With this view, I am in respectful agreement, and I, therefore, consider that there is no ground for interference in these petitions. I accordingly dismiss them but leave the parties to bear their own costs.

APPELLATE CIVIL

Before Passey and Tek Chand, JJ.

DR. HARMINDAR SINGH,—*Plaintiff-Appellant*

versus

DR. BALBIR SINGH AND OTHERS,—*Defendants-Respondents*

Civil Regular First Appeal No. 31 of 1950.

1957

Jan., 16th

Code of Civil Procedure (V of 1908)—Sections 16 and 17—Territorial Jurisdiction—Properties situated in Pakistan—Suit for partition of, whether triable in a Court in India—Maxim "Equity acts in personam"—Scope of—Doctrine of submission to foreign jurisdiction—Whether applies to actions in rem*—Scope of the doctrine stated.*

Held, that it is a general principle of jurisdiction that title to land is to be directly determined not merely according to the law of the country where the land is situate but by the Courts of that country. No sovereignty can extend its process beyond its own territorial limits to subject either persons or property to its judicial decisions. Courts in India, therefore, have no jurisdiction to try a suit for partition of properties situated in Pakistan.

Held, that the scope of the maxim "equity acts in personam" is restricted and has been confined to cases of contracts, fraud and trusts relating to immovables. It may be that this enumeration of matters in which jurisdiction *in personam* has been exercised is not exhaustive but illustrative and disputes involving a personal obligation may possibly fall within the rule of equity but that rule cannot be stretched so as to cover the relief sought in this case which affects movable and immovable properties in Pakistan. There cannot be the slighest doubt that the decree of an Indian Court will be nothing short of *brutum fulmen,* an empty thunder, in the foreign courts of Pakistan especially when there is no reciprocity between the two countries as contemplated in section 44A of the Code of Civil Procedure.

Held, that it is doubtful whether the doctrine of submission to foreign jurisdiction applies over actions *in rem.*

The scope of the doctrine of submission to foreign court's jurisdiction wherever it has been recognised is generally with respect to actions *in personam.* In the former case where the subject matter of the suit is an immovable property situated in a foreign country, the principle of effectiveness governs and it has always been recognised that exclusive jurisdiction over immovables belongs to the Courts of *Situs*. The law is the same with respect to personal property in a foreign territory. The English Courts have entertained in certain specified instances, actions *in personam* where the defendant has consented to the trial of the case before those courts. But in cases in which a defendant in an action *in rem* appears and protests against the jurisdiction, it cannot properly be said to constitute submission so as to confer jurisdiction on such court.

Held further, that the general doctrine of the exercise of civil jurisdiction in such matters is founded upon one or other of the two principles, namely, the principle of effectiveness or the principle of submission. In a case like this the principle of effectiveness must override the principle of submission on the ground that all jurisdiction ordinarily is territorial and mainly for the reason that *extra territorium jus discenti, impune non paretur* (the sentence of one adjudicating beyond his jurisdiction cannot be obeyed with impunity). Even if it be assumed that the defendants had in fact submitted to the jurisdiction of Ludhiana Court, with respect to the dispute relating to the properties situated in Pakistan, the effect of such submission is restricted and lies within a very narrow ambit. Where a person voluntarily submits to the jurisdiction of such a Court, the submission is taken to be only to the extent of the jurisdiction possessed by such Court and no further. No amount of consent, waiver or acquiescence, which is involved in a voluntary submission, can confer such jurisdiction which such Court has not.

Held also, that when the principles of effectiveness and of submission conflict, that is to say, when the judgment of the Court cannot be effective against the party who has submitted, the principle of effectiveness prevails and jurisdiction will not be exercised.

Case law discussed.

