

## APPELLATE CIVIL.

Before Mr. Justice Madgavkar and Mr. Justice Willd.

1929  
November 6.

SHAH SANKALCHAND HAKAMCHAND (ORIGINAL DEFENDANT), APPELLANT  
v. AMBALAL NAGINDAS (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Civil Procedure Code (Act V of 1908), section 20, clause (c)—Cause of action—Agency—Suit for accounts—Contract of agency entered and performed outside British India—Some collections made in British India—Individual collection no part of cause of action—Jurisdiction.*

In a suit based upon an alleged agency, responsible for accounts and refund, it is the general agency with liability to account and refund the balance which is the cause of action and not each separate act of payment or collection. Any individual act of collection cannot therefore be said to be a part of the cause of action so as to confer jurisdiction on the Court.

*Kessowji Damodar Jairam v. Luckmidas Ladha*,<sup>(1)</sup> relied on.

*Read v. Brown*<sup>(2)</sup>; *Musa Yakub v. Manilal*<sup>(3)</sup>; *Murti v. Bholu Ram*<sup>(4)</sup> and *Chand Kour v. Partab Singh*,<sup>(5)</sup> referred to.

APPEAL against the order passed by R. S. Broomfield, District Judge at Ahmedabad, reversing the decree passed by T. M. Bhagat, Joint Subordinate Judge at Ahmedabad.

Suit for accounts and refund.

The parties to the suit were residents of Mansa State, outside British jurisdiction. They carried on business there. On the death of the plaintiff's father, who was a ghee merchant at Mansa, the defendant who was a relation was appointed the plaintiff's agent to collect the outstandings due to his deceased father during the plaintiff's minority. This contract of agency was also entered into outside British India. The books were outside British India, and the accounts were to be rendered and the moneys returned outside British India.

In 1927, the plaintiff filed a suit for accounts in the Court of the First Class Subordinate Judge at

\*Appeal from Order No. 55 of 1927.

<sup>(1)</sup> (1889) 18 Bom. 404.

<sup>(2)</sup> (1888) 22 Q. B. D. 128.

<sup>(3)</sup> (1904) 29 Bom. 368.

<sup>(4)</sup> (1899) 16 All. 165 at p. 170.

<sup>(5)</sup> (1888) 16 Cal. 98.

Ahmedabad, alleging that the cause of action arose within the jurisdiction of Ahmedabad Court, because the defendant collected certain outstandings at Ahmedabad.

1929  
 SHAH  
 SANKALOHAND  
 v.  
 AMBALAL  
 NAGINDAS

The defendant denied the agency or collection of any outstandings and raised an objection to the jurisdiction of the Ahmedabad Court.

On a preliminary issue as to jurisdiction the Subordinate Judge relying on the ruling in *Gosvami Shri v. Shri Govardhanlalji*<sup>(1)</sup> held that the Ahmedabad Court had no jurisdiction and dismissed the suit.

On appeal, the District Judge held that in the absence of evidence, the question of jurisdiction must be decided on the assumption that the allegations in the plaint were true and therefore the Court at Ahmedabad had jurisdiction. He set aside the decree dismissing the suit and remanded it for disposal on the merits for the following reasons:—

“ I must make the same assumption for the purposes of this appeal. It is the contention of the appellant that the collection of money due to him by the defendant in Ahmedabad is a part of the cause of action in the suit, and that, therefore, the British Court has jurisdiction by virtue of section 20, clause (c) of the Civil Procedure Code. In my opinion, this contention is sound. ‘ Cause of action ’ has been defined as ‘ every fact which it would be necessary for the plaintiff to prove in order to support his right to the judgment of the Court ’, *Murti v. Bhola Ram*,<sup>(2)</sup> and as ‘ a bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed in the suit ’, *Musa Yakub v. Manilal*.<sup>(3)</sup> Any one of the essential facts is, therefore, a part of the cause of action. It seems obvious to me that the alleged fact, which for the purposes of this issue is assumed, that defendant collected certain moneys on plaintiff's behalf in Ahmedabad is one of the essential facts which plaintiff must prove in order to succeed in his suit, and if the payment of this money to defendant is part of the cause of action, then, the cause of action so far certainly arose in Ahmedabad where the money was paid, see as to that *Sreechures Bukshree v. Gopal Chunder*.<sup>(4)</sup> The case on which the learned Sub-Judge has relied, *Gosvami Shri v. Shri Govardhanlalji*,<sup>(1)</sup> has no application at all, for the Court was not there concerned with clause (c) of section 20, but only with what is meant by residence or carrying on business.”

<sup>(1)</sup> (1890) 14 Bom. 541.

<sup>(2)</sup> (1904) 29 Bom. 368.

<sup>(3)</sup> (1893) 16 All. 165.

<sup>(4)</sup> (1871) 15 W. R. 500.

