

## APPELLATE CIVIL.

*Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.*

1905,  
March 9.

RAMAPPA BHIKAPPA (ORIGINAL PLAINTIFF), APPELLANT, v. GANPAT  
ABA DHOLE AND ANOTHER (ORIGINAL DEFENDANTS 1 AND 3), RESPOND-  
ENTS.\*

*Civil Procedure Code (Act XIV of 1882), sections 17 and 20—Suit against several defendants—Some defendants residing outside the jurisdiction of Court—Objection—Earliest opportunity—Acquiescence in the institution of the suit.*

Plaintiff filed a suit against three defendants in the Court at Sirsi. Defendant 1 lived within the jurisdiction of that Court and defendants 2 and 3 lived within the jurisdiction of the Court at Barsi. Plaintiff did not apply under section 17 of the Civil Procedure Code (Act XIV of 1882) for leave to sue defendants 2 and 3; on the other hand, those defendants, though they had taken an objection in their written statement that the Court had no jurisdiction, did not apply under section 20 of the Code.

The Sirsi Court allowed the claim against defendants 2 and 3 who did not reside within its jurisdiction.

On appeal by defendant 3 the District Judge set aside the decree on the ground of want of jurisdiction and ordered that the plaint be returned for presentation to the proper Court.

The plaintiff having appealed against the said order,

*Held*, reversing the order, that defendants 2 and 3 not having made any application under section 20 of the Civil Procedure Code (Act XIV of 1882), they must be deemed to have acquiesced in the institution of the suit and the suit could not now be said to have been improperly instituted against them in the Sirsi Court.

APPEAL against an order passed by E. H. Leggatt, District Judge of Kárwár, setting aside the decree of G. N. Kelkar, Subordinate Judge of Sirsi, and directing the return of the plaint for presentation to the proper Court.

The plaintiff filed a suit against three defendants in the Court of the Subordinate Judge of Sirsi for taking accounts with respect to goods supplied to the defendants and for the recovery of the balance that might be found due to him. In the plaint defendant 1 was described as living at Sirsi and defendants 2 and 3 as living at Barsi.

Defendant 1 answered that he was not liable to the claim.

\* Appeal from order No. 16 of 1904.

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Defendants 2 and 3 contended, *inter alia*, that as they were residents of Barsi, the Sirsi Court had no jurisdiction to entertain the suit so far as they were concerned.

The Subordinate Judge found that he had jurisdiction to entertain the suit and allowed the claim to the extent of Rs. 3,057-4-6 against defendants 2 and 3, dismissing it as against defendant 1.

On appeal by defendant 3 the Judge held that the Court at Sirsi had no jurisdiction to entertain the suit. He, therefore, set aside the decree and directed that the plaint be returned to plaintiff for presentation to the proper Court.

The plaintiff preferred a second appeal against the said order and pending the second appeal the name of respondent 2 (defendant 2) was struck off.

*Nilkantb A. Shiveshvarkar* for the appellant (plaintiff).

*P. P. Khare* for respondent 1 (defendant 1).

*Sumitra A. Hattyangdi* for respondent 3 (defendant 3).

JENKINS, C. J. :—The present suit is brought in the Sirsi Court against three defendants, of whom one resides within the local limits of the Sirsi Court jurisdiction, the other two within that of the Barsi Court.

The Barsi defendants contend that the Sirsi Court has no jurisdiction so far as they are concerned.

But section 17 of the Civil Procedure Code says that all suits therein referred to (and this falls within its operation) shall be instituted in a Court within the local limits of whose jurisdiction any of the defendants at the time of the commencement of the suit actually and voluntarily resides, provided that either the leave of the Court is given, or the defendants who do not reside or carry on business or personally work for gain acquiesce in such institution.

The plaintiff did not obtain the leave of the Sirsi Court.

The question is whether the Barsi defendants have acquiesced. In their written statement they took an objection that there was no jurisdiction. But they made no application under section 20 of the Civil Procedure Code. The last paragraph of that section provides that every application for stay of proceedings thereunder shall be made at the earliest possible opportunity, and in

all cases before the issues are settled, and any defendant not so applying *shall be deemed to have acquiesced* in the institution of the suit.

No application was made under section 20. Therefore, the Barsi defendants must be deemed to have acquiesced in the institution of the suit, and the suit cannot now be said to have been improperly instituted against them in the Sirsi Court.

We therefore reverse the order of the District Judge and send back the case to be determined on the merits.

Costs of this appeal will be costs in the suit.

G. B. R.

*Order reversed.*

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## ORIGINAL CIVIL.

*Before Mr. Justice Batchelor.*

MOTILAL PARTABCHAND, CARRYING ON BUSINESS IN THE NAME OF KHUSALCHAND PARTABCHAND (PLAINTIFF), v. GOVINDRAM JEYCHAND, CARRYING ON BUSINESS IN THE NAME OF RAMBUX JEYCHAND (DEFENDANT).\*

1905.

April 3.

*Wagering contracts—Agreement to pay differences—Surrounding circumstances—Form of contract not of moment—Contract Act (IX of 1872), section 30—Bombay Act III of 1865.*

The law which is contained in section 30 of the Contract Act (IX of 1872) and in Bombay Act III of 1865, is that the Court must not only consider the terms in which the parties have chosen to embody their agreement, but must look to the whole nature of the transaction or institution, whatever it may be, and must probe among all the surrounding circumstances, including the conduct of the parties, with a view to ascertain what in truth was the real intention or understanding between the parties to the bargain. The actual form of the contract is of little moment, for gamblers cannot be allowed to force the jurisdiction of the Courts by the expedient of inserting provisions which might in certain events become operative to compel the passing of property though neither party anticipated such a contingency.

The Court should be astute to discover what in fact was the common intention of both parties, and should do all that is possible to see through the ostensible and apparent transaction into the underlying reality of the bargain.

\* O. C. J. Suit No. 721 of 1903.