First Appeal from the decree of the Court of Shri Gurcharan Singh, Senior Sub-Judge, Ludhiana, dated

the 12th day of November, 1949, granting a decree in favour of the plaintiff for declaration with regard to the agricultural land noted at Nos. 1 and 2 under Alif *of the Schedule 'A' to the effect that he (plaintiff) had got 1/18th share in them while defendants Nos. 1 and 2 had got 2/18th share and it was further ordered that the plaintiff was granted a preliminary decree for possession by partition of 1/18th share in the property at Nos. 1 to 3 under Para 'Be' of the said Schedule, against the defendants. It was also ordered that the share of the defendants 1 and 2 was determined 2/18th in the property noted above and Master Sakhya Ram, Near National Mills Limited, Ferozepore Road, Ludhiana was appointed Commisioner for making actual partition of the property noted at Nos. 1 to 3 under Para 'Be' of Schedule 'A'.*

C. L. AGGARWAL and JAGAN NATH, for Appellants.

K. L. GOSAIN and K. C. NAYAR, for Respondents.

JUDGMENT

Tek Chand, J.

TEK CHAND, J. This is a regular first appeal from the decree of the Senior Subordinate Judge, Ludhiana, passed on 11th November, 1949, dismissing the plaintiff's suit so far as property situated outside the district of Ludhiana, was concerned. The plaintiff had impleaded nine defendants out of whom defendants 3 to 9 are *pro forma*, and no relief was sought against them. The real contest is between the plaintiff on the one side and his half-brothers, defendants 1 and 2, on the other. The property which is the subject-matter of the suit has been classified in Schedule 'A' which forms part of the plaint, into four categories. Broadly speaking, the suit relates to, firstly, immovable property, lands and houses situated in the district of Ludhiana. In the second category is immovable property which is situated in Pakistan in Montgomery District. The third category consists of sums of money deposited by Sardar Balwant Singh, deceased, father of the contesting parties in the

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Central Co-operative Bank, Pakpattan, District Montgomery; the Punjab National Bank, Arifwala; the Imperial Bank, Arifwala, and monies left in trust with the firm Sher Singh-Partap Singh of Arifwala. In this category there was also a claim relating to the pension of the deceased Sardar Balwant Singh in the possession of the Government, presumably of West Punjab. In the fourth category claim is laid by the plaintiff to his share of cash, ornaments, household goods, etc., left behind by the deceased and alleged to have been received by defendants 1 and 2. Sardar Balwant Singh, father of plaintiff and defendants 1 and 2, died in West Punjab, on 30th January, 1945, leaving behind properties mentioned in Schedule 'A'. Plaintiff claimed that he was entitled to inherit one-third share of the entire movable and immovable property mentioned in the Schedul. He alleged that after the death of Sardar Balwant Singh, defendants 1 and 2 gave out that they were the sole owners of the entire property. The parties admitted that they were governed by the customary law in vogue among the agricultural tribes of Punjab. The plaintiff sought the following reliefs with respect to the various properties which were the subject-matter of his suit. He sought declaration to the effect that he was owner with respect to his one-third share of the property which was in joint possession of the three brothers. He sought separate possession by partition of the joint property. He prayed for decree for rendition of accounts in respect of the sums said to be with defendants 1 and 2 which they had refused to render to him.

Among other objections raised by the contesting defendants 1 and 2, they also contended that the Court of the Senior Subordinate Judge at Ludhiana, had no jurisdiction except with respect

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to the property situate in that district. It was submitted that no relief could be granted with respect to the land in Montgomery District, forming part of Pakistan territory. With respect to the sums of money it was denied that they had been transferred to East Punjab. On 24th of August, 1949, the plaintiff's counsel made a statement before the striking of the issues, that all the money lying in the Banks was still in Pakistan. It was during the course of the evidence that this position was not adhered to and the plaintiff as P.W. 1, stated that a sum of Rs. 36,000 lying in the Co-operative Bank at Pakpattan, belonging to the parties had been transferred to India, but this allegation was denied by defendant No. 1, who appeared as D.W. 6.

