

it is difficult to say. If I may be permitted to draw upon my own knowledge of certain parts of the Ratnagiri District, and subject to changes in the last 10 or 15 years, I am under the impression that the keeping of a mistress is not considered to be a particularly scandalous or immoral act. There is no connection shown between the ruzu-khata and the mistress. The evidence, as far as it goes, does not show that it was borrowed for the expenses of the mistress, but rather for the starting of the shop. Although I am in sympathy with the argument for the appellant that the District Judge should not have dealt with the matter so summarily as he has, the view of both the lower Courts, in my opinion, is correct, that in point of fact the debt was incurred not on account of the mistress, was not tainted with immorality, but was taken to start a shop for the benefit of the family.

If so, there is abundant authority for the proposition that joint family property including the share of the sons may be proceeded against on a decree on such a debt. The onus in such case would be upon the sons: *Bhagbut Pershad v. Mussumat Girja Koer*,<sup>(1)</sup> and that they would be bound by the decree, *Brij Narain v. Mangla Prasad*.<sup>(2)</sup> In this view the order of the lower Court was, in my opinion, correct.

The appeal is dismissed with costs.

*Decree confirmed.*

B. G. R.

<sup>(1)</sup> (1888) L. R. 15 I. A. 99.

<sup>(2)</sup> (1923) L. R. 51 I. A. 129.

## CRIMINAL REVISION.

*Before Mr. Justice Patkar and Mr. Justice Wild.*

KHALIRUNISSA (ORIGINAL APPELLANT), PETITIONER *v.* BASHIR AHMED  
DINMAHOMED (ORIGINAL RESPONDENT), OPPONENT.\*

*Criminal Procedure Code (Act V of 1898), section 488 (8)—Maintenance—Casual or temporary residence—"Last resided," meaning of—Jurisdiction.*

\*Criminal Revision No. 133 of 1929.

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RAMCHANDRA  
ANANTA  
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BHAGWANT  
GOPAL

Madgavkar J.

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July 8.

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Where the husband and wife have a fixed place of abode or a permanent place of residence, a casual or temporary residence in any other place would not confer jurisdiction on the Court situate at that place under section 488, sub-section 8, of the Criminal Procedure Code.

Where, however, the husband and wife have no fixed abode or permanent residence their casual or temporary residence at a place for about eight days with the intention of staying there longer if employment was found by the husband, gives the Court at that place jurisdiction to entertain an application under section 488 of the Criminal Procedure Code.

*Mrs. E. H. Jolly v. St. John William Jolly*,<sup>(1)</sup> followed.

*Ramdei v. Jhunni Lal*,<sup>(2)</sup> distinguished.

THIS was an application against the order passed by P. L. Thacker, Presidency Magistrate, Sixth Court, Bombay.

Application for maintenance.

The applicant was married to the respondent at Ambarakpur in the United Provinces about three years ago. After the marriage the parties went to Surat, where the respondent was then employed, and lived there for six or seven months. The applicant on account of the ill-treatment of the respondent then came to her father in Bombay. The respondent immediately followed her to Bombay and lived with her at her father's house for about eight days in search of employment and then left her. After a long time the applicant was able to trace the respondent to Karachi and a notice was sent to him through a pleader demanding maintenance. As the respondent failed to comply with the demand, an application was filed under section 488 of the Criminal Procedure Code, 1898, before the Presidency Magistrate, Sixth Court, Bombay.

The trying Magistrate, following the ruling in *Ramdei v. Jhunni Lal*,<sup>(2)</sup> held that as the stay of the respondent for about eight days in Bombay was not "residence" within the meaning of section 488, sub-section (8), of the Criminal Procedure Code he had no jurisdiction and dismissed the application.

<sup>(1)</sup> (1917) 21 Cal. W. N. 872.

<sup>(2)</sup> (1926) 27 Cri. L. J. 820.

The petitioner applied to the High Court.

*J. C. Tarapore*, for the petitioner.

*P. B. Shingne*, Government Pleader, for the Crown.

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KHAIRUNNISA

2.

