

RAJASTHAN HIGH COURT

Mohna Ramakrishanan

Vs.

Yogam Bala Dev Raj

SB C.R.P. No. 138 of 1994

(Dr. B.S. Chauhan, J.)

27.09.2002

ORDER

Dr. B. S. Chauhan, J.

1. This revision petition has been filed against the impugned order dated 23-11-1993, by which the learned trial Court has decided the issue of territorial jurisdiction as a preliminary issue and held that the Civil Court at Jodhpur has territorial jurisdiction over the matter.

2. The facts and circumstances giving rise to this case are that the plaintiff/non-petitioners filed a suit for recovery of Rs. 60,200/- against the defendant/petitioners alleging that on 2-6-1982, the defendant-petitioners had borrowed a sum of Rs. 25,000/- from the plaintiff/non-petitioner No. 1 at Ootacamund (Tamil Nadu) to purchase a plot and in this connection, a promissory note was executed by the defendant-petitioners in favor of plaintiff/non-petitioner No. 1 at Ootacamund. Thereafter, for the same loan, an another promissory note was executed by the defendant-petitioners on 1-6- 1983. Defendant-petitioners did not pay the amount of loan, therefore, they executed a third promissory note on 1-6-1988 for a sum of Rs. 40,000/- inclusive of the amount of interest at Ootacamund in favor of plaintiff/non-petitioner No. 1, who gave right to recover the interest on the said amount of promissory note to plaintiff/non-petitioner No. 2 and in this respect, necessary endorsement had been made on the reverse side of the promissory note at Jodhpur. Defendant-petitioners filed the written statement admitting the execution of first two promissory notes but denied the execution of third promissory note for a sum of Rs. 40,000/- and submitting that whatever amount was due, had already been repaid. An objection in respect of the territorial jurisdiction of Civil Court at Jodhpur was raised

on the ground that the transaction took place at Ooctacamund and the Court of Jodhpur had no jurisdiction. In view of the pleadings, issues were framed and issue No. 3-A was framed as to whether the Civil Court at Jodhpur had territorial jurisdiction over the matter and the said issue has been decided as a preliminary issue against the defendant/petitioners on the ground that the endorsement made on the reverse side of the promissory note amounted to assignment and as it was made at Jodhpur, the Civil Court at Jodhpur had the jurisdiction to try the suit. Hence this revision.

3. Mr. R. K. Thanvi, learned counsel for the petitioners, has submitted that the entry on the back of the promissory note is fictitious and has been made with an oblique motive; it was not so endorsed with the consent of the defendant-petitioners nor with their knowledge, nor any notice had ever been issued to them informing about the said endorsement. Moreso, what was authorized to plaintiff/non-petitioner No. 2 was to recover the amount of interest only and not the principal amount or the outstanding dues and such an action would not form a cause of action even partly and, therefore, the Civil Court at Jodhpur had no territorial jurisdiction. The finding on the said issue is liable to be reversed by this Court.

4. On the other hand, Mr. A. L. Chopra, learned counsel for plaintiff/non-petitioners, has submitted that as the endorsement which constitutes "cause of action" was made at Jodhpur, the Civil Court at Jodhpur has the jurisdiction and the impugned order passed by the learned trial Court does not require any interference whatsoever in a limited regional jurisdiction.

5. I have considered the rival submissions and perused the record of the case.

6. There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the route of the jurisdiction. Such an issue can be raised even at a belated stage in execution. The finding of a Court or Tribunal becomes irrelevant and unenforceable/in executable once the forum is found to have no jurisdiction. Acquiescence of party cannot confer jurisdiction upon a Court and an erroneous interpretation equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court

cannot derive jurisdiction apart from the Statute. (vide *Smt. Nai Bahu v. Lala Ramnarayan*,¹ *Natraj Studios Pvt. Ltd. v. Navrang Studio*,² *Sardar Hasan Siddiqui v. State Transport Appellate Tribunal*,³ *A. R. Antuley v. R.S. Nayak*,⁴ *Union of India v. Deoki Nandan Aggarwal*,⁵ *Karnal Improvement Trust v. Prakash Wanti*,⁶ *U. P. Rajkiya Nirman Nigam Ltd. v. Indure Pvt. Ltd.*,⁷ *State of Gujarat v. Rajesh Kumar Chimanlal Barot*,⁸ *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar*,⁹ and *Collector of Central Excise, Kanpur v. Flock (India) (P.) Ltd., Kanpur*.¹⁰