On 24th of August, 1949, counsel of defendants 1 and 2, made a statement that his clients had no objection to a decree for partition being passed in favour of the plaintiff in respect of the property situated in Ludhiana, as mentioned against items 1 and 2, under *Alif* and items 1 to 3 under *Be* in Schedule 'A' to the extent of his one-third share. It was also stated that the rest of the property and the entire money were left in the district of Montgomery and no money was ever transferred from Pakistan to India. The only issue which was framed in this case was of a preliminary nature and is reproduced below: —

> "Has this Court jurisdiction to try this suit except the property situate in Ludhiana District?"

The trial Court held that it had no jurisdiction as regards land left in Montgomery and further that it was not established that any monies had been transferred from Pakistan to India. It was also held that the residence of defendants 1 and 2 in Ludhiana District or their working for gain within

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the jurisdiction of the trial Court was not established though it was found that both the defendants owned agricultural and house property within the district. By order, dated 11th of November, 1949, the preliminary issue was decided against the plaintiff.

As regards the Ludhiana property the plaintiff's suit was decreed, and a declaration was given with regard to the agricultural land in that district, to the effect that the plaintiff had got 1/3rd share in it. Regarding property noted against items 1 to 3 under *Be* a preliminary decree was granted for possession by partition of 1/3rd share of the plaintiff as against 2/3rd share of the two defendants. A local commissioner was appointed for making actual partition of the property noted against items 1 to 3 under *Be* in Schedule 'A'. From the decision on the issue as to jurisdiction the plaintiff has appealed to this Court.

Mr. Chiranjiva Lal Aggarwal, learned counsel for the plaintiff-appellant, has urged firstly, that the Court in Ludhiana has jurisdiction over the entire property in suit. He urged that in any case it was not really a case of foreign jurisdiction. Indian Courts, he contended, had jurisdiction *in personam* against defendants 1 and 2 who were in India and had submitted to the jurisdiction of Ludhiana Court, and he maintained that in exceptional cases Courts in India have even jurisdiction *in rem*. He said that there was no case of foreign jurisdiction *ab initio* as the cause of action arose to the plaintiff on 30th of January, 1945, when the parties' father Sardar Balwant Singh died in Montgomery considerable time before the partition of the country when West Punjab and East Punjab were parts of the same province. He further maintained that judicial notice should be taken of the fact that Pakistan properties owned by the deceased father of the parties had been substituted in

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India in lieu of the properties left in Pakistan by allotment of properties in India. Lastly, he submitted that although no relief was sought in the plaint with respect to the properties allotted in exchange of the properties which were given to the defendants in India, the plaintiff *ex debito justitiae* may be permitted to amend his plaint for which he made an oral application. In support of his contention regarding the jurisdiction of Indian Courts over property in Pakistan he relied principally on *Venugopala Reddiar and another* v. *Krishnaswami Reddiar and another* (1). He also referred to certain passages from English Conflict of Law by Schmitthoff second edition.

Mr. K. L. Gosain, learned counsel for the contesting respondents, maintained that the Court in Ludhiana had no jurisdiction as to the property situated in Montgomery. Besides citing authorities, which will be considered presently, he also relied upon certain passages from the above-mentioned book by Schmitthoff. Mr. Gosain also submitted that amendment of the plaint should not be allowed at this late stage and that no case for amendment of the plaint was made out.

The respective arguments advanced by the learned counsel for the parties may now be examined. Section 16(b) of the Code of Civil Procedure provides that, subject to the pecuniary or other limitations prescribed by any law, suits for the partition of immovable property shall be instituted in the Court within the local limits of whose jurisdiction the property is situate. Explanation appended to this section provides that the word "property" in this section means property situate in India. There is a proviso to the effect that a suit to obtain relief respecting, or compensation for

(1) A.I.R. 1954 F.C. 24.

