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the proper *forum* for the present suit was the Subordinate Judge's Court at Chikodi. Every suit must be brought in the Court of the lowest competent jurisdiction. The District Court had not jurisdiction to entertain the suit. Its want of jurisdiction when manifest cannot be held to have been cured by any waiver, if there was a waiver, of the objection raised by the defendant, and we must annul its order with costs.

Order for registration annulled.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

January 28.

ADARJI DORA'BJI (ORIGINAL PLAINTIFF), APPELLANT, v. ERAKSHA'H
DHANJI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

*Partnership suit—Jurisdiction—District Court—Subordinate Court—Partnership—
Dissolution—Wrong—Damages—Indian Contract Act No. IX of 1872, Sec. 265
—Code of Civil Procedure, Act XIV of 1882, Sec. 213.*

A suit for winding up an expired partnership can be brought in the District Court under section 265 of the Contract Act (IX of 1872) and section 213 of the Civil Procedure Code Act (XIV of 1882).

But the jurisdiction of the ordinary Courts is not annulled by the special jurisdiction assigned to the District Court by section 265 of the Contract Act. Any one having a cause of action arising out of partnership transactions may sue the person liable in the ordinary Court. The jurisdiction of such Court, however, does not extend to the case of a winding up of an *expired* partnership. This jurisdiction is given to the District Court by section 265 of the Contract Act, and when, along with a new mode of relief, particular jurisdiction is constituted to administer it, the Court specified, and no other, is to be understood as vested with authority. Hence, though administration for the purpose may apparently be sought in the subordinate Courts, it can be obtained, in the case of an expired partnership, only in the District Court or the High Court. But the jurisdiction of the subordinate Courts in other respects is not extinguished. An apparent cause of action gives a right to sue in them for such relief as they can afford, though not for the particular kind of relief contemplated in section 265 of the Contract Act.

Where in a suit a cause of action appears which in itself is cognizable by an inferior Court, such a Court is not justified in rejecting the suit, merely because it is one in which the District Court might have jurisdiction under section 265 of the Contract Act.

* Appeal, No. 26 of 1883, from order.

Where an application under section 265 of the Contract Act is presented to the District Court, that Court should determine whether it is (1) a mere case of administration, or (2) of administration sought as a cloak for strictly litigious claim, or (3) of administration *plus* claims involving litigation of the ordinary means. In the second case it may properly decline a function that properly belongs to an ordinary Court. In the last case it may either assume the administration of the estate of the firm, or decline to do so, according to circumstances subject to appeal, and in the former case it may either deal with all questions arising between the expartners, or, if these be of such a kind as to form separable subjects of adjudication, it can direct the party in each case interested to proceed on the particular alleged cause of action in the Court having ordinary jurisdiction, and itself use the result as an element of its administration.

THIS was an appeal from the order of E. Cordeaux, Judge of the District of Poona, refusing to receive the plaintiff's plaint. The substance of the plaint was as follows :—

In August, 1876, the Poona Cantonment Committee invited tenders for the supply of conservancy carts. The parties agreed to send in separate tenders and if any one of them was accepted, to enter into a partnership for fulfilling the contract. The tender in the name of one of them having been accepted, the defendants on the 19th of August, 1876, entered into a contract with the committee to supply carts for five years. On the 27th of October, 1876, in pursuance of the agreement, the defendants executed to the plaintiff a deed of partnership assigning to him a five-anna share in the contract, and stipulated that the partnership should hold good so long as the contract lasted. In furtherance of the partnership business the plaintiff advanced Rs. 1,400 for the construction of carts and Rs. 1,660 for the hire of bullocks. Subsequently, as plaintiff alleged, the defendants, without the plaintiff's assent and without reasonable cause, put an end to their contract with the Cantonment Committee, and on the 19th of January, 1877, entered into a new contract tenable for one year. Under these circumstances the plaintiff prayed, first, for a declaration that the partnership of the 27th October, 1876, had come to an end; and, second, that Rs. 1,665-15, being the unexpended balance of the monies advanced by the plaintiff, Rs. 2,195-10, being the amount of profits with interest amounting to Rs. 1,042-5, together with Rs. 1,334-1, the price of carts, and Rs. 8,782-8, damages for breach of the contract, might be awarded to him.