7. In *Subodh Kumar Gupta v. Shrikant Gupta*,¹¹ the Hon'ble Supreme Court considered a case wherein a partnership firm was having the registered office at Bombay and factory at Mandsore. Two partners-defendants were residing at Mandsore while the third partner-plaintiff shifted to Chandigarh and an agreement had been drawn up between the partners at Bhilai for dissolution of the firm and distribution of assets. The suit was filed by the plaintiff in the Court at Chandigarh for dissolution of the firm and rendition of account on the ground that the defendants at Mandsore misappropriated partnership's fund and the aforesaid agreement was void and liable to be ignored. The Hon'ble Supreme Court held that in view of the provisions of Section 20 of the Civil Procedure Code, 1908 (for short, "the Code"), the suit can be entertained in a place where cause of action had arisen fully or partly. The mere bald allegation by the plaintiff for the purpose of creating a jurisdiction would not be enough for conferring jurisdiction or an allegation that agreement was void was also not enough unless the agreement is set-aside by the competent Court. The Court must find out, examining the provisions carefully, as to whether the suit can be entertained by it. Generally, it should be at the place where the defendant resides, actually and voluntarily, or carries on business or personally works for gain or the cause of action arises wholly or in part.

8. In *Oil and Natural Gas Commission v. Utpal Kumar Basu*,¹² the Hon'ble Supreme Court considered the provisions of Clause (2) of Article 226 of the Constitution of India, which provides for territorial jurisdiction of the High Courts. The Apex Court held that while deciding the territorial jurisdiction of the Court, within which the cause of action, wholly or partly, arises, must be decided on facts pleaded in the petition disregarding true or otherwise thereof, but the facts must form integral part of the cause of action. In the said case, facts involved had been that ONGC had decided to set-up a Kerosene Processing Unit at Hajaria (Gujarat). EIL was appointed by the ONGC as its consultant and in that capacity, EIL issued advertisement from New

Delhi calling for tenders and this advertisement was printed and published in all leading newspapers in the country including The Times of India in circulation in West Bengal. In response thereto, tenders or the bids were forwarded to EIL at New Delhi, which were scrutinized and finalized by the ONGC at New Delhi. However, the writ petition had been filed in the Calcutta High Court challenging the acceptance of tenders of the other party. Before the Supreme Court, it was contended that the Calcutta High Court had no jurisdiction as no cause of action had arisen, even partly, in its territorial jurisdiction. Mere communication to any person at a particular place or publication or reading of the news or notice etc. does not confer jurisdiction. After examining the facts of that case, the Apex Court came to the conclusion that the Calcutta High Court lacked jurisdiction. While deciding the said case, the Hon'ble Supreme Court placed reliance upon the judgment in *Chand Koer v. Partab Singh*,¹³ wherein it had been observed as under :-

"The cause of action has no relation whatsoever to the defense which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set- forth in the plaint as the cause of action; in other words, to the media upon which the plaintiff asked the Court to arrive at a conclusion in his favor."

9. Therefore, in determining the objection of lack of territorial jurisdiction, the Court must take all the facts pleaded in support of the cause of action into consideration albeit without embargo upon an inquiry as to the correctness or otherwise of the said facts.

10. In *Aligarh Muslim University v. Vinay Engineering Enterprises Pvt. Ltd.*,¹⁴ the Hon'ble Supreme Court examined a case wherein the contract between the parties was executed at Aligarh; the construction work was to be carried out at Aligarh; the contract provided that in the event of dispute, Aligarh Court alone would have the jurisdiction; the arbitrator was to be appointed at Aligarh and had to function at Aligarh. The Hon'ble Supreme Court held that the Court at Calcutta had no jurisdiction merely because the respondent company was a Calcutta-based firm.

