

1952

Present: Rose C.J. and Choksy A.J.

VYTHILINGAM, Appellant, and ARUNASALEM, Respondent

*S. C. 112—D. C. (Inty.) Jaffna, 40**Jurisdiction—Action in lunacy—Proper forum for institution—"Residence"—Civil Procedure Code, s. 556 (1).*

Where application was made under section 556 of the Civil Procedure Code in the District Court of Jaffna in respect of an alleged lunatic who had been residing in Jaffna but who for four years immediately preceding the application was sojourning in the Mental Hospital at Angoda—

Held, that the District Court of Jaffna had no jurisdiction to entertain the application and that the appropriate court was the District Court of Colombo within whose jurisdiction the Angoda Mental Hospital lies.

A PPEAL from an order of the District Court, Jaffna.

H. W. Tambiah, with *V. Ratnasabapathy* and *G. S. Thavathuray*, for the petitioner appellant.

C. Vanniasingham, with *C. Shanmuganayagam*, for the 1st respondent.

Cur. adv. vult.

February 8, 1952. ROSE C.J.—

This matter concerns the interpretation of the word "residing" in Section 556 (1) of the Civil Procedure Code (Cap 86). The sub-section reads as follows: "Whenever any person who is possessed of property is alleged to be a lunatic, the District Court within whose jurisdiction such person is residing may, upon such application as is hereinafter mentioned, institute an inquiry for the purpose of ascertaining whether such person is or is not of unsound mind and incapable of managing his affairs."

The application was made in the District Court of Jaffna, Jaffna having been the place of residence of the person alleged to be a lunatic prior to his sojourn in the Mental Home of Angoda for a period of at least four years immediately preceding the present application.

The term "residing" and "residence" are not terms of art and I therefore agree with the contention of learned counsel for the respondent that, in the present context, effect should be given to the natural and ordinary meaning of the word "residing". There is high judicial authority¹ for the proposition that "residence" means the place where a person "eats, drinks and sleeps", or in the words of Pollock C.B.² "where he is chiefly to be found", which interpretation would seem to be eminently in accord with the natural and ordinary meaning of the word.

The appellant contends that these words have no application to a lunatic, in that the element of volition may be deemed to be absent and that therefore his case is analogous to that of a convict undergoing a sentence of imprisonment, who is not regarded as "residing" in the gaol in which he is confined.

It seems to me that there is a clear distinction between the two cases. In the case of a lunatic there is, at the most, an absence of volition; so that in the case of a lunatic or an alleged lunatic—it is to be noted that the sub-section draws no distinction between the two—his residence can, in my opinion, properly be ascertained by applying a factual test based upon his physical presence, irrespective of the element of volition. Whereas in the case of a convict a contrary volition is deemed to exist, which contradicts the factual position of his confinement.

English authorities on the question as to where a lunatic or an alleged lunatic resides are of little value because the statutes under consideration differ from our own. They do, however, indicate that there is nothing inherently repugnant to the mind of the English Legislature in the conception that a lunatic may be regarded as residing in a mental hospital or asylum if that happens to be the place where he is "chiefly to be found" at the relevant time.

As far as our own Civil Procedure Code is concerned, there would seem to be no good reason to depart from the simple interpretation of residence to which I have previously referred. Moreover, Section 6 (2) of the Lunacy Ordinance (Cap. 177) provides that a pauper who is confined in an asylum shall on his recovery be conveyed back by Government "to his own village or usual place of former residence".

For these reasons I am of opinion that the learned District Judge was correct in holding that he had no jurisdiction to entertain the inquiry and that the appropriate court was the District Court of Colombo within whose jurisdiction the Angoda Mental Hospital lies.

The appeal is therefore dismissed with costs.

CHOKSY A.J.—I agree.

Appeal dismissed.

¹ *Per Bayley J. in R. v. North Curry 4 B. & C. 959.*

² *Per Pollock C. B. in Attenborough v. Thompson 27 L. J. Ex. 23.*