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This plaint was presented to the First Class Subordinate Judge of Poona on the 29th of September, 1880, and filed the same day. Evidence was taken on both sides, but on the 3rd of July, 1883, the Subordinate Judge came to the conclusion that he had no jurisdiction, and under section 57 of the Civil Procedure Code referred the plaint to the plaintiff for presentation to the District Court. On the same day the plaintiff presented the plaint to the District Court. Mr. Cordeaux was of opinion that more than half of the claim being for damages, the subordinate Court, and not the District Court, had jurisdiction. He, therefore, again returned the plaint to the plaintiff, who thereupon appealed to the High Court.

Hon. *F. L. Latham* (Acting Advocate General) with *Ghanashám Nilkanth Nádkarni* for the plaintiff.—The Subordinate Judge, to whom the plaint was originally presented, had jurisdiction, and he ought not to have returned the plaint after the suit had proceeded to a considerable extent. The jurisdiction depends upon whether the case comes within the purview of section 265 of the Contract Act, and whether this provision is merely empowering. Section 265 does not apply to the case of a still subsisting partnership. The District Court does not derive jurisdiction till the partnership has terminated—*Sorábjí Fardunji v. Dúlabbháí Hargovandás*⁽¹⁾. The plaintiff distinctly alleges a termination of the partnership in his plaint; and if this were a suit merely for winding up the affairs of the firm, the District Court would be the right *forum* for its adjudication. But, as said by Westropp, C.J., in *Ladubháí v. Revichand*⁽²⁾, section 265 is intended to be ancillary to, and not in supersession of, the ordinary suit for winding up the affairs of a partnership. For this proposition the cases of *Jiváli Rámá Sámi v. Sathambakam*⁽³⁾ and *Láchman Lall v. Rám Lall*⁽⁴⁾ are given as authorities. Section 265 does not contemplate hostile proceedings. The jurisdiction for cases involving such remains where it existed before—*Prósád Doss Mullick v. Russick Lall Mullick*⁽⁵⁾; *Rám Chunder Sháha v. Mánik Chunder Banikya*⁽⁶⁾; *Harrison v. The Delhi and London Bank*⁽⁷⁾. The Court of the Subordinate Judge was the proper and only Court for the

(1) I. L. R., 5 Bom., 65.

(4) I. L. R., 6 Calc., 521.

(2) I. L. R., 6 Bom., 143.

(5) I. L. R., 7 Calc., 157.

(3) I. L. R., 1 Mad., 340.

(6) I. L. R., 7 Calc., 428.

(7) I. L. R., 4 All., 437.

cognizance of the claim as regards damages, and the suit was properly brought in that Court.

As regards the return of the plaint, the ruling in *Jagjivan Jácherdás Seth v. Magdum Ali*⁽¹⁾ revolutionizes the practice of the Courts. Practice of the Courts is a recognized source of the law, and the practice of returning plaints on discovery of want of jurisdiction is of long standing and universal.

Branson, with him *Máneeksháh Jehángirsháh Taleýárkhán*.—As to the point of jurisdiction the cases cited support the view that the District Court is the right *forum*. In *Jiváli Rámá Sámi v. Satham-bakam*⁽²⁾ the question was between one District Court and another District Court, and not between a District Court and subordinate Court. The cases of *Prosád Doss Mullick v. Russick Lall Mullick*⁽³⁾ and *Rám Chunder Sháha v. Mánik Chunder Banikya*⁽⁴⁾ are decidedly in my favour, and they are cited with approval by the Madras High Court in *Ramayya v. Chandra Sekara Rau*⁽⁵⁾. As regards the question of the return of the plaint, the judgment in *Jagjivan Jácherdás Seth v. Magdum Ali*⁽¹⁾ gives reasons for overturning the old practice, and I have nothing to add to them.

