

[290] ORIGINAL CIVIL.

1891

JULY 24.

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18 B. 290.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

GOSWAMI SHRI 108 SHRI GIRDHARIJI MAHARAJ (*Original Plaintiff*),
Appellant v. SHRI GOVARDHANLALJI GIRDHARIJI MAHARAJ (Original
*Defendant), Respondent.** [24th July, 1891.]

Jurisdiction—Letters Patent, 1865, cl. 12—Dwell—Carry on business—Personally work for gain.

The word "dwell" must be construed with reference to the particular object of the enactment in which it occurs.

Residence in Bombay merely for a temporary purpose is not to "dwell" there so as to give jurisdiction to the High Court under cl. 12 of the Letters Patent, 1865.

Held, that the mere fact that the defendant had purchased the house which he occupied during a temporary visit to Bombay afforded no inference of an intention to dwell there.

A defendant who was the *Acharya* or high priest of the Vaishnava community and the Maharaj Tikait of Shri Nathji at Nathdwara had a *peethi*, or place of business, in Bombay, where devotees paid in any presents they intended to offer him.

Held, that this did not amount to "carrying on business" so as to give the High Court jurisdiction under cl. 12 of the Letters Patent, 1865.

The defendant when in Bombay was invited by his devotees and pupils to their houses, where he was treated as an incarnation of the deity with certain forms and ceremonies, and received presents, and gave his blessing.

Held, that this did not amount to "personally working for gain" within the meaning of cl. 12 of the Letters Patent, 1865.

[Affirmed, 18 B. 294 (P. C.) ; Cons., 29 M. 239 = 16 M.L.J. 238 = 1 M.L.T. 71.]

APPEAL from a decree of Farran, J., dismissing the suit on the ground that the Court had no jurisdiction to entertain it (see I. L. R., 14 Bom., 541).

Up to the year 1876 the plaintiff was the Acharya or high priest of the Vaishnava community, and the Maharaj Tikait of Shri Nathji at Nathdwara in the territory of the Maharana of Udepur in Rajputana. In that year he was deposed from his office and expelled from the territory by the Udepur authorities, and his son the defendant was installed in his place. At the time of his deportation the plaintiff had at Nathdwara a large amount of treasure in his treasury, which he alleged to be his private property, and which he had entrusted to his son (the defendant). Being himself prevented from returning to Udepur [291] he had called upon the defendant to remit this property to him, but the defendant had not done so. He accordingly filed this suit in the High Court of Bombay to recover the property in question.

The defendant contended that the Court had no jurisdiction over him. He stated that he resided at Nathdwara and only occasionally visited Bombay. He contended that he did not dwell or carry on business or personally work for gain within the Court's jurisdiction as required by cl. 12 of the Letters Patent, 1865, which is as follows:—

"And we do further ordain that the said High Court of Judicature at Bombay in the exercise of its ordinary original civil jurisdiction shall be empowered to receive, try, and determine suits of every description, if in the case of suits for land or other immoveable property such land or

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property shall be situated, or in all other cases if the cause of action shall have arisen either wholly, or, in case the leave of the Court shall have been first obtained in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain within such limits, except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Bombay, in which the debt or damage or value of the property sued for does not exceed 100 rupees."

The defendant was in Bombay on a visit from the 2nd April, 1889, until the 11th August, 1889, and while there he lived in a house which he had purchased in May, 1888. This house, however, he sold before leaving Bombay in August, 1889. It was on the 3rd May, 1889, while the defendant was in Bombay on the occasion of this visit that the plaintiff filed this suit.

It further appeared that the defendant had in Bombay a *pedhi*, or place of business, in which a *munim*, *mehtas* or other servants were employed. Into this *pedhi* offerings to the shrine of Shri Nathji were paid by the devotees and also offerings to the defendant personally. From thence they were transmitted by *hundi* to Nathdwara.

[292] It was also proved that while in Bombay the defendant was in the habit of visiting the houses of his devotees and pupils, on which occasions certain ceremonies were performed and presents were made to the defendant, who received them and gave his blessing to the persons offering them.

The material facts are fully set out in the judgment of Farran, J. (see I. L. R., 14 Bom., 541), who held that the defendant did not dwell or carry on business or personally work for gain within the jurisdiction, and, therefore, dismissed the suit.