BASHIR AHMED

PATKAR, J.—In this case the complainant filed an application under section 488 of the Criminal Procedure Code for maintenance against her husband. The learned Presidency Magistrate, Sixth Court, held that he had no jurisdiction to entertain the application as the stay of the respondent of about eight days in Bombay with the applicant could not be said to constitute “residence” within the meaning of sub-section (8) of section 488 of the Criminal Procedure Code. In support of his view he relied on the case of *Ramdei v. Jhunni Lal*,<sup>(1)</sup> where it was held that the words “last resided” in section 488 of the Criminal Procedure Code did not contemplate a mere casual residence in a place for a temporary purpose, and that where the husband is employed as a carpenter in the Railway workshops in Lahore and has been residing there continuously for eleven years, a temporary sojourn to Lucknow by him with his wife would not confer on the Lucknow Court jurisdiction to entertain an application by the wife for maintenance under that section.

It is urged on behalf of the applicant that the view taken by the lower Court is erroneous and reliance is placed on the decision in *Mrs. E. H. Jolly v. St. John William Jolly*,<sup>(2)</sup> where the husband ordinarily resided outside Calcutta but was temporarily in Calcutta on the date of the application, and it was held that the temporary residence was sufficient to give the Calcutta Court jurisdiction under sub-section (8) of section 488 of the Criminal Procedure Code.

The husband did not appear in the lower Court to contest the application. The applicant stated on oath that she was married to the opponent at Ambarakpur

<sup>(1)</sup> (1926) 27 Cri. L. J. 820.

<sup>(2)</sup> (1917) 21 Cal. W. N. 872.

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<sup>(1)</sup> (1917) 21 Cal. W. N. 872.

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1929.

KHAIRUNISSA

2.

BASHIR AHMED

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<sup>(1)</sup> (1926) 27 Cri. L. J. 820.

<sup>(2)</sup> (1917) 21 Cal. W. N. 872.

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in the United Provinces about two and a half years ago. Then they went to Surat and lived there for six or seven months, and on account of ill-treatment she came to her father in Bombay from Surat. The respondent then came a day later and stayed with her father for about eight days and told her father that he would try and find employment but left afterwards, and after she learnt that he was at Karachi, she sent him a notice through a pleader to provide for her maintenance and subsequently filed the present application. The question, therefore, in this case is whether the opponent last resided with his wife in Bombay.

According to Stroud's Judicial Dictionary "residence" has a variety of meanings according to the statute in which it is used: per Erle C. J. in *Naef v. Mutter*.<sup>(1)</sup> It is an "ambiguous word" and may receive a different meaning according to the position in which it is found: per Cotton L. J. in *Ex parte Breull: In re Bowie*.<sup>(2)</sup> In *Fernandez v. Wray*<sup>(3)</sup> it was held that temporary residence gives the Court jurisdiction under clause 12 of the Letters Patent, and that for the purpose of jurisdiction a man may be said *prima facie* to dwell where he is staying at any particular time, but it is open to him to show that he is not dwelling there, but at some other place. If a person has no permanent residence, he may be said to dwell where he may be found.

In *Arthur Flowers v. Minnie Flowers*<sup>(4)</sup> it was held that a mere temporary sojourn in a place, there being no intention of remaining there, would not amount to residence in that place within the meaning of section 3 of the Indian Divorce Act, 1869, so as to give jurisdiction under the Act to the Court within the local limits of whose jurisdiction such place is situated. In that case the husband and wife resided in Hyderabad and paid a flying visit to Meerut for a temporary purpose

<sup>(1)</sup> (1862) 31 L. J. C. P. 357.

<sup>(2)</sup> (1880) 16 Ch. D. 484.

<sup>(3)</sup> (1900) 25 Rom. 176.

<sup>(4)</sup> (1910) 32 All. 203.

and not with any intention of remaining there, and it was held that the mere casual residence in a place for a temporary purpose with no intention of remaining is not dwelling, and that where a party has a fixed residence outside the jurisdiction, an occasional visit within the jurisdiction will not suffice to confer jurisdiction by reason of residence within the meaning of section 3 of the Indian Divorce Act.

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In *Bright v. Bright*,<sup>(1)</sup> the husband and wife, who had no permanent residence, were held to have last resided at a Calcutta hotel where they had stayed for about a fortnight. In *Murphy v. Murphy*,<sup>(2)</sup> where the husband and wife had no permanent residence they having lived at several places since their marriage and last resided together in a hotel in Bombay, it was held that there was a sufficient residence within the meaning of the Indian Divorce Act to give the Court jurisdiction to entertain the petition.

