

1970

*Present* : Sirimane, J., and Wijayatilake, J.

U. L. PAUL PERERA, Appellant, *and* R. CHELLIAH and  
another, Respondents

*S.C. 555/67 (F)—D. C. Chilaw, 17653*

*Jurisdiction—Civil Procedure Code—Section 9 (a)—Action on a cheque.*

In an action for the recovery of a certain sum on two cheques—

*Held*, that in deciding an objection to jurisdiction based on the ground that a defendant is resident outside the jurisdiction of the Court, the Court has to look at the case on the facts as pleaded by the plaintiff, in the absence of any evidence to the contrary. A mere denial in the answer of the defendant is not sufficient to oust jurisdiction.

**A**PPEAL from a judgment of the District Court, Chilaw.

*Nimal Senanayake*, with (*Miss*) *Sherine Obeyesekere*, for the plaintiff appellant.

*D. R. P. Goonetilleke*, for the 1st defendant-respondent.

*C. D. S. Siriwardene*, with (*Miss*) *S. M. Senaratne*, for the 2nd defendant-respondent.

May 3, 1970. SIRIMANE, J.—

This action was filed by the plaintiff in the District Court of Chilaw for the recovery of a sum of Rs. 4,950 on two cheques drawn by the 1st defendant on the Mercantile Bank of Colombo, and endorsed by the 2nd defendant to the plaintiff.

The plaintiff alleged in this plaint that the 2nd defendant resided at Nathandiya within the jurisdiction of the District Court of Chilaw. It was conceded at the argument that if that averment was factually correct the Court had jurisdiction to hear the action under Section 9 (a) of the Civil Procedure Code, despite the fact that the 1st defendant was resident outside the Court's jurisdiction and the cause of action also arose outside the jurisdiction of that Court.

The plaintiff also averred in his plaint that he had given due notice of dishonour to both the defendants. At the trial several issues were raised of which only No. 9 is relevant for the purposes of this appeal. That issue reads as follows :—

“Has this Court jurisdiction to hear and determine this action in as much as the first defendant, resides in Colombo; the cheques were drawn in favour of the Bank, in Colombo and presented for payment and dishonoured in Colombo.”

The Court was invited to try this issue first. It makes no reference at all to the residence of the 2nd defendant.

In deciding an objection to jurisdiction based on the residence of a party, the Court has to look at the case on the facts as pleaded by the plaintiff, in the absence of any evidence to the contrary. A mere denial in the answer of the defendant is not sufficient to oust jurisdiction. In this case we notice that the defendant's substantial objection to jurisdiction was that the cheques had been drawn in Colombo.

The 2nd defendant gave no evidence in this case, and it was pointed out to us that summons had in fact been served on him at the address given in the plaint within the jurisdiction of the District Court of Chilaw. The learned District Judge dismissed the action relying on the case of *Seneviratne v. Thaha*<sup>1</sup> which he thought was "on all fours" with the present case. In that case the only defendant was admittedly resident outside the jurisdiction of the Court in which the action was filed. The learned District Judge appears to have decided the case against the 2nd defendant on the ground that he had no due notice of dishonour. This was not a question which the Judge was called upon to decide at that stage.

We set aside the order dismissing the action and send the case back for re-trial; at which the parties are entitled to raise issues afresh if they so desire. The plaintiff is entitled to the costs of this appeal.

WIJAYATILAKE, J.—I agree.

*Case remitted for re-trial.*

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