

REVISIONAL CIVIL.

Before Bhandari, C. J.

RAI BAHADUR MOHAN SINGH,—Petitioner

versus

SHRI LAJYA RAM AND OTHERS,—Respondents

Civil Revision No. 102-D of 1955.

Code of Civil Procedure (Act V of 1908)—Section 20—
 “Actually and Voluntarily resides”, meaning of—Whether
 a person may have two permanent residences at the same
 time.

1956

April, 27th.

Held, that a person is said to reside in a particular place if he actually lives in the place and has a freely exercised intention of remaining there permanently or for a length of time. The expression ‘residence’ does not import any permanence of residence. A person may well have two permanent residences at the same time in either of which he may establish his abode at any period and for any length of time.

Petition under Section 115 of Act V of 1908 for revision of the order of Shri Ved Prakash, Sub-Judge, 1st Class, Delhi, dated the 8th January, 1955, holding that Courts at Delhi have jurisdiction to try the suit against both the defendants.

J. G. SETHI and M. L. SETHI, for Petitioner.

A. N. GROVER, BRIJ BANS KISHORE and CHARAN DAS PURI, for Respondents.

JUDGMENT

BHANDARI, C. J.—This petition raises a question upon the interpretation of the expression “resides” appearing in section 20 of the Code of Civil Procedure.

The plaintiff is one Lajya Ram, a broker of Lahore, while the defendants are Mr. M. S. Oberoi, Director of Oberoi Hotels, Limited, and Rai Bahadur Jodha Mal, a well-known contractor of the Punjab. In the year 1946, Mr. Oberoi expressed a desire to purchase the Nedous Hotel at Lahore from Rai

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 Bahadur Jodha Mal and requested the plaintiff to negotiate the purchase. The plaintiff brought the parties together and induced the owner to enter into an agreement for the sale of the property for a large sum of money. Mr. Oberoi refused to purchase the property and the transaction could not be completed. The defendants declined to pay the commission to which the plaintiff considered himself entitled and the plaintiff accordingly brought a suit for the recovery of a sum of Rs. 79,500.

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The defendant objected to the jurisdiction of the Courts at Delhi to deal with the case, but the trial Court came to the conclusion that although no part of the cause of action had arisen in Delhi, Mr. Oberoi had been residing in Delhi, not merely temporarily, but for sufficiently long periods, that he had been carrying on business in Delhi and that he was personally working for gain in Delhi. The Court accordingly permitted the plaintiff to bring the suit in Delhi not only against Mr. Oberoi against whom substantial relief was claimed but also against Rai Bahadur Jodha Mal who is said to be residing in the Punjab. The defendants are dissatisfied with the order and have come to this Court in revision.

Section 20 of the Code of Civil Procedure has been designed to secure that justice might be brought as near as possible to every man's hearth-stone and that the defendant should not be put to the trouble and expense of travelling long distances in order to defend himself in cases in which he may be involved. It has accordingly been enacted that a person can be sued in the place in which he actually and voluntarily resides. The expression "resides" means "to make an abode for a considerable time; to dwell permanently or for a length of time; to have a settled abode for a time". The expression "actual" means "something real as opposed to constructive or

speculative ; something existing in act, fact or reality". Residence may be legal and technical or actual or physical. If a person lives with his wife and children in an established home, his legal and actual place of residence is the same. If a person has no established home and is compelled to live in hotels, boarding-houses or houses of others, his actual or physical habitation is the place where he actually or personally resides. If the family of a person lives at one place and he himself lives for a greater portion of the time at another place, he has legal residence at the place where his family resides and actual residence where he himself resides. The expression "actually resides" means actual residence or place where a person actually lives as distinguished from merely constructive or legal residence or place where a person resides in the legal and technical sense. It means residence existing in reality and in fact and not merely in form, that is actual residence and not a temporary abiding place. A person is said to reside in a particular place if he actually lives in the place and has a freely exercised intention of remaining there permanently or for a length of time. The expression "resides" does not import any permanence of residence (*Srinavasa Moorthy v. Venkata Varada Ayyangar*) (1). A person who resided in a house in London only about three months in a year while the rest of the year he spent at his residence in the country was said to "dwell" in London within the meaning of the City of London Small Debts Courts Act 1852. (*Bailey v. Bryant*) (2). As pointed out by Wood B. in *A. G. v. Coote* (3), it is no uncommon thing for a gentleman to have two permanent residences at the same time in either of which he may establish his abode at any period and for any length of time.

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(1) I.L.R. 29 Mad. 239, 275

(2) 28 L.J.Q.B. 86

(3) (1817) 4 Price 183

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The evidence which has been produced in the present case makes it quite clear that Mr. Oberoi actually and volutarily resides not only at Calcutta, but also at Delhi. In his deposition before the trial Court he stated that he is Managing Director of the Grand Hotel at Calcutta, that he has been residing in separate apartments in the said hotel ever since the year 1938, that he runs his own personal kitchen attached to the apartments, that he has been drawing rations for himself and the members of his family from the Grand Hotel, that he is assessed to income-tax at Calcutta, that he has a separate telephone connection in his apartment and that his mother who used to live with him in his apartments at the Grand Hotel died in Calcutta. All these facts appear to indicate that he actually and voluntarily resides at Calcutta. But at the same time he was constrained to admit that his duties as Managing Director of the Oberoi Hotels and a Director of a large number of other limited concerns often bring him to Delhi, that he occupies a set of rooms in the Maiden's Hotel, when he visits De'hi in connection with his official duties and that a permanent telephone has been installed in the room set aside for his use. He admitted further that in November, 1951, he applied to the Secretary of the Election Commission for the inclusion of his name in the electoral roll for the Delhi State Constituency, Delhi, that he stated the place of his ordinary residence as Maiden's Hotel Delhi, that a few days later he appeared before a Magistrate of the first class in connection with his application and stated that he had been residing in Delhi since long before 1947, that in the agreement between the plaintiff and the defendants in the present case which was executed between the parties on the 3rd October, 1946. he has been described as Managing Director, Associated Hotels, Limited, "at present at Delhi" and that the marriage of one of his daughters was celebrated at

Delhi. These facts fully corroborate the finding of the trial Court that Mr. Oberoi has two more or less permanent dwelling places, one in Calcutta and the other in Delhi, in which he can establish his abode at any time at his own sweet will and pleasure. It follows as a consequence that the Civil Courts at Delhi have jurisdiction to deal with his case.

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For these reasons I would uphold the order of the trial Court and dismiss the petition with costs. Ordered accordingly.

APPELLATE CIVIL.

Before Khosla, J.

KISHAN CHAND AND OM PARKASH—*Defendants*—

Appellants

versus

RAKESH KUMAR AND OTHERS,—*Respondents*

Regular Second Appeal No. 413 of 1954.

Hindu Law—Alienation—Father—Mortgage by father of coparcenary property for new business—Whether son can challenge the mortgage on the ground that it is without necessity—Effect on son's suit in cases the mortgagee has obtained a decree on the basis of the mortgage and where no such decree has been obtained, stated.

1956

May, 1st.

Held that a mortgage by a Hindu father of coparcenary property for new business can be challenged by the sons on the ground that there was no necessity without proving that the money was raised for an immoral purpose, where no decree on the basis of the mortgage had been obtained.

Held also, that a distinction must be made between cases in which the mortgagee has filed a suit on the basis of the mortgage and obtained a decree and cases in which no such decree has been obtained. Proposition (2) laid down by their Lordships of the Privy Council in *Raj Brij*