It would follow from these decisions that where the husband and wife had a fixed place of abode or a permanent place of residence, a casual or temporary residence in any other place would not confer jurisdiction on the Court situate at that place. In the present case it appears that the husband and wife had no fixed place of abode and no permanent residence, and the husband came to Bombay and stayed with the complainant and her father for about eight days, and had the intention of remaining there as he told the complainant's father that he would try and find employment in Bombay but left after eight days. The husband did not appear before the Magistrate and has not given any evidence as to his usual place of residence. On the evidence before us we hold that the husband has no fixed place of abode or permanent residence.

<sup>(1)</sup> (1909) 36 Cal. 961.

<sup>(2)</sup> (1920) 45 Bom. 547.

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 Patkar J.

I think, therefore, that there was sufficient "residence together" of the husband and wife in Bombay so as to give jurisdiction to the Magistrate under sub-section (8) of section 488 of the Criminal Procedure Code.

In the case relied on by the learned Magistrate the husband had a fixed place of residence in Lahore, and it was held that a mere temporary sojourn to Lucknow with his wife did not confer on the Lucknow Court jurisdiction to entertain the application.

We would, therefore, reverse the order of the lower Court dismissing the application, and direct the Magistrate to issue notice to the husband, and decide the application on the merits.

WILD, J.—This is an application by the petitioner Khairunnissa, residing in Madanpura, Bombay, to set aside the order of the learned Presidency Magistrate, Sixth Court, Bombay, dismissing for want of jurisdiction the application made by her under section 488 of the Criminal Procedure Code for maintenance against her husband.

The case of the petitioner is that she was married to the respondent at Ambarakpur, that she and her husband went to Surat where they lived for six or seven months, that owing to ill-treatment by her husband she was taken to her father's house in Bombay, that her husband joined her there and stayed with her for eight days and that thereafter he left her and was not heard of for some time. Finally, however, he was found to be at Karachi and it appears that he is now at Mubarakpur in the United Provinces.

The learned Presidency Magistrate dismissed the application following the ruling in *Ramdei v. Jhunni Lal*<sup>(1)</sup> on the ground that the words "last resided" in

<sup>(1)</sup> (1926) 3 O. W. N. 231; 27 Cri. L. J. 820.



section 488 of the Criminal Procedure Code do not contemplate a mere casual residence in a place for a temporary purpose.

It is true that, according to the petitioner's statement, the residence of her husband at Bombay was merely a temporary one. The meaning of the words "last resided" in section 488 have apparently not been construed by this Court and I would prefer to follow the ruling in *Mrs. E. H. Jolly v. St. John William Jolly*,<sup>(1)</sup> where it was held that temporary residence was sufficient to give the Court jurisdiction under sub-section (8) of section 488. It is difficult enough for a wife to recover maintenance from her husband who refuses to maintain her and to give a strict interpretation to the words "last resided" in section 488 would render the difficulty even greater. Moreover, in this case it would appear that the respondent has no settled place of residence and that this is not a case like that of *Ramdei v. Jhanni Lal*<sup>(2)</sup> where the parties had a fixed place of residence. I would, therefore, set aside the order of the learned Presidency Magistrate dismissing the application and would direct him to proceed with it according to law.

*Rule made absolute.*

J. G. R.

<sup>(1)</sup> (1917) 21 Cal. W. N. 872.

<sup>(2)</sup> (1926) 3 O. W. N. 231; 27 Cri. L. J. 820.

## ORIGINAL CIVIL.

*Before Mr. Justice Fawcett.*

DHARAMSEY KHETSEY v. BALKRISHNA PANDURANG SAMANT.\*

*Dekkhan Agriculturists' Relief Act (XVII of 1879), sections 2 and 11—Agriculturist—Civil Procedure Code (Act V of 1908), Order XXX, rule 1—Suit against a firm—Partners in the firm "agriculturists"—Whether firm "agriculturist".*

The definition of "agriculturist" in section 2 of the Dekkhan Agriculturists' Relief Act, 1879, can only apply to a firm sued under the provisions of Order XXX, rule 1 of the Civil Procedure Code, 1908, if that firm by itself or

\*C. C. J. Suit No. 2376 of 1927.

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v.

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Wid J.

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