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wrong to, immovable property held by the defendant, where the relief sought can be entirely obtained through his personal obedience, may be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain. Section 17 of the Code of Civil Procedure deals with suits for immovable property situate within jurisdiction of different Courts and provides that such a suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate. Dicey in his Conflict of Laws, sixth edition, lays down the following principles:—

> "The courts of any country are considered by English law (*Companhia de Mocambique* v. *British South Africa Co.* (1)) to have jurisdiction over (i.e., to be able to adjudicate upon) any matter with regard to which they can give an effective judgment, and are considered by English law not to have jurisdiction over (i.e., not to be able to adjudicate upon) any matter with regard to which they cannot give any effective judgment, (*vide* page 22).
>
> Subject to the Exceptions hereinafter mentioned, the court has no jurisdiction to entertain an action for—
>
> (1) the determination of the title to, or the right to the possession of, any immovable situate out of England (foreign land); or

(1) (1892) 2 Q.B. (C.A.) 358, 394.

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(2) the recovery of damages for trespass to such immovable (*vide* page 141)."

Dr. Cheshire states the same principle in the following words:—

"An English Court has no jurisdiction to adjudicate upon the right of property in, or the right to possession of, foreign immovables even though the parties may be resident or domiciled in England." (*See* page 715 of Private International Law.)

In the words of Meili [International Civil and Commercial Law, English translation (1905), page 279['in respect to immovable property every attempt of a foreign tribunal to found a jurisdiction over it must, from the very nature of the case, be utterly nugatory, and its decree must be for ever incapable of execution *in rem.*'

In *British South Africa Company* v. *Companhia de Mocambique* (1), Lord Herschell observed—

"No nation can execute its judgments, whether against persons or movables or real property, in the country of another".

It is a general principle of jurisdiction that title to land is to be directly determined, not merely according to the law of the country where the land is situate, but by the Courts of that country, as was observed by Wright, J., in *Companhia de Mocambique* v. *British South Africa Company* (2). In the Mocambique case the plaintiffs Companhia de Mocambique complained that the defendants British South Africa had committed trespasses upon their land situate in Africa and had

(1) (1893) A.C. 602.
(2) (1892) 2 Q.B. 358, 366.

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evicted them and assaulted their servants. The plaintiffs asked, *inter alia*, for a declaration of title to the land in question and further for damages for the alleged trespass. The contention for the defence, which found favour with their Lordships of the House of Lords was, that English Courts had no jurisdiction to try either claim and that they could not entertain actions relating to the title to foreign land.

In the words of Story (Conflict of Laws, eighth edition section 539)—

> "No sovereignty can extend its process beyond its own territorial limits to subject either persons or property to its judicial decisions. Every exertion of authority of this sort beyond this limit is a mere nullity and incapable of binding such persons or property in any other tribunals."

In *Sirdar Gurdyal Singh* v. *The Rajah of Faridkote* (1), the facts were, that the ruler of Faridkote had employed the father of the appellant as his treasurer and considerable defalcations in the treasury monies were alleged. The treasurer thereupon left the employment of the Rajah and returned to Jind State which was his home. The Rajah of Faridkote obtained judgment for certain sums from the Courts of Faridkote against the absent extreasurer. On appeal to the Judicial Committee of the Privy Council, the question was raised, whether the Courts of Faridkote had properly assumed jurisdiction, and their Lordships came to the conclusion that the judgment of the Courts of Faridkote was "a nullity by international law". Earl of Selborne delivering the judgment of

(1) (1894) A.C. 670.

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their Lordships of the Privy Council, observed as under at page 683—

> "All jurisdiction is properly territorial, and '*extra territorium jus dicenti, impune non paretur*' (the sentence of one adjudicating beyond his jurisdiction can not be obeyed with impunity). It exists always as to land within the territory, and it may be exercised over moveables within the territory."

In *Cartwright* v. *Pettus* (1), the English Courts re-refused to entertain action for partition of a foreign land. Actions for ejectment from a foreign land (*Skinner* v. *East India Company* (2), for the possession of land in a foreign country [*Doulson* v. *Mathews* (3)], and for a claim to a title of a foreign house or the proceeds of its sale [*in re*: *Hawthorne* (4)], were refused.