1929

SEAH  
SANKALOHAND  
v.  
AMBALAL  
NAGINDAS

The defendant appealed to the High Court.

*H. V. Divatia*, for the appellant.

*Dewan Bahadur G. S. Rao*, for the respondent.

MADGAVKAR, J. :—The question in this appeal is whether the Ahmedabad Court has jurisdiction.

The plaintiff-respondent sued the defendant-appellant on the ground that on the death of the respondent's father the appellant, who was a relation, was entrusted with the duty and undertook it of collecting outstandings due to his deceased father. The parties have always resided outside British India. The father's main business as ghee merchant was also outside British India. The alleged agency, which was admittedly closed before his death, and the place of contract were outside British India. The books were outside British India, and the accounts were to be rendered and the moneys returned outside British India. *Prima facie*, therefore, the British Court would have no jurisdiction.

The respondent, however, in paragraph 14 of the plaint alleged that the appellant collected certain outstandings at Ahmedabad and therefore the Ahmedabad Court had jurisdiction. The appellant in his written statement denied absolutely the agency or the collection of any outstandings and raised an objection to jurisdiction on the grounds above.

The trial Court, without explicitly framing a preliminary issue as to whether any collection of the outstandings was proved, raised an issue, pure and simple, as to jurisdiction and decided it in the negative against the plaintiff-respondent. The plaintiff appealed. The learned District Judge held that in the absence of evidence, the question of jurisdiction must be decided on the assumption that the allegations in the plaint

were true and the alleged collection was a part of the cause of action of the plaintiff and the Ahmedabad Court, therefore, had jurisdiction, and reversed the order of the trial Court, dismissing the suit for want of jurisdiction and remanded it for disposal on the merits. The defendant appeals.

1929  
 SHAH  
 SANKALCHAND  
 v.  
 AMBALAL  
 NAGINDAS  
 Madgavkar J.

It is argued for the appellant that even if the appellant was proved to have collected outstandings at Ahmedabad, such a collection was not a part of the cause of action, and the Ahmedabad Court had therefore in any case no jurisdiction, much less where the plaintiff had failed to prove such collection. It is contended for the respondent that on the well-known definition of "cause of action" in *Read v. Brown*,<sup>(1)</sup> followed in India in cases such as *Musa Yakub v. Manilal*<sup>(2)</sup> and *Murti v. Bhola Ram*,<sup>(3)</sup> the collection of outstandings at Ahmedabad was a portion of the cause of action, and the facts as stated in the plaint must be assumed to be true for the decision of that question: *Chand Kour v. Partab Singh*.<sup>(4)</sup>

The point is not free from difficulty. As the defendant-appellant denied any collection whatsoever and raised the plea of jurisdiction and as the jurisdiction otherwise was outside British India, it was incumbent on the plaintiff-respondent to prove the collection at Ahmedabad before that Court would hold that it had jurisdiction. On the further question, whether the Ahmedabad Court has jurisdiction, even if the appellant did collect any outstandings at Ahmedabad, the decision depends on whether the agency and the contract to collect and the general act of collection and accounts were parts of the cause of action or whether each separate act of collection at each place can also be said to be a portion of the cause of action. We are of

<sup>(1)</sup> (1886) 22 Q. B. D. 128.

<sup>(2)</sup> (1904) 29 Bom. 368.

<sup>(3)</sup> (1893) 16 All. 165 at p. 170 (F.B.)

<sup>(4)</sup> (1888) 16 Cal. 98 at p. 102.

1929

SHAH

SANKALOHAND

v.

AMBALAL  
NAGINDAS

Madgavkar J.

opinion on the whole that the latter view cannot be upheld, and that any individual act of collection cannot be said to be a part of the cause of action so as to confer jurisdiction. The matter may be tested in two ways: If, for instance, some payments or collections were at some place in French or Portuguese territory, would that fact *ipso facto* confer jurisdiction on such foreign Court to consider the entire question of agency and accounts? Or again, if the agency were proved, presumably, the agent might be responsible for the laches. Supposing there were outstandings at Ahmedabad and the appellant failed to collect them, would such failure be said to be a portion of the cause of action and confer jurisdiction? We think not, the reason being that not each separate act of payment or collection of each outstanding at each place is the cause of action; but in a suit such as the present based upon the alleged agency, responsible for accounts and refund, it is the general agency with liability to account and refund the balance, which is the cause of action and not each separate act of payment or collection. An indirect consequence does not necessarily make it a portion of the cause of action: *Kessowji Damodar Javram v. Luckmidas Ladha*.<sup>(1)</sup> On the whole, therefore, we are of opinion that in law the view of the trial Court was right.

We allow the appeal, set aside the order of the District Court, and confirm the order of the trial Court dismissing the suit. Costs throughout on the plaintiff-respondent.

*Decree reversed.*

J. G. R.

<sup>(1)</sup> (1889) 13 Bom. 401.