The plaintiff appealed.

Inverarity, Jardine and Sethna, for the appellant (plaintiff).

Lang and Scott, for the respondent (defendant).

The following authorities were cited:—*Emriloll v. Kidd* (1); *Kavasji v. Wallace* (2); *Subbaraya v. The Government* (3); *Bramwell v. Lacy* (4); *Mitchell v. Hender* (5); *Anonymous* (6); *Muthayu Chetti v. Allan* (7); *Chinnammal v. Tulukannatummal* (8); *Kessowji v. Khimji Jairam* (9).

JUDGMENT.

TELANG, J.—The only question in this case relates to the jurisdiction of this Court to try it, and it has been sought to place the jurisdiction on the grounds that the defendant dwells, carries on business, and also personally works for gain within the local limits of the civil jurisdiction.

As regards the first point, the English and Indian cases mentioned in the judgment of Farran, J., show that the word "dwell" must be construed with reference to the particular object of the enactment in which it occurs. And construing cl. 12 of the Letters Patent, 1865, in that way, we are of opinion that the cases of *Emriloll v. Kidd* (1) and *Kavasji v. Wallace* (2) were rightly decided. It was not, we think, the intention of the Letters Patent to give jurisdiction in cases of temporary residence only. Now in this case the defendant came to Bombay only in the course of a progress he was making, in the course of which he

(1) 2 Hyde, 117.

(2) 1 B. H. C. R. 113.

(3) 1 M. H. C. R. 286.

(4) 10 Ch. D. 691.

(5) 23 L. J. (Q. B.). 273.

(6) 23 W. R. 223.

(7) 4 M. 209.

(8) 3 M. H. C. R. 146.

(9) 12 B. 507.

[293] intended to visit the various establishments he keeps up in various parts of the country. He actually stayed here from 2nd April to 11th August, 1889. It seems probable that he stayed longer than he had originally intended. But in any case, his stay here was only for a temporary purpose, such as, we think, does not satisfy the requirements of cl. 12 of the Letters Patent.

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It was, however, argued that the defendant had purchased a house in Bombay in the year preceding the year of his visit, and that that circumstance would afford a foundation for the jurisdiction of the Court, on the ground of residence. No doubt, according to the case of *Bailey v. Bryant* (1), a man may have more than one residence, but, in order to afford foundation for jurisdiction, the residences must be of a permanent character, and be visited from time to time. Here there is no evidence whatever of any intention on the part of the defendant himself to visit Bombay from time to time. The house, after being purchased, was in fact occupied by the defendant's servants, and, from the mere fact of purchase, no inference of an intention to personally dwell in the house from time to time can be drawn. On the other hand, the fact of the house having been sold some time after the purchase, affords some ground for an opposite inference. On the whole, therefore, we are of opinion that the argument for jurisdiction on the ground of residence fails.

The next point to be dealt with, turns on the meaning of the phrase "carry on business." The defendant admittedly has a *pedhi*, or place of business, in Bombay, where devotees pay in whatever presents they wish to offer to him. We think, however, that it would be a straining of language to call that carrying on business. These presents are mere voluntary offerings, which the pupils and devotees of the defendant make to him for their own spiritual benefit. They are received on behalf of the defendant by his servants, and transmitted to him in due course. We do not think that this can be properly held to be equivalent to carrying on business within the jurisdiction.

Lastly, comes the question whether the defendant personally works for gain within the jurisdiction. The evidence shows [294] that when the defendant is in Bombay, his devotees and pupils invite him to their houses, and, treating him as an incarnation of the deity, go through certain forms and ceremonies, which are held to be appropriate to the occasion, and make presents to the defendant. The defendant receives the presents, and gives his blessing to the devotees. It requires, we think, a straining of language in this case also to hold that this is "personally working for gain." There is no work in the matter at all.

Upon the whole we are of opinion that the several grounds on which the jurisdiction is sought to be vested in this case have all failed, and that the appeal must be dismissed with costs.

Appeal dismissed.

Attorneys for appellant (plaintiff) :—Messrs. *Conroy and Brown.*

Attorneys for the respondent (defendant) :—Messrs. *Craigie, Lynch and Owen.*

(1) 1 Ellis & Ellis, 340.