In *Nilkanth Balwan Natu and others* v. *Vidya Narsinh Bharati and others* (5), the facts were, that plaintiffs had instituted a suit against the defendants in the Satara Court to enforce certain mortgages which had been executed in their favour. Some of the properties mortgaged were in the Bombay Presidency and some were outside British India being in the Kolhapur State. Their Lordships of the Privy Council following their previous judgment in *Ramabhadra Raju Bahadur* v. *Maharaja of Jeypore* (6), held that Satara Courts in British India had no jurisdiction to try the suit so far as it related to the properties in Kolhapur, as the words "situate within the jurisdiction of different Courts" in section 17 of the Code of Civil

(1) (1676) 2 Ch. Cas. 214.
(2) (1667) 6 State Trials 710.
(3) 4 T.R. 603.
(4) (1883) 23 Ch. D. 743, 746.
(5) I.L.R. 54 Bom. 495 (P.C.).
(6) I.L.R. 42 Mad. 813.

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Procedure, referred solely to Courts in British India. In *Murli Mal* v. *Sant Ram and another* (1), disputes between the parties were referred to an arbitrator of Jullundur who delivered his award which included certain properties situated in Jammu and Kashmir outside British India. An application was made in the Court of Senior Subordinate Judge at Jullundur, to get the award filed. It was held that the Court in British India had not jurisdiction over the subject-matter of the award which was a factory at Srinagar and the Court could not enforce the award. Rulings illustrative of the above principle need not be multiplied.

Mr. Chiranjiva Lal's argument is that the above rule embodying the general principle of jurisdiction, that title to land is to be determined by the Courts within the local limits of whose jurisdiction the land is situated, is subject to certain qualifications within the ambit of which he desires this case to be brought. His contention is that as the defendants are within the jurisdiction of Ludhiana Court, the maxim that equity acts *in personam* should be applied and relief with regard to rendition of accounts and partition of property which may be found to have been allotted to the defendants in India in lieu of the lands left by them in Montgomery District in Pakistan should be granted. He refers to Schmitthoff where the following passage from the judgment of Wright, J., in *Companhia de Mocambique* v. *British South Africa Co.*, (2), is reproduced:—

"Courts of Equity have, from the time of Lord Hardwicke's decision in *Penn* v.

(1) A.I.R. 1929 Lah. 24.
(2) (1892) 2 Q.B. 358, 364.

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Lord Baltimore (1), in 1750 exercised jurisdiction *in personam* in relation to foreign land against persons locally within the jurisdiction in cases of contract, fraud and trust."

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Mr. Aggarwal has also referred us to the following passage at page 166 of Schmitthoff's learned work:—

> "To the rule that the English courts will not take cognizance of disputes involving the decision of title to foreign land, a broad exception exists in the case of equitable jurisdiction *in personam*. In this case, the English courts will not only assume jurisdiction but will also apply English law to the foreign land. Actions concerning an equitable or personal interest in land may involve incidently a decision on the title to foreign land, but such an incident would not bar the jurisdiction *in personam* of the English courts. Scott, L. J., said in *St. Pierre* v. *South Amercian Stores* (2), at p. 397, with reference to Lord Herschell's speech in the *Mocambique case* (3),
>
> 'By these words I understand him to have meant that it is the action *founded on* a disputed claim of title to foreign lands over which an English court has no jurisdiction, and that where no question of title arises, or only arises as a collateral incident of the trial of other issues, there is nothing to exclude the jurisdiction.'

(1) (1750) Wes Sen. 444.
(2) (1936) 1 K.B. 382.
(3) (1893) A.C. 602.

