to the contention of the parties at the hearing.

Before us the defendants have abandoned their objection to the jurisdiction on the ground of non-residence within the jurisdiction, and I have recorded their admission as made through their counsel, Mr. Donald, in the following terms: "I admit for the purposes of this suit that the defendants at the time of the commencement of the suit were dwelling within the limits of the original jurisdiction of the High Court and my only objection to the jurisdiction is that the suit is one for land."

From the note of his judgment it is apparent that on the question whether the suit was one for land, Mr. Justice Russell has decided adversely to the defendants, so that the dismissal of the summons has (so far as Mr. Justice Russell is concerned) become decisive against the defendants. It thus falls within the rule laid down in *Hadjee Ismail Hadjee Hubbeeb* v. *Hadjee Mahomed Hadjee Joosub* [1] and (in my opinion) an appeal lies.

Mr. Justice Russell seems to have thought that this was a case where the granting of leave would make a difference one way or the other, but it really has nothing whatever to do with the case, as it has been argued before us; for if the suit is one for land, then leave would be of no avail. It is sometimes overlooked that under section 12 of the Letters Patent leave is only required where the cause of action shall have arisen in part within the local limits of the Ordinary Original Jurisdiction of

(1) (1874) 13 Ben. L. R. 91.

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the High Court: in no other case is there any power or need to give leave under the section.

Is this then a suit for land or other immoveable property within the meaning of clause 12 of the Letters Patent?

For the plaintiffs it is contended it is not, inasmuch as it does not ask for delivery of the land, and it is argued that we are precluded by authority from giving to the words any other meaning than this. As I indicated in the course of the argument, if there is an actual decision of this Court to that effect then we are bound to follow it whatever our individual views may be, and whatever may have been decided in the Calcutta High Court.

It therefore is necessary to examine the authorities in detail.

The first case cited by the plaintiffs is *Venkoba* v. *Rambhaji valad Arjun* [1] where it was held by Gibbs and Melvill, JJ., that a suit for the recovery of a mortgage debt by the sale of the mortgaged property is not a suit for land within the meaning of section 5 of the Civil Procedure Code of 1859. Mr. Lowndes relies on the words "we think that a suit for land is a suit which asks for delivery of the land to the plaintiff." But the words immediately preceding show that this view was based on a comparison of section 5 with sections 223 and 224 of the Act, which speak of a "decree for a house, land or other immoveable property."

We have no such guide in the Letters Patent to the meaning of the expression *suit for land*, so that the determining factor in that case is absent from the present, and the decision, standing alone, is not a decision by which we are bound in construing clause 12 of the Letters Patent.

But then it has been argued that this reasoning was adopted by Sir Charles Sargent in delivering the judgment of the Court in *H. H. Shrimant Maharaj Holkar* v. *Dadabhai* [2], where it was held that in a suit for specific performance of an agreement made in Bombay, but relating to land situate outside the original jurisdiction of the High Court, and to realize a mortgage debt by sale of the land, the Court had jurisdiction.

The passage in *Venkoba's* case, to which I have already referred, was no doubt cited in the judgment, but only as being

(1) (1872) 9 Bom. H. C. R. 12. (2) (1890) 14 Bom. 353.

a determination under the Civil Procedure Code of 1859. I cannot find that it forms a part of the *ratio decidendi*; for that I think is to be found in the concluding paragraphs of the judgment, where it is pointed out that the suit was one, which the Court of Equity in England could entertain even in the case of land outside the limits of its jurisdiction, and that as the High Courts in India had all the powers of a Court of Equity in England for enforcing their decrees *in personam*, different language would have been employed, had it been intended to exclude from the jurisdiction of the Court suits *in personam* as well as suits *in rem*.

By this *ratio decidendi* we are bound, but it falls very far short of affirming that a suit for land means only a suit for the recovery of land.

The next decision to which we were referred by Mr. Lowndes is *Sorabji* v. *Rattonji* (1), where it was held, following the *Holkar's* case, that a suit for foreclosure is not a suit for land within the meaning of clause 12 of the Letters Patent. I do not think it in any way furthers the plaintiff's contention.