11. In *Board of Trust for the Port of Calcutta v. Bombay Flour Mills Pvt. Ltd.*¹⁵ the Hon'ble Supreme Court considered a case wherein a Civil Court at Bharatpur (Rajasthan) entertained a civil suit in respect of assignment of imported goods unloaded at Calcutta dock and the plaintiff's representation to the Port Trust to waive

the port charges had been refused. The Civil Court at Bharatpur entertained the suit and passed an *ex parte* ad- interim mandatory injunction directing the Port Trust to release the goods on payment of specified amount. The Rajasthan High Court dismissed the appeal of the Port Trust, but the Hon'ble Supreme Court held that as no cause of action, even partly, occurred at *Bharatpur*; the only appropriate Court at Calcutta was competent to take cognizance of the action and held that the orders of the Civil Court at *Bharatpur*, having no jurisdiction, were void and the order of the High Court, refusing to interfere with the orders, was illegal.

12. In *Manju Bhatia v. New Delhi Municipal Council*,¹⁶ the Hon'ble Supreme Court considered a case for damages, under which a "cause of action" in a definite form may not be relevant except when necessary to comply with the laws relating to procedure and limitation etc. The Apex Court observed that "a cause of action in modern law is merely a factual situation, the existence of which enables the plaintiff to obtain a remedy from the Court and he is not required to head his statement of claim with a description of the breach of the law on which he relies....."

13. In *State of Assam v. Dr. Brojen Gogoi*,¹⁷ the Hon'ble Supreme Court examined a case wherein the Bombay High Court had granted anticipatory bail to a person who was allegedly connected with the offence, for all practical purposes, in a place within the territorial jurisdiction of Gauhati High Court and all such activities had perpetrated therein. The Hon'ble Apex Court transferred the case from Bombay High Court to Gauhati High Court to be heard further.

14. In *C. B. I., Anti-Corruption Branch v. Narayan Diwakar*,¹⁸ the Hon'ble Apex Court considered a case where the respondent was the Incharge/Collector in Daman within the territorial jurisdiction of Bombay High Court and an FIR had been lodged against him in Daman for hatching conspiracy. He stood transferred to Arunachal Pradesh within the territorial jurisdiction of Gauhati High Court. The CBI gave him a wireless message from Bombay advising him to appear before its officers, in respect of investigation of the said case, in Bombay. The respondent filed writ petition under Article 226 of the Constitution before the Gauhati High Court. The Supreme Court did not decide the case on merit but observed as under :-

"Suffice it to say that on the facts and circumstances of the case and the material on record, we have no hesitation to hold that the Gauhati High Court

was clearly in error in deciding the question of jurisdiction in favor of the respondent. In our considered view, the writ petition filed by the respondent in the Gauhati High Court was not maintainable."

15. The entire argument in the case had been that the Gauhati High Court had no jurisdiction to entertain the writ petition as no cause of action had arisen, even partly, within its territorial jurisdiction and receiving the message in Arunachal Pradesh to appear before the CBI Authority at Bombay did not give rise to the cause of action, even partly.

16. In *Navinchandra N. Majithia v. State of Maharashtra*,¹⁹ the Hon'ble Supreme Court while considering the provisions of Clause (2) of Article 226 of the Constitution, observed as under at Pages 2973-2974 :-

"In legal parlance the expression 'cause of action' is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a Court or a tribunal; a group of operative facts giving rise to one or more basis for suing; a factual situation that entitles one person to obtain a remedy in Court from another person. 'Cause of action' is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment the meaning attributed to the phrase 'cause of action' in common legal parlance is existence of those facts which give a party a right to judicial interference on his behalf."

17. The Apex Court held that while considering the same, the Court must examine as to whether institution of a complaint/plaint is a *mala fide* move on the part of a party to harass and pressurize the other party for one reason or the other or to achieve an ulterior goal. For that consideration, the relief clause may be a relevant criterion for consideration but cannot be the sole consideration in the matter.

18. In *H. V. Jayaram v. Industrial Credit and Investment Corpn. of India Ltd.*,²⁰ the Hon'ble Supreme Court examined the issue of territorial jurisdiction of a Court in respect of the offence under Section 113(2) of the Indian Companies Act, 1956. Taking note of Sections 113 and 207 of the said Act, the Apex Court held that the cause of action for default of not sending the share certificates within the stipulated

period would arise only at a place where the registered office of the company was situated as from that place the share certificates could be posted and are usually posted.