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The above lines relied upon by Mr. Chiranjiva Lal Aggarwal do not really help him. The scope of the maxim 'equity acts *in personam*' is restricted and has been confined to cases of contracts, fraud and trusts relating to immovables. It may, however, be contended that this enumeration of matters in which the jurisdiction *in personam* has been exercised, is not exhaustive, but only illustrative. That may be so, and disputes involving a personal obligation may possibly fall within the rule of equity, but that rule cannot be stretched so as to cover the relief sought in this case which directly affects movable and immovable properties in Pakistan. On the other hand, to the dispute involved in this case, the following observations of Lord Campbell in *Norris* v. *Chambres* (1), will apply:—

> "An English court ought not to pronounce a decree, even *in personam,* which can have no specific operation without the intervention of a foreign court, and which in the country where the lands to be charged by it lie would probably be treated as *brutum fulmen.* I do not think that the Court of Chancery would give effect to a charge on land in the county of Middlesex so created by a Prussian Court sitting at Duesseldorf or Cologne."

There cannot be the slightest doubt that the decree of Ludhiana Court wil be nothing short of *brutum fulmen* (an empty thunder), in the foreign Courts of Pakistan especially when there is no reciprocity between the two countries in the matter of their respective decrees as contemplated in section 44-A, Civil Procedure Code, which contains provision

(1) (1861) 28 Beav. 246=(1861) 3 De. G.F. and J. 583.

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similar to that in Foreign Judgments (Reciprocal Enforcement) Act, 1933 (23 George 5, Chap. 13). Mr. Chiranjiva Lal Aggarwal has placed reliance upon the judgment of the Federal Court in *Venugopala Reddiar and another* v. *Krishnaswami Reddiar and another* (1). In that case a suit had been instituted in Madras Court in 1932, which included immovable property situate in Burma, as a part of the subject-matter. While the suit was pending in a South India Court, Burma ceased to be a part of India on 1st of April, 1937. In November, 1938, the contesting defendants filed an additional statement contending that the Court in South India had thereafter no jurisdiction to deal with the Burma properties. An Additional issue embodying this question was framed and after hearing arguments thereon the trial Court gave a finding to the effect that the Court had no longer jurisdiction to try the suit "regarding the movables and immovables situated in Burma". On a revision petition having been filed by the plaintiffs against this order of the trial Court, a Division Bench of the Madras High Court held that the plaintiffs' right to continue the pending action had not been taken away and the Court in Madras Presidency had jurisdiction to try the suit. On an appeal being instituted in the Federal Court their Lordships dismissed the appeal. There is no analogy between the facts of the present case and those which came up for review before the Federal Court in the above-mentioned reported case. This suit was instituted in the Court of Subordinate Judge in Ludhiana on 4th of December, 1947, after the separation of Pakistan from India whereas the suit in the authority referred to above was instituted in 1932, when Burma was still a part of India. The principle of law, which was applied by their Lordships of the Federal Court, to the effect that a right to continue a

(1) A.I.R. 1943 F.C. 24.

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duly instituted suit is in the nature of a vested right and it cannot be taken away except by a clear indication of intention to that effect, cannot apply to the facts of this case. Therefore, the suit when instituted in 1932, in British India with respect to property situated in British India and also in Burma could be continued in British India with respect to property in Burma even after Burma had been separated in 1937. Another distinguishing feature of that case is that Article 10, Government of India (Adaptation of India Laws) Order, 1937, provided that the powers which were exercisable by any authority before the Act came into force should continue to be exercised even thereafter, until other provision was made by a competent legislature or authority.

Mr. Chiranjiva Lal Aggarwal next cited *Debendra Nath Bhattacharjee* v. *Amarendra Nath Bhattacharjee and others,* (1). The facts of this case were that a suit for partition had been instituted on 1st of June, 1951 and the property the partition of which was sought was situated in India within the jurisdiction of the trial Court and also in the town of Chandernagore which on the date of the suit was French possession. The defendant pleaded *inter alia* that the Court had no jurisdiction to try the suit as some of the properties were in French territory. It was held that the fact that Chandernagore, (Application of Laws) Order, 1950, made the Civil Procedure Code applicable to Chandernagore, did not change this position and that in spite of this Order, Chandernagore continued to be foreign territory and on 1st of June, 1951, the Subordinate Judge had no jurisdiction to try the suit as regards those Chandernagore properties. On 9th of June, 1952, Chandernagore formed part of the territory of India when the Subordinate Judge's Court would have jurisdiction to try the suit as

(1) A.I.R. 1955 Cal. 159.