There is another case in the same volume to which I may refer in passing, *Balaram* v. *Ramchandra* (2), where it was held that in a partition suit the Court had no jurisdiction over land outside the local limits.

This was no novel doctrine, for the same view was expressed in *Ramchandra* v. *Dada* (3) as the rule that prevailed in the Supreme Court.

I will in the first place then apply the test proposed by Sir Charles Sargent, and consider whether this is a suit, which would have been entertained by the Court of Equity in England, in relation to land abroad, and for this purpose it is necessary to see for what it is that the plaintiffs pray by their plaint.

Put briefly it may be said that first they ask for a declaration that they are entitled to exclusive possession and enjoyment of the *talao* and that the defendants have no right in or to the same: then they seek an injunction to give effect to that declaration: and then they pray for a declaration that they are

(1) (1898) 22 Bom. 701. (2) (1898) 22 Bom. 922.
(3) (1861) 1 Bom. H. C. R. Appx. lxxvi.

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owners of a piece of land. The prayer for an injunction to restrain another suit was apparently added later, and need not be considered.

Bearing these prayers in mind let us now consider what is the jurisdiction exercised by the Court of Equity in England in relation to foreign land.

An examination of the authorities appears to me to establish the proposition that a Court of Equity in England only assumed jurisdiction in relation to land abroad, where as between the litigants or their predecessors some privity or relation was established on the ground of contract, trust or fraud, but in no case of which I am aware has the Court of Equity entertained a suit, even if the defendant was within the limits of its jurisdiction, where the purpose was to obtain a declaration of title to foreign land.

The limitation which I have here suggested is, I think, justified by the decision (to cite one case from many) in *Norris* v. *Chambres* [1], and is in accordance with the opinion expressed by Kay, J., in *Graham* v. *Massey* [2].

Even in *Penn* v. *Lord Baltimore* [3], the leading case on this subject, though specific performance was decreed, on more mature consideration Lord Hardwicke omitted from the decree a direction that the defendant "should quietly hold according to the articles."

The point I am now discussing invites reference to the decision of the House of Lords in *British South Africa Company* v. *Campanhia de Mocambique* [4].

The reliefs sought by plaintiffs in that action are described by Fry L. J. in *Campanhia de Mocambique* v. *British South Africa Company* [5] as follows:—"first, a declaration of their title; secondly, an injunction to support and give effect to that declaration; thirdly, damages for trespass to the land; and, fourthly, an injunction to prevent future trespasses."

The land, to which the action related, was in South Africa. The case in the first instance came before a Division Bench,

(1) (1861) 29 Beav. 246; 3 De G.F. & J. 583. (3) (1750) 1 Vesey (Sen) 443 at p. 455.
(2) (1883) 23 Ch. D. 743 at p. 747. (4) (1893) A. C. 602.
(5) (1892) 2 Q. B. 358 at p. 406.

which, sitting as a Court vested with all the jurisdiction of a Court of Equity, held that the High Court will not entertain an action for directly determining the title to land in a foreign country. An appeal was preferred against this decision, but in the course of the argument the plaintiff's claim for a declaration of title and an injunction was abandoned.

The Court of Appeal decided on the rest of the case in favour of the plaintiffs, who thereupon appealed to the House of Lords, where it was held that the Supreme Court of Judicature has no jurisdiction to entertain an action to recover damages for a trespass to land situate abroad. In the course of his judgment Lord Herschell refers, and, as it appears to me, with approval, to the admission by the plaintiffs that the Court could not make a declaration of title or grant an injunction to restrain trespasses in relation to land abroad (see p. 624).

He goes on to decide as a point, not so obvious, that the plaintiffs could not even recover damages for a trespass to foreign land where the title was in question, and bases that decision on general considerations, which should make us pause before we place on the words *suit for land* a construction that might require us to decide the title to land abroad.

Mr. Lowndes very fairly admitted that, if his argument be correct, then this Court would have jurisdiction, and would be bound, to entertain a suit framed, as this is, wherever the land might be situate whether in Bengal or even in England. And yet it is clear from the authorities I have cited that the High Court in England could not entertain a similar suit as to land situate here.

