

Mohan Singh Vs. Lajya Ram and ors.

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Court : Punjab and Haryana

Decided On : Apr-27-1956

Reported in : AIR1956P& H188

Judge : Bhandari, C.J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 20

Appeal No. : Civil Revn. No. 102-D of 1955

Appellant : Mohan Singh

Respondent : Lajya Ram and ors.

Advocate for Def. : A.N. Grover,; Brij Bans Kishore, Advs. for; Lajya Ram

Advocate for Pet/Ap. : J.G. Sethi and; M.L. Sethi, Advs.

Disposition : Revision dismissed

Judgement :

ORDER

Bhandari, C.J.

1. This petition raises a questions upon the interpretation of the expression 'resides' appearing in Section 20, Civil P. C.

2. The plaintiff is one Lajya Ram, a broker of Lahore while the defendants are Mr. M. S. Oberoi, Director of Oberoi Hotels Limited, and Rai Bahadur Jodha Mal, a well-known contractor of the Punjab. In the year 1946 Mr. Oberoi expressed a desire to purchase the Nedous Hotel at Lahore from Rai Bahadur Jodha Mal and requested the plaintiff to negotiate the purchase.

The plaintiff brought the parties together and induced the owner to enter into an agreement for the sale of the property for a large sum of money. Mr. Oberoi refused to purchase the property and the transaction could not be completed, the defendants declined to pay the commission to which the plaintiff considered himself entitled and the plaintiff accordingly brought a suit for the recovery of a sum of Rs. 79,500/-.

3. The defendant objected to the Jurisdiction of the Courts at Delhi to deal with the case, but the trial Court came to the conclusion that although no part of the cause of action had arisen in Delhi, Mr. Oberoi had been residing in Delhi not merely temporarily but for sufficiently long periods, that he had been carrying on business in Delhi and that he was personally working for gain in Delhi.

The Court accordingly permitted the plaintiff to bring the suit in Delhi not only against Mr. Oberoi against whom substantial relief was claimed but also against Rai Bahadur Jodha Mal who is said to be residing in the Punjab. The defendants are dissatisfied with the order and have come to this Court in revision.

4. Section 20 of the Code of Civil Procedure has been designed to secure that justice might be brought as near as possible to every man's hearth-stone and that the defendant should not be put to the trouble and expense of travelling long distances in order to defend himself in cases in which he may be involved. It has accordingly been enacted that a person can be sued in the place in which he actually and voluntarily resides.

The expression 'resides' means 'to make an abode for a considerable time; to dwell permanently or for a length of time; to have a settled abode for a time.' The expression 'actual' means 'something real as opposed to constructive or speculative; something existing in act, fact or reality'. Residence may be legal and

technical or actual or physical. If a person, lives with his wife and children in an established home, his legal And actual place of residence is the same.

If a person has no established home and is compelled to live in hotels, boarding-houses or houses of others, his actual or physical habitation is the place where he actually or personally resides. If the family of a person lives at one place and he himself lives for a greater portion of the time at another place, he has legal residence at the place where his family resides and actual residence where he himself resides.

The expression 'actually resides' means actual residence of place where a person actually lives as distinguished from merely constructive or legal residence or place where a person resides in the legal and technical sense. It means residence existing in reality and in fact and not merely in form, that is actual residence and not a temporary abiding place. A person is said to reside in a particular place if he actually lives in the place and has a freely exercised intention of remaining there permanently or for a length of time.

The expression 'resides' does not import any permanency of residence -- 'Srinivasa Moorthy v. Venkata Varada Ayyangar', 29 Mad 239, (275) (A). A person who resided in a house in London only about three months in a year while the rest of the year he spent at his residence in the country was said to 'dwell' in London within the meaning of the City of London Small Debts Courts Act of 1852. -- ('Bailey v. Bryant', (1859) 28 LJ QB 86) (B). As pointed out by Wood B. in -- 'A. G. v. Coote', (1817) 4 Price 183 (C), it is no uncommon thing for a gentleman to have two permanent residences at the same time in either of which he may establish his abode at any period and for any length of time.

5. The evidence which has been produced in the present case makes it quite clear that Mr. Oberoi actually and voluntarily resides not only at Calcutta but also at Delhi. In his deposition before the trial Court he stated that he is Managing Director of the Grant Hotel at Calcutta, that he has been residing in separate apartments in the said hotel ever since the year 1938. that he runs his own personal kitchen attached to the apartments, that he has been drawing rations for himself and the members of his family from, the Grand Hotel, that he is assessed

to income-tax at Calcutta, that he has a separate telephone connection in his apartments and that his mother who used to live with him in his apartments at the Grand Hotel died in Calcutta.

All these facts appear to indicate that he actually and voluntarily resides at Calcutta. But at the same time he was constrained to admit that his duties as Managing Director of the Oberoi Hotels and a Director of a large number of other limited concerns often bring him to Delhi, that he occupies a set of rooms in the Maiden's Hotel when he visits Delhi in connection with his official duties and that a permanent telephone has been installed in the room set aside for his use.

He admitted further that in November 1951 he applied to the Secretary of the Election Commission for the inclusion of his name in the electoral roll for the Delhi State Constituency, Delhi, that he stated the place of his ordinary residence as Maiden's Hotel, Delhi, that a few days later he appeared before a Magistrate of the first class in connection with his application and stated that he had been residing in Delhi since long before 1947, that in the agreement between the plaintiff and the defendants in the present case which was executed between the parties on 3-10-1946 he has been, described as managing Director, Associated Hotels Limited 'at present at Delhi' and that the marriage of one of his daughters was celebrated at Delhi.

These facts fully corroborate the finding of the trial Court that Mr. Oberoi has two more Or less permanent dwelling places, one in Calcutta and the other in Delhi, in which he can establish his abode at any time at his own sweet will and pleasure. It follows as a consequence that the Civil Courts at Delhi have jurisdiction to deal with his case.

6. For these reasons I would uphold the order of the trial Court and dismiss the petition with costs. Ordered accordingly.