

Present: Mr. Justice Pereira.

Dec. 31, 1909

MENDIS v. PERERA:

C. R., Panadure, 9,155.

*Jurisdiction—Place of residence—Civil Procedure Code, s. 9.*

A person may be said to "reside" (Civil Procedure Code, section 9) in a place where he has his family establishment and home. An action on a promissory note made in Kurunegala was held to have been rightly brought in the Panadure Court against a person who worked in Kurunegala, but whose wife and children, whom he occasionally visited, resided in Moratuwa.

**A** PPEAL from a judgment of the Commissioner of Requests, Panadure (G. F. Roberts, Esq.). In this case the plaintiff alleging that the defendant was a resident of Moratuwa sued the defendant in the Court of Requests of Panadure on a promissory note for Rs. 90 made in Kurunegala in favour of one Fernando, who endorsed it to plaintiff. The defendant alleged that he was a resident of Kurunegala. Plaintiff, who was the only witness called in the case, gave evidence to this effect: "Defendant is a carpenter. I have heard that he is working at Kurunegala. He works very often away, and then comes to Moratuwa. He comes to Moratuwa once or twice in three months. His wife and children are all living in Moratuwa. Fernando was also at Kurunegala with the working party." The learned Commissioner dismissed the action on the ground that he had no jurisdiction.

The plaintiff appealed.

*A. St. V. Jayewardene*, for the appellant.—The evidence shows that the defendant's real and permanent residence is at Moratuwa. The fixed and permanent home of a man's wife and family to which he has always an intention of returning constitutes his dwelling place or place of residence (*Fatima Begam v. Sakina Begam*<sup>1</sup>). Under the English Law it has been held that it was possible for a man to have two places of residence (*Attenborough v. Thompson*<sup>2</sup>). It was held in *Kerr v. Haynes*<sup>3</sup> that where a man had two places of residence, one at his place of business and the other where his family resided, the latter should be regarded as his dwelling place.

*Cur. adv. vult.*

<sup>1</sup> I. L. R. 1 All. 51.

<sup>2</sup> 29 L. J. Q. B. 70, 72.

<sup>3</sup> 27 L. J. Ex. 23.

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In this case the question is whether the defendant can be said to reside at Moratuwa, for it is only the fact of his residence there that can give the Court of Requests of Panadure jurisdiction.

The only evidence in the case is that of the plaintiff. He stated on oath that the defendant was a carpenter, and that he had heard that he was working at Kurunegala. He further said that the defendant "worked very often away and came to Moratuwa for a time, that is, about once or twice in three months, and that his wife and children were all living at Moratuwa." He added: "He (meaning the defendant) is a resident there (meaning Moratuwa)." On this evidence the Commissioner dismissed the claim, being of opinion that it could not be said that the defendant resided at Moratuwa..

On this question of residence in connection with the provision as to jurisdiction we could derive no help from Indian authorities, because the Indian Code gave jurisdiction to the Court within the territorial jurisdiction of which the defendant resided or carried on business or personally worked for gain; and it further provided by way of explanation, so as to leave no room for future discussion, that when a person had a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he should be deemed to reside at both places in respect of any cause of action arising at the place where he had such temporary lodging.

It is clear from the above that the Indian Legislature did not favour the idea of the place where a person carried on business or personally worked for gain being deemed his place of residence. A distinction is drawn between the two in the very words used in the Code.

The appellant's counsel cited in support of his argument the case of *Fatima Begam v. Sakina Begam*.<sup>1</sup> There it was laid down that the words "dwelling" and "residence" were synonymous with "domicil" and "home," and meant that place where a person had fixed his permanent home, to which, whenever he was absent, he had the intention of returning. I am not inclined to accept that proposition as one of general application. There are cases in which "residence" as used in certain particular statutes has been held to mean home or domicil (see *e.g.*, *Lambe v. Smythe*<sup>2</sup>), and, indeed, as observed by Erle C.J. in *Naef v. Mutter*,<sup>3</sup> the word has a variety of meanings according to the statute in which it is used; but when we are in search of a meaning of a general application, it must be borne in mind that the elements of permanence and exclusiveness exist in a far greater degree in "domicil" than in "residence."

"Residence" or dwelling place has been defined to mean the place where an individual eats, drinks and sleeps, or where his

<sup>1</sup> *I. L. R. 1 All. 51.*

<sup>3</sup> *31 L. J. C. P. 359.*

<sup>2</sup> *15 L. J. Ex. 287.*

family or his servants eat, drink, and sleep (*per* Bayley J. in *R. v. Dec. 31, 1909*  
*North Curry*<sup>1</sup>), and it has also been said that the "residence" of a  
person is the place "where he is chiefly to be found" (*per* Pollock  
C.B. in *Attenborough v. Thompson*<sup>2</sup>), and thus the possibility of a  
person having at one and the same time or period two dwelling  
places has been recognized (see *R. v. Murray*<sup>3</sup> cited in *Fatima Begam*  
*v. Sakina Begam, supra*). The question was mentioned but not  
decided by Cockburn C.J. in his judgment in *Kerr v. Haynes*.<sup>4</sup>

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In the present case I shall be content to rest my ruling on the  
decision in this last case that I have cited. There it was laid down  
that the place where a person had his family establishment and home  
should rather be deemed to be his dwelling place than a place where  
his stay was entirely subservient to the purposes of his business, and  
that alone. Applying this test to the evidence that I have quoted  
above, I think that the defendant in this case may well be said to  
have a residence or dwelling place at Moratuwa.

I set aside the judgment and remit the case for trial. The  
appellant will have his costs of appeal. Costs in the Court below  
will abide the result.

*Appeal allowed; case remitted.*

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