The judgment of the Court was delivered by

WEST J.—As Mr. Branson for the respondent declines to support the recent judgment impugned by the Advocate General as to the legality of returning a plaint on the discovery of a want of jurisdiction, we need not discuss the point in dealing with the present case. The questions are—(1) whether the Subordinate Judge had jurisdiction; and (2) whether the District Court was bound to assume it.

When the partnership between the parties to the present suit was entered into on the 27th October, 1876, they, no doubt, contemplated its lasting until the term should expire of the contract made by the defendants for supplying carts to the municipality of Poona for five years ending on the 19th August, 1881. They thus looked forward, of course, to the partnership continuing for nearly five years, but at the same time this, though in some degree the

(1) I. L. R., 7 Bom., 487.

(3) I. L. R., 7 Calc., 157.

(2) I. L. R., 1 Mad., 340.

(4) I. L. R., 7 Calc., 428.

(5) I. L. R., 5 Mad., 256.

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moving purpose of their mutual contract, was not directly a term of it. The actual stipulation was for a partnership to endure for the term of the contract with the municipality. That contract, being only between the municipality and the defendants, could be put an end to without the assent of the plaintiff, and it was an end to on 19th January, 1877. The defendants at the same time entered on another contract with the municipality for one year, which was obviously not identical with the one in which the plaintiff had obtained a share. The partnership was thus at an end.

If it was fraudulently or improperly terminated by the defendants, they were liable to the plaintiff, as for a wrong, in not continuing the contract in which he was interested, but the partnership itself existed no longer when the term assigned to it by the mutual stipulation had in any way been reached.

The plaintiff himself fixes the origin of his cause of action at this date. For the previous time he seeks a share of profits; for the time subsequent he claims damages; and damages, too, for the breach of duty on the defendants' part, who, being bound to give honest furtherance to the purpose of the partnership, defeated it by their voluntary act. This way of putting the plaintiff's case implied a partnership ended, not one still continuing. It involved, not a mere taking of accounts and winding up of a business, but a true litigation and estimate of damages as for a wrong.

The partnership being thus treated as having expired, a suit for winding up its affairs could undoubtedly be brought in the District Court—Act IX of 1872, sec. 265; Act XIV of 1882, sec. 213. The question is as to the effect of the section (265 of the Contract Act) which allows this in a case wherein complaint is made of wrong, and damages are sought. Sir M. Westropp, the late Chief Justice of this Court, thought the special jurisdiction was merely auxiliary, not preventing a suit in any other Court which on the facts would have jurisdiction. The views of the other High Courts, as shown by the cases cited, have not been quite uniform or consistent. In some instances it seems to have been thought that the fact that damages were sought did not deprive the District Court of its exclusive jurisdiction under section 265; and this jurisdiction appears to have been considered such as

to shut out that of any other Court when recourse could, under the section, be had to the District Court. To us it appears that the view of the District Court's jurisdiction as an auxiliary one is the correct view, but that the mode of working it admits of doubt. The law has given to the District Court a peculiarly equitable jurisdiction without providing in what relation this is to stand to that of the ordinary Courts, or even to its own jurisdiction under the ordinary law. Effect must, however, be given, as far as possible, to the intentions of the Legislature, and this end, it seems, may be attained by regarding the application under section 265 as one which the District Court may scrutinize with a view to determine whether it is, in truth, a mere case of administration, or of administration sought as a cloak for strictly litigious claims, or of administration *plus* claims involving litigation of the ordinary means. In the second case, it may, we think, properly decline a function that properly belongs to an ordinary Court. In the last case it may either assume the administration of the estate of the firm, or decline to do so according to circumstances, subject to appeal; and in the former case it may either itself deal with all questions arising between the ex-partners, or, if these be of such a kind as to form separable subjects of adjudication, it can direct the party in each case interested to proceed on the particular alleged cause of action in the Court having ordinary jurisdiction, and itself use the result as an element of its administration as presently indicated.

