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YELLAPPA v. MARLINGAPPA.

ently of this land in Bashya's lifetime; and on the latter's death all that was done was that his remuneration for that service was increased and the enhanced amount was made payable, not from the land in dispute, but out of the assessment, payable to Government by its occupant. That was an arrangement between the appellant and Government, which could not prejudice the rights of Bashya's heir in the absence of any law affecting that right.

The proceedings adopted by the Collector in 1883 and in 1905, on which the appellant relies in support of his case, were on the supposition that what was done in 1865 on Bashya's death had the effect of continuing the land in dispute as one reserved for *shetsanadi* service. That was not its effect and the proceedings in question were, in our opinion, *ultra vires* of the Collector.

This is the conclusion arrived at by the learned District Judge in his lucid judgment, and we entirely agree with him.

His decree under appeal must be confirmed with costs.

Decree confirmed.

R. R.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

1910.
March 11,

JOHN GEORGE DOBSON, PLAINTIFF, *v.* THE KRISHNA MILLS, LTD., DEFENDANTS.*

Letters Patent, clauses 12 and 14—Cause of action arising partly within jurisdiction—Further cause of action arising wholly outside jurisdiction—Joinder—Time of application.

An application under clause 14 of the Letters Patent to join a further cause of action arising wholly outside the jurisdiction, can be made in a case in which leave to sue has to be obtained under clause 12; nor is there anything in clause 14 to show that this application must be made before the plaint is filed. There is nothing to prevent the plaintiff making the application at any time before the hearing, but it would certainly be advisable for him to make it at the time the plaint is presented.

* Original Suit No. 64 of 1910.

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JOHN GEORGE DOBSON v. THE KRISHNA MILLS, LTD.

PROCEEDINGS in Chambers.

The plaintiff, having obtained leave to sue under clause 12 of the Letters Patent, took out a summons calling on the defendants to show cause why he should not be allowed under clause 14 of the Letters Patent to join a further cause of action arising wholly outside the jurisdiction.

Inverarity appeared for the defendants to show cause.

Shortt appeared for the plaintiff in support of the summons.

MACLEOD, J.:—The plaintiff in this suit is a merchant carrying on business at Manchester in England. The defendants are a Registered Company carrying on business at Beawar outside the jurisdiction of this High Court. In 1907 the plaintiff commenced to contract with the defendants to sell their yarns which the defendants were to pay for in Bombay against documents, and shipments of yarn were made in pursuance of such contracts. In respect of one contract after a portion of the yarn contracted for had been taken delivery of by the defendants, they gave notice to the plaintiff that they would not take delivery of the remainder owing to inferiority of quality. The plaintiff accordingly did not ship the balance and claims as damages the difference between the contract price and the market price at the date of the notice. I shall call this claim A. In respect of yarn shipped under another contract the defendants refused to take delivery. The plaintiff claims the value of this shipment with interest and charges. I shall call this claim B. In October 1907 the defendants consigned to the plaintiff in England 11 bales of yarn for sale and the plaintiff advanced £100 against this shipment. The account sales showed a balance of £15 due to the plaintiff which the defendants have refused to pay and the plaintiff seeks to recover this sum from the defendants. I shall call this claim C. It is obvious that in the case of claims A and B the cause of action arose only in part within the local limits of the Ordinary Original Jurisdiction of this Court and that in the case of claim C the cause of action arose wholly outside the said limits. But in para 13 of the plaint it is merely stated that the cause of action in respect of the said claims and in particular in respect of claim B arose partly in

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Bombay within the jurisdiction of the Court, without any mention being made that the cause of action in respect of claim C arose wholly out of the jurisdiction.

Accordingly when the plaint was presented on the 25th January 1910 to the Judge in Chambers, leave was granted under clause 12 of the Letters Patent.

The plaintiff then proceeded to take out this summons calling upon the defendant to show cause why he should not be permitted to join together in one suit the several causes of action set out or appearing in the plaint and proceed to trial at the same time upon all such causes of action in the suit as framed. The application is made under clause 14 of the Letters Patent which is as follows :—

And we do further ordain that where plaintiff has several causes of action against defendant, such causes of action not being for land or other immoveable property, the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the defendant to show cause why the several causes of action should not be joined in one suit, and to make such order for trial for the same as to the High Court shall seem fit.

The defendants have raised two objections :

(1) That an application under clause 14 cannot be made in a case in which leave has to be obtained under clause 12 in respect of the other causes of action.

(2) That in any event the application should be made before the plaint is filed.

Now the Court has original jurisdiction in respect of a cause of action arising partly within the local limits provided the leave of the Court has first been obtained. Therefore in this case as soon as leave had been obtained the Court had original jurisdiction in respect of claims A and B. It then became lawful for the Court to call on the defendants to show cause why the cause of action in respect of claim C should not be joined in the suit and there is nothing in clause 14 to show that this must be done before the plaint is filed. If no application was made under clause 14 that part of the plaint which related to claim C would be struck out as soon as the case came on for hearing, but as far as I can see there is nothing to

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prevent the plaintiff making the application at any time before the hearing. However, apart from other circumstances, the measure of his success would probably depend on the application being made at the earliest opportunity, and it would certainly be advisable for a plaintiff to make an application under clause 14 at the time the plaint is presented. On the merits I see no reason why the cause of action in respect of claim C should not be tried in this suit. Evidence will have to be taken regarding the contracts for purchases of yarn by the defendants from the plaintiff, and neither party will be embarrassed by the inclusion of evidence regarding the contract for the sale of yarn by the defendants to the plaintiff.

Summons absolute.

K. McI. K.

Attorneys for the plaintiff:—Messrs *Smetham, Byrne & Co.*

Attorneys for the defendants:—Messrs. *Bicknell, Merwanji & Romer.*

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

1910.
April 12.

VITHAL NARAYAN KARANDIKAR AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* MARUTI NARAYAN KALE, HEIR AND LEGAL REPRESENTATIVE OF SUNDRABAI, DECEASED, AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Family property—Division under an award—House of residence—Prohibition of sale by a co-sharer of his portion to an outsider—Pre-emption—Construction—Court-sale—Prohibition not effective.

An award under which family property was divided among co-sharers provided that in case of a sale by any of the co-sharers of his portion of the house of residence he should sell it to his co-sharer for a certain sum and that he should not sell it to an outsider until the expiration of two months from the date of a notice in writing saying that they (co-sharers) were not willing to buy it. Subsequently a portion of the house belonging to one co-sharer having been sold in execution of a decree against him it was purchased by an outsider. The

* Second Appeal No. 155 of 1907.