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Rameshwar and ors. Vs. Jethabhai

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Court : Rajasthan

Decided On : Nov-18-1958

Reported in : AIR1960Raj13

Judge : K.L. Bapna, Ag. C.J.

Acts : Displaced Persons (Institution of Suits) Act, 1948 - Sections 3 and 4; Rajasthan Displaced Persons (Institution of Suits) Ordinance, 1949 - Sections 3

Appeal No. : Civil Misc. 1st Appeal No. 29 of 1954

Appellant : Rameshwar and ors.

Respondent : Jethabhai

Advocate for Def. : Thanchand, Adv.

Advocate for Pet/Ap. : Hastimal, Adv.

Disposition : Appeal dismissed

Judgement :

K.L. Bapna, Ag. C.J.

1. This is an appeal under Order 43 Rule 1 of the Civil Procedure Code against an order of the learned Civil Judge of Balotra, dated 6th August 1954 in suit No. 30/50.

2. The plaintiffs-appellants are Ramkaran, his son Bhanwarlal, Rameshwar and Ramrakh and the defendant respondent is Jethabhai son of Nensi Gujrati residing at Bombay. The case set out by the plaintiffs in their amended plaint is that the plaintiffs were carrying on business at Karachi and became displaced persons on the formation of Dominions of India and Pakistan. It was alleged that the defendant carried on business at Bombay under the name of Nensi Deosi and there was a branch of it at Karachi.

This branch came to be closed on the formation of Dominions of India and Pakistan. It was alleged that on 20th September 1946 there was a contract between the parties by which it was agreed that the plaintiffs will cave delivery or 225 bags of Khopra at a certain rate to be delivered at the end of three months from the date of contract: It was alleged that the plaintiffs offered delivery on the due date which was said to be 3rd January 1947, but the defendant did not take delivery of the troods wherupon it was alleged that the plaintiffs became entitled to claim damages amounting to Rs. 5118/12/9 from the defendant.

The suit was for recovery of this amount. The suit was instituted at Balotra in, the Court of District Tudee. Balotra by reference to Section 3 of the Rajasthan Displaced Persons (Institution of Suits) Ordinance. 1949 on the ground given in para 7 that the plaintiffs were displaced persons and lived at Balotra and therefore the court had jurisdiction under Section 3 of the Rajasthan Displaced Persons Ordinance, 1949.

3. The defendant filed a written statement denying the plaintiffs to be displaced persons. It was admitted that the defendant carried on business at Karachi in the name of Nensi Deosi, but it was pleaded that on the formation of Pakistan he became a displaced person and had begun to live at Bombay. The defendant denied having entered into the transaction as alleged by the plaintiffs, or that any delivery was offered and refused. The amount of damages claimed was also denied. It was pleaded that the plaintiffs were the old residents of Balotra and were not displaced persons.

4. Preliminary issues were framed on 10th May 1951 and amended on 15th September 1952. Issue No. 1 was whether the plaintiffs were displaced persons

and issue No. 2 was whether the defendant was not a displaced person. After recording evidence the court found that the plaintiffs were not displaced persons and therefore could not take the advantage of Section 3 of the Rajasthan Displaced Persons Ordinance.

The court also found that the defendant was a displaced person and for that reason also the suit could not be instituted at Balotra. The court by its order dated 16th August 1954 directed that the plaint be returned to the plaintiffs for presentation to the proper court. The plaintiffs have filed this appeal.

5. The plaintiffs have produced evidence to show that they were carrying on business in the name and style of Ramkaran Bhanwarlal at Karachi and Rameshwar plaintiff has testified that at the time of the formation of Pakistan the plaintiffs were, actually living at Karachi and bad to run away from Karachi in January 1948. It was said by hint that prior to their coming to Balotra they had no business at Balotra. Rameshwar however admitted in cross-examination that they had their ancestral house at Balotra.