The jurisdiction of the ordinary Courts is not annulled by the special function assigned to the District Court by section 265 of the Contract Act. If the Legislature had had such an intention, section 213 of the Code of Civil Procedure was the place to have expressed it. In the same place, too, we should look for a restriction, were any intended, of the administrative powers of the District Court, but none is to be found there. The result, we think, is that any one having a cause of action arising out of partnership transactions may sue the persons liable in the ordinary Court. The jurisdiction of such Court, widened for some purposes by section 213 of the Civil Procedure Code, is prevented from extending to the case of a winding up of an expired partnership by the special provision in section 265 of the Contract Act; for when along with

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a new mode of relief, as in this instance, particular jurisdiction is constituted to administer it, the Court specified, and no other, is to be understood as vested with new authority—*Coe v. Wise*⁽¹⁾. The particular method prescribed, and no other, is to be pursued—*Taylor v. Taylor*⁽²⁾; *The Wolverhampton New Waterworks Company v. Hawkesford*⁽³⁾. Hence, though administration for other purposes may apparently be sought in the subordinate Courts, it can be obtained, in case of an expired partnership, only in the District Court or the High Court. The enactments on the subject being in *pari materia*, effect is to be given to the more specific as an exception to the more general. But the jurisdiction of the subordinate Courts in other respects is not hereby extinguished. An apparent cause of action gives a right to sue in them for such relief as they can afford, though not for the particular kind of relief contemplated in section 265 of the Contract Act. It is not compulsory on a party to seek the latter; it is merely an advantage allowed to him if he thinks fit to avail himself of it.

It follows that where a cause of action appears which in itself is cognizable by an inferior Court, such a Court is not justified in rejecting a suit, merely because it seems that the case is one in which the District Court might have jurisdiction under section 265 of the Contract Act. It may happen that one of the parties to the suit in the lower Court may institute a suit in the District Court under its special jurisdiction. In such a case the District Court will have to determine, whether it will, or will not, withdraw the pending suit from the lower Court to itself, or allow it to run its course; but, unless the higher Court interferes, the jurisdiction of the lower Court which has attached is not disturbed, though the plaintiff's fruition of its judgment in his favour may be affected by the necessity of taking his decree to the higher Court. It may be that the inferior Court will have attached some part or the whole of the property of the firm, and the holder of its decree can, at any rate, obtain execution against the property, unless it has been legally placed beyond his reach; but the scramble to which this might lead amongst competing claimants will be prevented by the District Court immediately, on admitting an application for

(1) L. R., 1 Q. B., 711.

(2) L. R., 1 Ch. Div. at p. 431.

(3) 28 L. J., C. P., 242.

administration, issuing a public notice, then promptly passing a provisional decree for the benefit of all concerned, and thereon attaching the whole estate of the partnership, to abide by the plenary decree and the results in detail of the winding up, and appointing a receiver to carry out its orders. All persons interested may be brought in as parties, or ranked as parties, to such a suit. The attachment will hold for the benefit of all alike; and it may be considered that the assets are not finally realized under section 295, Civil Procedure Code, until the accounts are completely taken and all admissible claims ascertained. Thus, though a party has been earlier in obtaining his decree against the partnership, the District Court having attached the property will execute it, especially where it has been obtained by an ex-partner only so far as is equitable with advertence to all the circumstances of the partnership and its estate and transactions.

Here the Subordinate Judge was the more wrong in rejecting the suit as the investigation had, in fact, been completed. Both parties had submitted to the jurisdiction; and, in a case which, at most, was one of doubt, he could not have been wrong in proceeding to an adjudication. The District Judge, not thinking the case a fit one for the exercise of his powers under section 265 of the Contract Act, has refused to accept the plaint as an application under that enactment. It does not appear to be so certainly a case which he ought to deal with under the section that we can properly reverse his order. We confirm it, and reverse that of the Subordinate Judge. Costs to follow the final decision. The plaint to be transferred by the District Court to the Court of the Subordinate Judge for replacement in the records of the latter.

Order accordingly.

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