19. In *Rajasthan High Court Advocates' Association v. Union of India*,²¹ the Hon'ble Supreme Court considered the question of territorial jurisdiction of the Principal Seat of this Court at Jodhpur and the Bench at Jaipur and explained the meaning of "cause of action" observing as under at page 422 :-

"The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense, 'cause of action' means the circumstance forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the rights, but the infraction coupled with the right itself. Compendiously the expression means every fact which would be necessary for the plaintiff to prove, it traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguishing from every piece of evidence which is necessary to prove each fact, comprises in a 'cause of action.' It has to be left to be determined in each individual case as to where the cause of action arose."

20. In *Union of India v. Adani Exports Ltd.*,²² the Hon'ble Supreme Court considered the scope of Section 20 of the Code and Clause (2) of Article 226 of the Constitution while examining as to whether in that case the Gujarat High Court was having territorial jurisdiction. The Court held that the facts which may be relevant to give rise to the "cause of action", are only those which have "a nexus or relevance with the lis involved in the case and none else." In the said case, the respondent had filed an application before the Gujarat High Court claiming the benefit of Pass-Book Scheme under the provisions of the Import Export Policy introduced w.e.f. 1-4-1995 in relation to certain credits to be given on export of shrimps. However, none of the respondents in the civil application was stationed at *Ahmedabad*. Even the Pass-book, if to be issued, had to be issued by an Authority stationed at Chennai; the entries in the pass-book under the Scheme concerned were to be made by the Authority at Chennai and the export of prawns made by them and import of the inputs, benefit of which the respondents had sought in the application, were also to be made at Chennai. The Court held that the Gujarat High Court had no territorial jurisdiction, in spite of the fact that the respondents were carrying on their business of export and import from

Ahmedabad, the orders of export and import were placed from and were executed at *Ahmedabad*, documents and payments of export and imports were sent/made at *Ahmedabad*, the credit of duty claimed in respect of export were handled from *Ahmedabad*, the respondents had executed a bank guarantee through their bankers as well as a bond at *Ahmedabad*, non-grant or denial of utilization of the credit in the pass-book might affect the company's business at *Ahmedabad*. The Court held as under at page 130 of AIR:-

". In order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the Court to decide a dispute which has, at least in part, arisen within its jurisdiction. each and every fact pleaded by the respondents in their application does not *ipso facto* lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, fall into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the Courts at *Ahmedabad*. the fact that the respondents are carrying on the business of export and import or that they are receiving the export and import orders at *Ahmedabad* or that their documents and payments for exports and imports are sent/made at *Ahmedabad*, has no connection whatsoever with the dispute that is involved in the applications. Similarly, the fact that the credit of duty claimed in respect of exports that were made from Chennai were handled by the respondents from *Ahmedabad* have also no connection whatsoever with the actions of the appellants impugned in the application. The non-granting and denial of credit in the passbook having an ultimate effect, if any, on the business of the respondents at *Ahmedabad* would not also, in our opinion, give rise to any such cause of action to a Court at *Ahmedabad* to adjudicate on the actions complained against the appellants."

21. In *Muhammad Hafiz v. Muhammad -akariya*,²³ the "cause of action" was

explained as under :-

".....the cause of action is the cause of action which gives occasion for and forms the foundation of the suit....."

22. Similarly, in *Read v. Brown*,²⁴ this was explained as under:-

"Every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court."

23. Same meaning has been reiterated by the Privy Council in *Mohammed Khalil Khan v. Mehbul Ali Mian*,²⁵ and by the Supreme Court in *State of Madras v. C. P. Agencies*,²⁶ and *A. B. C. Laminart Pvt. Ltd. v. A. P. Agencies, Salem*,²⁷

24. A "cause of action" is a bundle of facts which, taken with the law applicable, gives the plaintiff a right to relief against the defendant. However, it must include some act done by the defendant, since in the absence of an act, no cause of action can possibly occurred. (Vide *Radhakrishnamurthy v. Chandrasekhara Rao*,²⁸ *Ram Awalamb v. Jata Shankar*,²⁹ and *Salik Ram Adya Prasad v. Ram Lakhan*,³⁰

