

SOMASIRI
v.
CEYLON PETROLEUM CORPORATION

COURT OF APPEAL
WIJETUNGA, J. AND
ANANDACOOMARASWAMY,
COURT OF APPEAL NO. 614/83 (F)
D.C. COLOMBO CASE NO. 2068/SPL
13 FEBRUARY, 1991.

Civil Procedure – Civil Procedure Code, section 9 – Jurisdiction – Residence – Cause of action.

Held :

Even if the residence of the Corporation is not distinctly and clearly averred, it is no ground to reject the plaint or dismiss the action, when the plaintiff-appellant

has averred the principal place of business at the mentioned address as within the jurisdiction of the Court.

The true definition of 'cause of action' is the act on the part of the defendant which gives the plaintiff his cause of complaint.

The cause of action arises at Kollupitiya where the decision to transfer complained of was made and from where the letter was issued transferring the defendant.

Cases referred to:

(1) *Sulaiman v. Ibrahim* (1890) 9 SCC 131.

(2) *Ranghamy v. Kirihamy* (1904) 7 NLR 357.

APPEAL from judgment of the District Court of Colombo.

Kithsiri P. Gunaratne with *S. M. Senaratne* and *Saliya Mathew* for appellant.

D. H. N. Jayamaha for respondents.

Cur adv vult.

7th March, 1991.

ANANDACOOMARASWAMY, J.

This is an appeal from the judgment of the Learned District Judge of Colombo dated 5th September, 1983, dismissing the Plaintiff's action with costs on the ground that the Court had no jurisdiction to hear and determine the said action, as the cause of action set out in the plaint did not arise at Kollupitiya within the jurisdiction of the Court.

The facts relevant to this appeal are briefly as follows:—

The Plaintiff-Appellant instituted the action in August, 1981 against the Defendants-Respondents praying *inter alia* :—

- (a) To declare the transfer order dated 11th August, 1981 made by the 1st Defendant transferring the Appellant from Batticaloa

to Kolonnawa is unlawful/illegal/null and void and is of no force or effect in law.

- (b) To grant permanent, interim injunction and enjoining order as stated in the plaint.

Fourteen issues were raised and parties agreed to the Learned District Judge trying issues Numbers 7 and 8 relating to jurisdiction as issues of law first. The Learned District Judge answered those issues against the Plaintiff-Appellant, stating that the Court had no jurisdiction and dismissed the action with costs. It is from this judgment that the Plaintiff-Appellant has appealed to this Court.

The first Defendant-Respondent having its Head Office at 113, Galle Road, Kollupitiya issued a transfer order dated 11.8.1981 transferring the Plaintiff-Appellant from Batticaloa to Kolonnawa.

The plaint has the following averment :-

- "1. The first Defendant is a Corporation established under Ceylon Petroleum Corporation Act No. 28 of 1961 and is deemed to be a corporate body having its principal place of business at the above address and the cause of action hereinafter set out arose at Kollupitiya within the jurisdiction of this Court".

The transfer order was sent by the first Defendant-Respondent through the 2nd Defendant-Respondent to be served on the Plaintiff-Appellant who was then employed in the Petroleum Corporation Branch at Batticaloa, whose area Manager was the 2nd Defendant-Respondent.

Jurisdiction of the Court is governed by Section 9 of the Civil Procedure Code which reads as follows :-

- "9. Subject to the pecuniary or other limitations prescribed by any law, action shall be instituted in the Court within the local limits of whose jurisdiction :-

- (a) a party defendant resides; or

- (b) the land in respect of which the action is brought lies or is situate in whole or in part: or
- (c) the cause of action arises; or
- (d) the contract sought to be enforced was made”

The Ceylon Petroleum Corporation was having its Head Office at Kollupitiya and carried on its business all over the Island through its Branches, but had its principal place of business at Kollupitiya where it had its Head Office, from where it had its central control and administration. Therefore it is quite clear that the Ceylon Petroleum Corporation is deemed to reside for purposes of suit wherever it carried on business in its own name.

The Learned Counsel for the Respondent contended that the averment in paragraph one (1) did not show that the 1st Defendant-Respondent (Ceylon Petroleum Corporation) resided at the address mentioned for the purpose of Section 9 (a) of the Civil Procedure Code, as the words “within the jurisdiction of this Court” refer to “the cause of action hereinafter set out arose at Kollupitiya and not to the words “its principal place of business at the above address”. He further contended that “the fact of such residence must be distinctly averred and it is not sufficient to describe Defendant in the caption as of such and such a place within such limits”, if the Plaintiff relies for the Court’s jurisdiction on the residence of the Defendant within the territorial limits of the Court. In support of this contention he relied on the decision in the case of *Sulaiman v. Ibrahim*⁽¹⁾ where the Supreme Court (Clarence, A.C.J., and Dias, J.) held “In an action on a foreign judgment it is not necessary for Plaintiff to aver that the foreign Court had jurisdiction over the parties or the cause. The want of jurisdiction may be shown by Defendant upon plea.

“The caption to a pleading cannot supply necessary averment. Where, therefore, a Plaintiff relies for the Court’s jurisdiction on the residence of the Defendant within the territorial limits of the Court, the fact of such residence must be distinctly averred, and it is not sufficient to describe Defendant in the caption as of such and such a place within such limits.”

We find from the averment in paragraph one (1) of the plaint that the 1st Defendant-Respondent Corporation has its principal place of business at the mentioned address within the jurisdiction of the Court. The words "within the jurisdiction of this Court" refer to both place of business and the cause of action. Even if the residence of the Corporation is not distinctly and clearly averred it is no ground to reject the plaint or dismiss the action, when the Plaintiff-Appellant has averred the principal place of business at the mentioned address as within the jurisdiction of the Court.

On the second question whether the cause of action arose within the jurisdiction of the Court, the Learned Counsel for the Appellant relied on the decision in the case of *Ranghamy v. Kirihamy*⁽²⁾ where the Supreme Court (Layard, C.J., and Wendt, J.) held "In an action raised by a trustee of a Buddhist Vihare against the lessee of certain lands to set aside the lease which had been executed within the jurisdiction of the District Court of Kandy, on the ground that such lease was an improvident alienation.

"The true definition of "Cause of Action" was the act on the part of the Defendant which gives the Plaintiff his cause of complaint; that the wrongful act of the Defendant complained of was done in Kandy, in accepting a lease from the incumbent which the latter had improperly executed for his own benefit and to the injury of the vihare; and that therefore the District Court of Kandy had jurisdiction to try the case, notwithstanding that the residence of the Defendant and the site of the lands were beyond its limits."

The act complained of is the decision to transfer the Plaintiff-Appellant and the issuance of the letter transferring him from Batticaloa to Kolonnawa and not the acceptance of the said letter which gives rise to the cause of action, for, if the acceptance of the said letter gives rise to the cause of action, it is meaningless in the facts and circumstances of this case, because one cannot avoid complying with an order transferring by not accepting or refusing to accept the letter conveying such order. Therefore the cause of action arose at Kollupitiya where the decision to transfer was made and from where the said letter was issued, within the jurisdiction of the Court. It follows therefore that the District Court of Colombo has

jurisdiction to hear and determine this action and accordingly issues Numbers 7 and 8 have to be answered in favour of the Plaintiff-Appellant.

For the foregoing reasons we set aside the judgment of the Learned District Judge dated 5th September, 1983 and remit the case back to the Learned District Judge of Colombo to hear, determine and deliver judgment in accordance with law in this action.

The appeal is accordingly allowed with costs.

WIJETUNGA, J. – *I agree.*

Appeal allowed.
