

1930

Present : Garvin A.C.J. and Jayewardene A.J.

CHINNADURAI v. RAJASURIYA.

398—*D. C. Jaffna*, 24,667.

Action—*Dismissal for want of jurisdiction*—*Application to return plaint to be filed in proper Court*—*Civil Procedure Code, s. 47.*

Where an action was dismissed on the ground that the Court had no jurisdiction and an application was made to the Supreme Court in appeal that the plaint should be returned to the plaintiff to be filed in the proper Court,—

Held, that the Supreme Court would not entertain the application at that stage of the action.

Semble, the order, which is made upon a plea of jurisdiction made and upheld by the Court, is almost invariably an order dismissing the action.

A PPEAL from a judgment of the District Judge of Jaffna.

Croos Da Brera (with him *Rajapaksa* and *Ramachandra*), for plaintiff appellant.

Soertsz (with him *Graticen* and *Charawanamuttu*), for defendant, respondent.

June 12, 1930. GARVIN A.C.J.—

This is an appeal from a judgment dismissing an action upon the ground that the Court had no jurisdiction to entertain it. The action is based upon a promissory note for a sum of Rs. 3,000 which was made at Panadure. At the time of making of the note, the defendant, who was the maker, was resident at Panadure. At the date of the action he was a resident at Katugastota. The

payee of the note endorsed it to one J. H. Ponnampalam, who in turn endorsed it to the second plaintiff. It is said that the second plaintiff is really resident in the Straits and pays occasional visits to Jaffna, which may possibly be her domicile, but certainly not her residence. There is no evidence that any demand was made for payment.

The position in which we are left is this : We have here a contract which was made in Panadure, outside the jurisdiction of the District Court of Jaffna. The party defendant was at the date of action resident outside the jurisdiction and there is no definite evidence from which it can be held that the cause of action arose within the jurisdiction of the District Court of Jaffna. Whichever test is applied the result is the same. The District Court of Jaffna has no jurisdiction to entertain the action. I think, therefore, that the learned District Judge was right in upholding the objection and dismissing the plaintiffs' action. Counsel for the appellant, however, applied to us to make an order returning the plaint in order that it may be filed in the proper Court. He referred to the provisions of section 47 of the Civil Procedure Code, and in support of his application, he invited our attention to the case of *Werthelis v. Daniel Appuhamy*.¹ That certainly is an instance where this Court in appeal made an order directing the plaint in that case which was found to be instituted in the wrong Court to be returned to the plaintiff in order that he might file it in the Court which had jurisdiction. Wendt J., in making that order, said that he felt justified in doing so by reason of certain Indian cases which were cited to him. An examination of these decisions shows that they are based upon what is said to have been the inveterate practice in those Courts. Here, however, the practice has always been the other way. With one or two isolated instances, such as the case to which I have referred, the order which is made upon a plea of jurisdiction tried

and upheld by the Court is almost invariably an order dismissing the action. It is unnecessary, however, for the purpose of the disposal of the application now before us to hold that it is not competent for this Court to make such an order. Ordinarily there can be no advantage to the plaintiff in a plaint being returned except that he might possibly benefit by being relieved of the obligation to affix fresh stamps to the paper upon which it is written. The real reason for the present application is that the claim is now out of time and it is hoped that by this means an avenue of escape will be found. But there is a decision of this Court to the effect that a plaint returned under the provisions of section 47 and thereafter filed in the Court which has jurisdiction must be taken to date from the date of the presentation to that other Court. I am not disposed in a case in which the issue has been properly raised and fully tried and then finally determined here in appeal to make such an order even if I had the power to do so for the sole purpose of enabling the plaintiff to renew a litigation upon a stale claim.

The appeal is dismissed with costs.

JAYWARDENE J.—I agree.

Appeal dismissed.

¹ (1909) 12 N. L. R. 196.