

Harshad Chiman Lal Modi vs Dlf Universal & Anr on 26 September, 2005

Equivalent citations: AIR 2005 SUPREME COURT 4446, 2005 (7) SCC 791, 2005 AIR SCW 5369, (2005) 5 CTC 133 (SC), (2005) 2 CLR 688 (SC), 2005 (7) SLT 240, 2006 (1) HRR 16, 2005 (2) CLR 688, 2005 (7) SCALE 533, 2005 SCFBRC 543, (2005) 8 JT 561 (SC), 2006 HRR 1 16, 2005 (5) CTC 133, (2006) 3 JCR 222 (SC), (2005) 35 ALLINDCAS 88 (SC), 2005 (9) SRJ 589, MANU/SC/710/2005, (2005) 3 CIVILCOURTC 711, (2006) 1 LANDLR 524, (2005) 7 SCJ 616, (2005) 6 SUPREME 634, (2005) 2 WLC(SC)CVL 686, (2005) 61 ALL LR 647, (2006) 2 CAL HN 160, (2006) 1 CIVLJ 708, (2005) 4 CURCC 46, (2005) 6 ANDHLD 1, (2005) 3 CPR 51, (2006) 2 MAD LW 85, (2006) 100 REVDEC 27, (2005) 4 RECCIVR 260, (2006) 1 ICC 253, (2005) 7 SCALE 533, (2006) 101 CUT LT 5, (2005) 3 CPJ 112

Author: C.K. Thakker

Bench: Arijit Pasayat, C.K. Thakker

CASE NO.:

Appeal (civil) 2726 of 2000

PETITIONER:

Harshad Chiman Lal Modi

RESPONDENT:

DLF Universal & Anr.

DATE OF JUDGMENT: 26/09/2005

BENCH:

Arijit Pasayat & C.K. Thakker

JUDGMENT:

J U D G M E N T C.K. Thakker, J.

This appeal is filed by the appellant against the order passed by the Additional District Judge, Delhi on May 25, 1998 in Suit No. 1036 of 1994 and confirmed by the High Court of Delhi on November 01, 1999 in Civil Revision Petition No. 506 of 1998 holding that Delhi Court has no jurisdiction to try the suit and the plaint should be returned to the plaintiff for presentation to proper court.

To appreciate the controversy raised in this appeal, admitted and/or undisputed facts may be noted. The appellant-original plaintiff entered into a 'plot buyer agreement' ('agreement' for short) with DLF Universal Limited, respondent No.1 original defendant No. 1 on August 14, 1985 for purchase of a residential plot admeasuring 264 sq. mtrs. in Residential Colony, DLF Qutub Enclave Complex, Gurgaon, Haryana. The agreement was in the Standard Form Contract of the first respondent. According to the appellant, the agreement was made in Delhi. The Head Office of respondent No.1 was situated in Delhi. Payment was to be made in Delhi. The plaintiff paid an amount of Rs.12,974/- (Rupees twelve thousand nine hundred seventy four only) towards the first instalment. It is the case of the appellant that payment was made by him in instalments as per the schedule to the agreement. In spite of the payment of amount, the first respondent unilaterally and illegally cancelled the agreement on April 04, 1988 under the excuse that the appellant had not paid dues towards construction of Modular House to respondent No. 2- original defendant No. 2 - DLF Builders & Developers Pvt. Ltd. The appellant objected to the illegal action of the first respondent and sent a legal notice through an advocate calling upon the first respondent to carry out his part of the contract but respondent No.1 replied that the agreement had been cancelled and nothing could be done in the matter. The appellant, in the circumstances, was constrained to file Suit No. 3095 of 1988 on the Original Side of the High Court of Delhi for declaration, specific performance of the agreement, for possession of the property and for permanent injunction.

In the prayer clause, the plaintiff stated;

"Therefore, it is most respectfully prayed that in the facts and circumstances stated above, this Hon'ble Court may graciously be pleased to:--

a) pass a decree of declaration to the effect that there is a valid and existing contract with regard to plot No. L-31/4, DLF Qutab Enclave Complex, Gurgaon, Haryana, between the plaintiff and the Defendant No. 1;

b) pass a decree to the effect that the Defendant No. 1 is bound to abide by the contract, i.e. plot buyer agreement dated 14.8.85 and the unilateral rescinding/canceling/withdrawing of the contract by the Defendant No. 1 is bad and illegal;

c) pass a decree of specific performance directing the Defendant No. 1 to perform its part of the contract by withdrawing the letter dated 4.4.88 and further accepting the payments of the due instalments with regard to the plot from the plaintiff in accordance with the terms and conditions of the agreement, and execute a sale deed in favour of the plaintiff after the full money is paid to the Defendant No. 1 as per clause (22) of the agreement;