25. The "cause of action" in a suit of negotiable instrument arises wherever any one of the facts, the proof of which is essential to plaintiff's case, occurs where a promissory note was signed by the defendant at Seccondrabad and delivered to the plaintiff at Madras. It was held that the Madras High Court had jurisdiction as the delivery was necessary to complete the plaintiff's title. (Vide *Winter v. Round*,³¹

26. In the case of a cheque where it is drawn on a bank at place 'A' but the creditor hands it over to its banker at place 'B' for collection, the Court at place 'A' has jurisdiction as payment, which is part of cause of action, takes place at place 'A'. (vide *Firm M/s. Bodh Raj Mahesh Kumar v. M/s. Earl Chawla and Co. (P) Ltd.*,³²

27. Therefore, for a "cause of action", it must be determined as what is the place where the right is created though infringement of the right might have taken place at some other place. (Vide *Vijaya Bank, Regional Office, Egmore, Madras v. Kiran and Co.*,)³³

28. A case similar to that in hand was dealt with by this Court in *Rameshwar Lal Ram*

Karan v. Gulab Chand Puranmal,³⁴ wherein it was held that a suit can be filed in a Court within whose jurisdiction a negotiable instrument was executed and the Court, in whose territorial jurisdiction an assignment was made, could not have jurisdiction as no cause of action, even in part, occurred therein, for the reason that such an assignment might have been made to defeat the statutory provisions contained in Section 20 (c) of the Code. While deciding the said case, the learned single Judge of this Court considered two contrary judgments by the Division Bench of this Court on the same point, viz. *Mishrimal v. Moda*,³⁵ and *Abdul Gafoor v. Sensmal*,³⁶ and followed the former one, observing as under :-

.....If the assignment were to be treated as forming part of cause of action for the purpose of giving jurisdiction, the defendant could be compelled to defend the suit at the choice of the plaintiffs and this would cut at the basic principle underlying Section 20, Civil Procedure Code."

29. There are certain judgments wherein it has been held that assignment constitute the cause of action and is sufficient to give jurisdiction to the Court. (Vide *Kalooram Agarwalla v. Jonistha Lal Chakrabarty*,³⁷ *Gopal Shuriamal v. T.G.S. Narayan*,³⁸ *Union of India v. Adon Haje*,³⁹ *Alliance Assurance Co. v. Union of India*,⁴⁰ *Ramarao v. Union of India*, AIR 1961 Andhra Pradesh 282; Radhakrishnamurthy (supra); and *Barikara Narasayya v. R. Basavana Gowd*,⁴¹ Another different view has also been taken to the extent that an assignment/endorsement, which merely authorises the endorsee to take delivery of the goods, will not create the jurisdiction. (Vide *Commissioner for the Port of Calcutta v. General Trading Corpn. Ltd.*),⁴²

30. In view of the aforesaid judicial pronouncements, it may be summarized that the cause of action is a bundle of facts and to examine the issue of jurisdiction, it is necessary that one of the inter-linked facts must have occurred in a place where the suit has been instituted. The said fact must have a direct nexus to the lis between the parties and in case the facts taken in the plaint are denied, the plaintiff has to prove the same. The fact must have direct relevance in the lis involved. It is not that every fact be treated as a cause of action in part and may create a jurisdiction of the Court, in whose territorial jurisdiction it has occurred. The condition precedent for creation of jurisdiction is that the facts occurred therein must form an integral part of the cause of action. A mere allegation by a plaintiff for the purpose of creating a jurisdiction should not be enforced for conferring jurisdiction. Moreso, a fact, which does not have any

direct relevance with the lis but is made to occur only to defeat to statutory provisions of Section 20 (c) of the Code in order to deprive the Court which must have territorial jurisdiction over the subject matter of the suit, should not be accepted for the reason that the act has knowingly or purposely been performed to harass the defendant and deprive the Court which has territorial jurisdiction over the subject matter and to try the suit.