P. W, 3 Ramjas son of Hazarirnal further ad-mited in cross-examination that for generations past the plaintiffs lived at Balotra, but they had also a shop at Karachi and had left the place because of the formation of Pakistan. Ramias P. W. 2 son of Gulabdas and who is also brother of Ramkaran stated that the plaintiffs had a shop at Karachi which had to be closed because of the forma tion of Pakistan. He said that the plaintiffs lived with their children at Karachi from Section 1988 onwards.

He admitted that the plaintiffs had their ancestral house at Balotra and used to come here in order to celebrate their marriages. It is not necessary to refer to other witnesses who have testified on similar lines. Learned counsel for the respondent relied on two documents. One is a copy of the plaint in suit No. 124/1950 instituted on 20th January 1947 in which Ramkaran and Bhanwarlal plaintiffs, Ramjas P.W. 2, and, Dhanrai Ramkaran's brother, were plaintiffs and in para I they said that these plaintiffs carried on business at Jodbpur in the name of Gulabdass Ramjas and at 'Karachi in the name of Ramkaran Bhanwarlal.

They described themselves in the array of plaintiffs as being residents of Todhpur. Ramjas who came as a witness for the plaintiffs admitted that this was a plaint filed by him in suit No. 124/ 50. The other document is a rent-note executed by Ramkaran on Asad Sudi 13 Section 1999 in respect of a shop situated at Balokra taken by him from Bhagwandass Bhanwarlal and Bhanwarlal as D. W. 1 has testified that Ramkaran had taken, his shop on lease from Section 1991 to Section 1998 i.e. for a period of 7 years from the year 1934 to 1941 A.D. All this evidence leaves no room for doubt that the plaintiffs are old residents of Baiotra and for sometime carried on business at Baiotra between the years 1934 to 1941 A.D. But what is important in the present case is whether they were 'displaced persons'.

6. It may be mentioned that the Rajasthan Displaced Persons Ordinance was repealed by the Central Act No. 68 of 1950, the Displaced Persons (Institution of Suits and Legal Proceedings) Amendment Act, 1950, and in respect of existing suits under the corresponding laws in Part B States it was laid down that they would be deemed to have been instituted under the Displaced Persons (Institution of Suits) Act, 1948, that is Act No. 47 of 1948. It may also be mentioned that the definition in the Displaced Persons Act No. 47 is the same as in the Rajasthan Displaced Persons Ordinance.

This definition defines 'displaced person' any person, who on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or fear of such disturbances in any area now forming part of Pakistan, has been displaced from, or has left his place of residence in such area after the 1st day of March, 1947, and who has subsequently been residing in India. The definition requires (1) the displacement of any person, or (2) the leaving of his place of residence in any area now forming part of Pakistan after the 1st day of March, 1947, (3) owing to the setting up of the Dominions of India and Pakistan or (4) on account of civil disturbances or fear of such disturbances in any area now forming part of Pakistan and (5) who has subsequently been residing in India.

In the present case there is the evidence which has been led on behalf of the plaintiffs to prove that the plaintiffs at the time of formation of Pakistan lived at Karachi find had business there. Rameshwar plaintiff who has come in the

witness, box has testified that he and his family had to leave Karachi because of the formation of Pakistan. The plaintiffs were therefore displaced persons although they may have shown their residences at fodhpur and Balora in certain litigations and may have property in India also. It may be mentioned here that not only the leaving of the place of residence but the displacement of business of any person will also bring him within the definition of a 'displaced person'. The first issue therefore was not rightly decided by the trial court and I hold that the plaintiffs were displaced persons.