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regards those properties as well. As the Chandernagore properties, when they formed part of foreign territory, had already been included in the plaint, their Lordships of the Calcutta High Court very rightly held that it would be hypertechnical to insist on the plaintiff going through the formal procedure of amending the plaint to include the Chandernagore properties. The facts of the two cases are totally dissimilar and the decision in the Calcutta case does not help the plaintiff-appellant. The Calcutta ruling, referred to above, held that the recognised rule of international law which the Courts in India, in common with other countries, observe is that they do not exercise jurisdiction in suits directly involving the question of right to immovable property situated in foreign countries. Our attention has not been drawn to any similar provision applicable after the partition of Punjab in 1947. Mr. Chiranjiva Lal Aggarwal, has argued that on the date of the institution of this suit in December, 1947, Pakistan could not be deemed to be a foreign country but only another Dominion and the creation of two Dominions under the British Crown could not be deemed to make them foreign countries so as to attract the principles of Private International Law. This argument is without any force. Firstly, Explanation to section 16 of the Code of Civil Procedure specifically mentions that the word "property" in this section means property situate in India. Thus the jurisdiction of the Court could not extend to property situated ouside India, i.e., in Pakistan. Our attention has also been drawn to the provisions of sub section (4) of section 6 of the Indian Independence Act, 1947, which runs as under:—

> "(4) No Act of Parliament of the United Kingdom passed on or after the appointed day shall extend, or be deemed to extend, to either of the new Dominions as part of the law of the Dominion unless it is ex-

tended thereto by a law of the Legislature of the Dominion".

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Thus neither of the Dominions was subject to the authority of any Act of the Parliament of the United Kingdom, even if there had been one.

Mr. Chiranjiva Lal Aggarwal then wants us to assume that in lieu of the immovable property in Pakistan left by the parties' father, the Government of India must have allotted some property in India and the plaint, therefore, should be deemed to include such a property. In the alternative he desires us to allow the plaintiff to amend his plaint so as to enable him to include such property, after he has had an opportunity to ascertain if any such allotment has, in fact, taken place. We cannot accede to such a request. The suit was instituted on 4th of December, 1947, and there was ample opportunity for the plaintiff to ascertain, if any property in India had been allotted in lieu of property in Pakistan, which was the subject-matter of this suit. If any such property had, in fact, been given the plaintiff would have submitted an application for amendment of the plaint, if he had been so advised. The fact of the matter is that no such application was presented to the trial Court or even to this Court. The only effect of our decision in this case can be that the rights of the parties with respect to their properties in a foreign country cannot be adjudicated upon. It may, still be open to the plaintiff to seek partition of any properties which after 4th of December, 1947, were acquired or were given and which still jointly belong to them.

Shri Chiranjiva Lal Aggarwal, has also raised an argument on the basis of submission by the defendants to the jurisdiction of Ludhiana Court with respect to property which was within foreign jurisdiction. He contends that relief can be granted to him

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by courts in India in view of defendants' submission to their jurisdiction despite the fact, that the greater bulk of the property is beyond the territorial jurisdiction of Indian Courts. His argument for several reasons is untenable. First of all it is doubtful whether the doctrine of submission to foreign jurisdiction applies over actions *in rem*. The scope of the doctrine of submission wherever it has been recognised is generally with respect to actions *in personam*. In the former case where the subject-matter of the suit is an immovable property situated in a foreign country the principle of effectiveness governs. Thus it has always been recognised that exclusive jurisdiction over immovables belongs to the Court of *situs*. The law is the same with respect to personal property in a foreign territory. The English Courts have entertained in certain specified instances actions *in personam* where the defendant has consented to the trial of the case before those Courts. But in cases in which a defendant in an action *in rem* appears and protests against the jurisdiction I do not think it can properly be said to constitute submission so as to confer jurisdiction in such Court. In this case the defendant's contention throughout was that with respect to property situated in Pakistan, Courts of East Punjab had no jurisdiction.

