

1955

Present: Gratiaen, J., and Sansoni, J.

SOWDOONA, Appellant, and ABDUL MUEES, Respondent.

S. C. 35 of 1953—D. C. Matara, 21,473

Jurisdiction—Muslim Law—Kaikuli—Action for repayment of it—Court where the action may be instituted—Civil Procedure Code, s. 9.

A Muslim husband's obligation to return the *kaikuli* to his wife on demand is first undertaken by him at the place where he marries her.

A Muslim husband who had deserted his wife was sued by the wife for the recovery of Rs. 1,500 that had been paid to him as *kaikuli* at Gallo a few days before they were married. The marriage was celebrated at Matara. The plaintiff resided at Matara, and the defendant at Galle, when the action commenced.

Held, that the District Court of Matara had jurisdiction to hear the case. Scope of the rule that "the creditor must seek out the debtor" examined.

APPPEAL from a judgment of the District Court, Matara.

H. W. Jayewardene, Q.C., with *M. I. M. Haniffu, M. I. M. Cassim* and *A. C. M. Uvais*, for the plaintiff appellant.

A. M. Ameen, for the defendant respondent.

Cur. adv. vult.

March 4, 1955. GRATIAEN, J.—

The plaintiff, who is a Muslim lady, sued the defendant (her husband) in this case for the payment of Rs. 1,500 paid to him as *kaikuli* a few days before they were married. The marriage was celebrated at Matara and still subsists although the parties have separated. She resided at Matara, and he at Galle, when this action commenced. The money had been received by him from her parents at Galle.

The only ground on which the plaintiff's claim was dismissed was that, in the learned Judge's opinion, the cause of action arose at Galle (where the defendant resided) because, under the Roman-Dutch law, it is "the duty of the creditor to seek out the debtor". With great respect, the rule is not quite so rigid. Performance of a contractual obligation must *prima facie* be made where the obligation was contracted, unless another place of performance has been expressly or impliedly agreed. *Lee's Roman-Dutch Law* (5th ed.) p. 258; *Haniffa v. Ocean Accident and Guarantee Corporation Ltd.*¹ I should be very surprised indeed if the principles of a civilised system of jurisprudence would automatically entitle a Muslim husband who had deserted his wife to insist that she must seek him out in order to obtain satisfaction of her just demands.

But apart from these considerations, I am satisfied that the District Court of Galle did not have exclusive jurisdiction to try this case. *Kaikuli* is a sum of money given by the parents of a Muslim bride to her intended husband. Once the marriage has taken place, he owns it but is nevertheless liable to pay it over to the wife if she demands it, even during the subsistence of the marriage. *Vanderstraaten's Reports* 162. This is an incident of a Muslim marriage according to a well-recognised custom in Ceylon. Sampayo, J., took the view that the money is held in trust by the husband for the wife—*Pathumma v. Cassim*², and this opinion was adopted by the judges who decided *Pathumma v. Idroos*³, and *Zainabu Natchia v. Usoof Mohamadu*⁴. Perhaps an equally acceptable theory is that the husband undertakes, upon his marriage, an implied contractual obligation to pay the money to his wife whenever she demands it or, if she dies, to her heirs. But in either view, it seems clear to me that the obligation to pay the money to the wife is not finally imposed until the marriage has actually taken place; until then, the intended husband holds it in trust for her parents to whom he must return it if the marriage, for whatsoever reason, should not take place.

I therefore conclude that the defendant's obligation to pay the *kaikuli* to the plaintiff on demand was first undertaken at Matara where he married her. If the obligation be equated to an obligation in the nature of a trust, the English law applies, and the trustee debtor must seek out the beneficiary in order to discharge the trust. Alternatively, there was a breach of a contractual obligation undertaken at Matara. In that event, the action was properly instituted in the Court within whose jurisdiction "the contract sought to be enforced was made". Section 9 of the Civil Procedure Code. For either reason, the learned District

¹ (1933) 35 N. L. R. 216.

² (1919) 21 N. L. R. 221.

³ (1929) 31 N. L. R. 230.

⁴ (1936) 38 N. L. R. 37 at 45.

Judge should, in accordance with his findings on the merits of the dispute, have entered a decree for the plaintiff. I would therefore allow the appeal and enter judgment in her favour as prayed for with costs in both Courts.

SANSONI, J.—I agree.

Appeal allowed.