31. Rules of interpretation require that construction, which carries on objectives of the Statute, protects interest of the party and keeps the remedy alive, should be preferred looking into the text and context of the Statute. It must be so as to further the ends of justice and not to frustrate the same. Construction given by the Court must promote the object of the Statute and serve the purpose, for which it had been enacted, and should not efface its very purpose. (Vide *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.*,⁴³ *N. K. Jain v. C. K. Shah*,⁴⁴ *Meera Gupta v. State of West Bengal*,⁴⁵ *Directorate of Enforcement v. Deepak Mahajan*,⁴⁶ *Food Corporation of India v. New Delhi Assurance Co. Ltd.*,⁴⁷ *Hindustan Lever Ltd. v. Ashok Vishnu Kate*,⁴⁸ *S. Gopal Reddy v. State of Andhra Pradesh*,⁴⁹ *Raipur Development Authority v. Anupam Sahkari Griha Nirman Samiti*⁵⁰ *Gautam Paul v. Debi Rani Paul*⁵¹ *Tata Engineering and Locomotive Co. Ltd. v. State of Bihar*,⁵² *Gayatri Devi Pansari v. State of Orissa*,⁵³ *Regional Provident Fund Commissioner v. Shiv Kumar Joshi*,⁵⁴ *M/s. Ambalal Sarabhai Enterprises Ltd. v. M/s. Amrit Lal and Co.*,⁵⁵ *Commissioner of Income Tax, Mumbai v. Anjum M. H. Ghaswala*,⁵⁶ 8 and *Joseph Joseph v. State of Kerala*,⁵⁷

32. In *Tinsukhia Electric Supply Co. Ltd. v. State of Assam*,⁵⁸ the Hon'ble Supreme Court placed reliance upon the judgment in *Whitney v. I.R.C.*,⁵⁹ wherein it had been observed as under:-

"A Statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object....."

33. The Apex Court held as under :-

"The Courts strongly lean against any construction which tends to reduce a Statute futility. The provision of the Statute must be so construed as to make it effective and operative....."

34. If merely by making an endorsement on the negotiable instrument it is permitted to give rise of jurisdiction to a particular Court, it would definitely defeat the purpose of Section 20 (c) of the Code.

35. "Cause of action" for recovery of loan from borrower by the creditor involves a bi-lateral contract, wherein creditor advances money to the debtor with condition to repay it back as agreed between the parties to the contract, with interest or without interest, at a place agreed between the parties in accordance with the terms and conditions of the contract. Terms and conditions of such a concluded contract can be changed by any of the parties to the contract, but only with the consent of the other party to the contract. Nobody is permitted to alter terms and conditions of the contract unilaterally.

36. The assignment of the right to recover any amount, principal or even interest, is a separate contract between two persons-assignor, who is creditor and assignee. By assignment, the creditor can transfer any of his right which accrued to him under the contract of loan. What the creditor can transfer by way of assignment is the right which he possesses. The creditor himself has no right to alter any of the terms or conditions of the loan agreement so as to make it, amount payable at different place than the place which was agreed between the debtor and creditor.

37. In this type of case, the creditor has right only to recover the amount, principal and interest, at the place where debtor agreed to pay only and, therefore, he can assign the right to recover in favor of third person only to the extent of recovery of amount from the debtor at a place where debtor agreed to repay.

38. The instant case requires to be examined in the light of the above- referred to settled legal propositions. The lis involved is whether defendant-petitioners had taken money from the plaintiff/non-petitioner No. 1 and whether they had repaid the money, for which they had executed first and second promissory notes in favor of the plaintiff/non-petitioner No. 1 or whether they had executed the third promissory note. The lis between the parties is not as to whether the plaintiff/non-petitioner No. 1 had made an endorsement/assignment in favor of the plaintiff/non-petitioner No. 2 for recovery of interest amount. The said endorsement reads as under :-

"Please pay the interest accrued on this pro-note to Brij Mohan s/o Balkishanji

by caste Rajput R/o Chopasani Road, near Dalda Building, Jodhpur."

39. Moreso, the endorsement is only to recover the interest and not the whole amount. The said endorsement had been made on the back of the promissory note without the consent of the defendant-petitioners and without informing them or giving any notice even subsequent thereto. Endorsement/assignment did not involve the defendant-petitioners in any manner and in absence of any act on their part, it cannot be a "cause of action" at all, which may create territorial jurisdiction of the civil Court at Jodhpur.