The general doctrine of the exercise of civil jurisdiction in such matters is founded upon one or other of the two principles, namely, the principle of effectiveness or the principle of submission. In a case like this the principle of effectiveness, must override the principle of submission, on the ground that all jurisdiction ordinarily is territorial and mainly for the reason that *extra territorium jus discenti, impune non paretur* (the sentence of one adjudicating beyond his jurisdiction cannot be obeyed with impunity). I do not find that there was in fact any submission to the jurisdiction of Ludhiana Court so as to invoke the

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principle of submission. But even if it be assumed that the defendants had in fact submitted to the jurisdiction of Ludhiana Court, with respect to the dispute relating to the properties situated in Pakistan, the effect of such submission is restricted and lies within a very narrow ambit. Where a person voluntarily submits to the jurisdiction of such a Court, the submission is taken to be only to the extent of the jurisdiction possessed by such Court and no further. No amount of consent, waiver or acquiescence which is involved in a voluntary submission, can confer such jurisdiction which such Court has not. In *Darbar Patiala* v. *Firm Narain Das-Gulab Singh* (1), a person had obtained a decree in the Punjab and execution was taken against properties in that Province. In the meantime on application by the debtor in the United Provinces under the U.P. Encumbered Estates Act, the decree-holder appeared there, and agreed to abide by the decision of the Special Judge in respect of debtor's property in that Province, without prejudice to his rights in respect of the debtor's property in the Punjab and a decree was passed. It was contended that the effect of the decree-holder's submission to the jurisdiction of the Court in United Provinces, was that the decree passed in the Punjab was extinguished and execution could not be continued there. It was held, that the Special Judge had no jurisdiction, outside the United Provinces, and no amount of consent, waiver or acquiescence could confer any jurisdiction on the Special Judge. That authority also approved of the following observation by Cheshire as a basis for the exercise of jurisdiction:—

> "When the principles of effectiveness and of submission conflict, that is to say, when the judgment of the Court cannot be effective against the party who has submitted, the

(1) A.I.R. 1944 Lah. 302.

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principle of effectiveness prevails and jurisdiction will not be exercised". Private International Law by Cheshire, Third Edition, page 141).

There is thus no force in the argument of Shri Chiranjiva Lal Aggarwal, Advocate resting on the principle of submission.

In view of what has been stated above, the appeal fails and is dismissed, In the circumstances of the case there will be no order as to costs of this appeal in this Court.

Passey, J.

PASSEY, J.—I agree.

REVISIONAL CIVIL

Before Bhandari, C.J.

S. MOHINDER SINGH THIND,—*Petitioner.*

versus

SHRI KANWAL SHARAN KALIA,—*Respondent*

Civil Revision 381 of 1956.

1957

Jan., 18th

Jurisdiction—Civil Court—Order passed by a Criminal Court under section 514 Criminal Procedure Code—Civil Court whether has the jurisdiction to interfere with the same under section 115 Civil Procedure Code

Held, that the power to determine whether a bond should or should not be forfeited vests only in a criminal Court. A Civil Court has no power to intrude on the functions specifically entrusted to another Court. If the criminal Court who has power to order the forfeiture of a bond has exercised the powers conferred upon it, it is open to the person aggrieved by the order to seek redress at the hands of a superior criminal Court. He cannot secure the intervention of a civil Court, for civil Court has no power to pronounce upon the propriety of an order passed under section 514 of the Code of Criminal Procedure.