If therefore we accept Sir Charles Sargent's test that it could not have been intended to exclude from the jurisdiction of the High Courts such suits *in personam* as would have been entertained by a Court of Equity in England in relation to land abroad, it is clear that no reason exists for holding that a suit, framed as this is, must be regarded as within our jurisdiction, though it relates to land outside our local limits.

Indeed Sir Arthur Strachey in *Sorabji's* case goes so far as to say that it was part of Sir Charles Sargent's *ratio decidendi* that the framers of clause 12 "intended to exclude from the Court's

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jurisdiction only such suits relating to land as, if brought in England, the Courts would have refused to entertain on the ground that the land was situate abroad."

It is not necessary for me now to consider whether this is an exact representation of Sir Charles Sargent's *ratio decidendi* but it certainly fortifies my view that there is nothing in that *ratio decidendi,* which compels us now to exclude the present suit from the category of suits for land.

It therefore comes back to this: on the true construction of clause 12 of the Letters Patent is this a suit for land ?

Though it is a general principle that the title to land should ordinarily be determined by the Court within the limits of whose jurisdiction it lies, it no doubt is open to the Legislature to disregard that principle.

But the Courts certainly would not lean towards a construction involving that result, where the words of the Legislature are fairly capable of a meaning in conformity with the general principle.

Now I know of no usage of legal phraseology, which at the date of the Letters Patent would limit the phrase "*a suit for land*" either in England or the old Supreme Court here to a suit for the recovery of land. It cannot be suggested that the use of the expression *suit for land* in section 5 of the Civil Procedure Code of 1859, as interpreted in *Yenkoba's* case[1], throws any light on this; for that is an Act to simplify the procedure of Courts of Civil Judicature *not established by Royal Charter.*

The proceeding for the delivery or recovery of land was both in England, and in the Supreme Court, ejectment, and if it was intended to refer in clause 12 only to suits for the recovery of land, surely the framers would have used the appropriate phrase of a suit in ejectment.

The reasonable inference, therefore, as it seems to me, is that it was not intended that the expression "suit for land" was to be read with a technical limitation, which never had been associated with it.

Taking the words therefore in their fair natural meaning, can there be any doubt that this is a suit for land ? Its leading purpose is to establish a title to possession of land and to secure

(1) (1872) 9 Bom. H. C. R. 12.

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that possession from molestation, and it is important to note that this claim is based not on any contract, trust or fraud, or any circumstance giving rise to privity between the parties, but is brought to vindicate rights resulting from ownership and possession alleged to be with the plaintiffs.

The plaintiffs do not even ask for damages by reason of trespass, so that we have not to consider what would have been the result in that case: their prayers are directly concerned with the land itself and are so framed as in my opinion to constitute this a *suit for land* within the meaning of clause 12 of the Letters Patent.

The result is that the appeal must be allowed with costs throughout. The plaint will be returned to the plaintiffs who will take such other steps as they may be advised.

Attorney for the appellants: *Mr. B. Raghavayya.*

Attorneys for the respondents: *Messrs. Ardeshir, Hormasji, Dinsha & Co.*

W. L. W.

ORIGINAL CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batchelor.

1904.
October 6.

VEERCHAND NOWLA AND OTHERS (PLAINTIFFS) *v.* B. B. & C. I. RAILWAY COMPANY (DEFENDANTS).*

DOOLA DEVICHAND (PLAINTIFF) *v.* B. B. & C. I. RAILWAY COMPANY (DEFENDANTS).*

Provident Funds Act (IX of 1897, as amended by Act IV of 1903), sections 2 (4), 4—Compulsory deposit—Provident Fund—Contributions by a railway servant—Liability of the contributions to be attached on the servant's leaving the Company's service—Attachment—Civil Procedure Code (Act XIV of 1882), section 278.

The contribution which the employé of a Railway Company makes towards the Railway Provident Fund, governed by the provisions of the Provident Funds Act (IX of 1897), is a "compulsory deposit" within the meaning of section 4 of the Provident Funds Act (IX of 1897, as amended by Act IV of 1903).

* References from the Court of Small Causes at Bombay in suits Nos. 11952 of 1904 and 12358 of 1904.