7. As to the second issue it may be mentioned that Section 4 gave a special right to displaced per-sons which they could only take advantage of if the conditions mentioned therein can be shown to have been satisfied. Section 4 is as under:--

'Notwithstanding anything contained in Section 20 of the Code of Civil Procedure, 1908 (V of 19081, or in any other law relating to the local limits of the jurisdiction of Courts or in any agreement to the contrary, a displaced person may institute a suit in a Court within the local limits of whose jurisdiction he or the defendant or any of the defendants, where there are more than one. of the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for a gain, if--

(i) the defendant, or where there are more than one, each of the defendants, actually and voluntarily resides or carries on business, or personally works for gain in India and is not a displaced person;

(ii) the cause of action, wholly or in part, arises or has arisen in a place now situate within the territories of Pakistan.

(iii) the Court in which the suit is instituted is otherwse competent to try it; and

(iv) the suit does not relate to immovable property.'

Section 3 of the Rajasthan Ordinance is virtually the same.

8. In the present case the defendant did not reside at Baiotra and the jurisdiction could only be sought on the ground of the plaintiffs, displaced persons being

residents of Baiotra if the defendant who was then residing in India was not a displaced person. The burden of proving that the defendant was not a displaced person lay on the plaintiffs because it was the plaintiffs who wanted to invoke the special jurisdiction under Section 4 of the Ordinance.

In the amended plaint there was no mention as to whether or not the defendant was a displaced person. In the plaint which was filed originally the defendant Jethalal was described as the son of Nensi Gujrati resident of Karachi at present at Bombay. In para 2 it was mentioned that the defendant who was a Hindu carried on business at Karachi in the name of Nensi Deosi and had now come to reside at Bombay as a displaced person and that his firm at Karachi had been closed.

The plaintiffs amended their plaint by an application dated 5th July 1950 by deleting in the array of parties that Jethalal was a resident of Karachi and was now living at Bombay and showed him as a resident of Bombay. Para 2 was altered so as to read that there was a firm Nensi Deosi at Bombay of which there was a branch at Karachi, which was closed because of the formation of Pakistan, but that the Bombay firm was still carrying on business. Although the plaint may have been amended there was the admission of the plaintiffs in the original plaint that the defendant lived at Karachi and had become a displaced person,

9. Learned counsel for the appellants urged that the admission had been wrongly made and the explanation given in the application was sufficient to wipe off its effect. The contention is not correct. Of the plaintiffs Rameshwar had come in the witness box and it was upto him to show how he had come to make the wrong admission. That would have been a statement on oath and if the explanation was satisfactory it could have been accepted by the court.

The application only purported to remote the glaring defect which might not have been seen by the first lawyer Mr. Lachmandass who presented the plaint, but might have come to the notice of Mr. Shankarlal another lawyer of the plaintiffs who drifted the application for amendment. Even then there should have been an allegation in the plaint that the defendant was not a displaced person, because it was only on that contingency that the suit could be instituted at Baiotra.

The other allegations in the plaint confirmed that the defendant carried on' business at Karachi. It is for instance said in para 3 that the contract of the sale of Khopras took place with the defendant on 20th September 1946 and inpara 4 it is mentioned that the defendant was asked to take delivery but he did not do so. It is clear that the defendant was alleged to have lived at Karachi at least some time in the end of 1946 and in the beginning of 1947.

It was urged by learned counsel for the plaintiffs-appellants that the firm Nensi Deosi had many branches and Karachi was only one of them and the defendant could not reside at all such places. In the first place the allegations in the plaint indicate that the defendant was carrying on business at Karachi.

In his statement on 27th April 1953 Ramesli-war admitted that the contract of the sale of Kho-pras was done with the defendant. Secondly as stated earlier even if the defendant did not reside at Karachi his business had been displaced and he had to close his business an Karachi due to the formation of Pakistan. The plaintiffs who had other business or dealings in India were carrying on business at Karachi and became displaced persons so also the defendant may also be carrying on business elsewhere but nevertheless he became a displaced person.

10. In any case the plaintiffs did not discharge the burden to prove that the defendant was not a displaced person in order to give jurisdiction to the court at Balotra. The decision of the lower court on the second issue is correct.

11. As a result there is no force in this appealand it is accordingly dismissed with costs.

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