40. The "cause of action" for suit of recovery of loan amount is entirely different than the "cause of action" on the basis of assignment of the right to recover or right to receive the amount. In the later case, the debtor, if not a party to the contract, is stranger to the transaction of assignment and cannot be made bound by any term or condition agreed between the assignor (creditor) and the assignee.

41. In view of the peculiar facts and circumstances of the case, I am of the considered opinion that the endorsement on the back of the promissory note itself is not a *bona fide* exercise on the part of the plaintiff/non-petitioner No. 1 and it had been made only to defeat the statutory provisions of Section 20 (c) of the Code and an interpretation to the statutory provision which facilitates a party to execute its *mala fide* intention, requires to be avoided. Even if the assignment is bona fide, the plaintiff/non-petitioner No. 1, had merely authorized the plaintiff/non-petitioner No. 2 to recover the interest on the said amount, cannot file the suit for recovery of the entire dues at Jodhpur.

42. In view of the above, the revision stands allowed. The impugned order dated 23-11-1993 on the preliminary issue regarding jurisdiction of the Court, is reversed and set aside. It is held that the Civil Court, Jodhpur has no territorial jurisdiction to try the suit. The learned trial Court is directed to return the plaint to the plaintiffs for the purpose of its presentation before the competent Court, if they so request. Ordered accordingly. In the facts and circumstances of the case, the cost to the tune of Rs. 3000/- (Rs. Three thousand) is awarded to the defendant-petitioners.

Revision allowed.

Cases Referred.

1. AIR 1978 SC 2
2. AIR 1981 SC 537

3. AIR 1986 All 132
4. AIR 1988 SC 1531: (1988 Cri LJ 1661)
5. AIR 1992 SC 96
6. (1995) 5 SCC 159
7. AIR 1996 SC 1373
8. AIR 1996 SC 2664
9. AIR 1999 SC 2213
10. AIR 2000 SC 2484
11. (1993) 4 SCC 1
12. (1994) 4 SCC 711
13. 15 Ind Appeals 156
14. (1994) 4 SCC 710
15. AIR 1995 SC 577
16. AIR 1998 SC 223
17. AIR 1998 SC 143
18. AIR 1999 SC 2362: (1999 Cri LJ 3666)
19. AIR 2000 SC 2966
20. AIR 2000 SC 579: (2000 Cri LJ 736)
21. AIR 2001 SC 416
22. (2002) 1 SCC 567
23. AIR 1922 PC 23
24. (1889) 22 QBD 128
25. AIR 1949 PC 78
26. AIR 1960 SC 1309
27. AIR 1989 SC 1239
28. AIR 1966 AP 334
29. AIR 1969 All 526 (FB)
30. AIR 1973 All 107
31. (1867) 1 MHC 202
32. AIR 1974 P and H2
33. AIR 1983 Mad 357
34. AIR 1960 Raj 243
35. 1951 RLW 433
36. AIR 1955 Raj 53
37. AIR 1936 Cal 349
38. AIR 1953 Nag 193

39. AIR 1954 Tra and Coc 362
40. AIR 1959 Cal 563
41. (1985) 2 CCC 581
42. AIR 1964 Cal 290
43. AIR 1987 SC 1023
44. AIR 1992 SC 1289: 1991 Cri LJ 1347
45. AIR 1992 SC 1567
46. AIR 1994 SC 1775
47. AIR 1994 SC 1889
48. (1995) 6 SCC 326: AIR 1996 SC 285
49. AIR 1996 SC 2184: 1996 Cri LJ 3237
50. (2000) 4 SCC 357
51. (2000) 8 SCC 330: AIR 2001 SC 61
52. (2000) 8 SCC 346
53. AIR 2000 SC 1531
54. AIR 2000 SC 331: 2000 Lab IC 232
55. (2001) 8 SCC 347: AIR 2001 SC 3580
56. (2002) 1 SCC 633: AIR 2001 SC 386
57. (2002) 3 SCC 8: AIR 2002 SC 1117
58. AIR 1990 SC 123
- 59.1926 AC 37