d) pass a decree of permanent injunction restraining the Defendants from allotting, selling, transferring, alienating in any manner whatsoever the said plot No. L-31/4 DLF Qutub Enclave Complex, Gurgaon (Haryana) to any person other than the plaintiff and further restrain them from interfering in any manner whatsoever with

the possession or rights of the plaintiff after the said plot has been handed over to the plaintiff;

e) pass a decree of delivery of possession against the Defendant No. 1 directing him to hand over vacant and peaceful possession of the plot No. L-31/4 DLF Qutub Enclave Complex, Gurgaon (Haryana) to the plaintiff, or in the event, the said plot is already allotted and handed over to some other person by the Defendant No. 1, another plot in the same Complex of equivalent area in identical location be handed over to the plaintiff by the Defendant No. 1.

On December 09, 1988, a single Judge of the High Court of Delhi granted interim injunction in favour of the plaintiff. A common written statement was filed by both the defendants on March 29, 1989 controverting the claim of the plaintiff on merits. So far as jurisdiction of the court was concerned, it was clearly admitted and in paragraphs 18 and 19 it was stated that "jurisdiction of this Hon'ble Court is admitted". In view of increase in pecuniary jurisdiction of the District Court, Delhi, the suit came to be transferred from High Court of Delhi to District Court, Delhi on July 12, 1993 and it was re-numbered as Suit No. 1036 of 1994. On February 17, 1997, the trial court framed issues which did not include issue as to the jurisdiction of the court obviously because jurisdiction of the court was not disputed by the defendants. As late as on August 22, 1997, i.e. after more than eight years of the filing of the written statement, the defendants filed an application under Order 6, Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "Code") seeking amendment in the written statement by raising an objection as to jurisdiction of Delhi Court to entertain the suit. It was stated that the suit was for recovery of immovable property situated in Gurgaon District. Under Section 16 of the Code, such suit for recovery of property could only be instituted within the local limits of whose jurisdiction the property was situated. Since the property was in Gurgaon, Delhi Court had no jurisdiction in the matter. On January 16, 1998, the application was allowed and the written statement was permitted to be amended. The amended written statement was filed which also contained a statement that the jurisdiction of the court was "admitted". On the basis of the amendment of written statement, however, the learned Additional District Judge framed an additional issue as under :

"Whether Delhi Civil court has jurisdiction to try and entertain the present suit: OPD"?

After hearing the parties, the trial court by an order dated May 25, 1998 upheld the contention of the defendants and ruled that Delhi Court had no jurisdiction to try the suit. The plaint was, therefore, ordered to be returned to the plaintiff for presentation to the proper court. The Court stated;

"In this view of the matter, I have no hesitation in coming to the conclusion that the suit falls within the ambit of Section 16(d) of the Code of Civil Procedure and the proviso thereto has no application on the facts of the present case.

In view of my above discussion, it is held that the Delhi Civil Court has no jurisdiction to try the present suit and as such, the Plaint in the present suit is returned to the Plaintiff for presentation in the Proper Court. Parties through their counsel are directed to present in the proper Court on 5.6.1998."

Being aggrieved by the said order, the appellant approached the High Court by filing Civil Revision Petition No. 506 of 1998 which also came to be dismissed. Against the said order, the appellant has approached this Court. Notice was issued on December 06, 1999 and parties were directed to maintain status quo. On April 17, 2000, leave was granted, operation of the judgment was stayed and the Additional District Judge, Tis Hazari, Delhi, was allowed to proceed with the suit but it was stated that he would not deliver judgment "until further orders". Status quo granted earlier was ordered to be continued. The appeal has now come up for final hearing.

We have heard learned counsel for the parties.

Ms. Indu Malhotra, learned counsel for the appellant contended that the courts below have committed an error of law as well as of jurisdiction in allowing the amendment in the written statement and in holding that Delhi Court had no jurisdiction. She submitted that the defendants were having their Head Office at Delhi, the agreement had been entered into at Delhi, payment was to be made and in fact made at Delhi, breach of agreement took place at Delhi and hence Delhi Court had jurisdiction to entertain the suit and the plaintiff could have instituted the suit in Delhi Court. It was also submitted that the parties had agreed that the Delhi Court alone had jurisdiction in all matters arising out of the transaction. It was urged that in the facts and circumstances of the case, the courts below should not have exercised discretionary jurisdiction in favour of the party who had filed a written statement in which jurisdiction of Delhi Court had been expressly admitted. The written statement was filed in 1989 but an amendment application was moved after more than eight years. Serious prejudice had been caused to the plaintiff due to delay on the part of the defendants. When the defendants had waived the objection as to jurisdiction by specifically admitting the jurisdiction of Delhi Court, amendment ought not to have been allowed by the trial court nor such order could have been confirmed by the High Court. The learned counsel also submitted that even after the amendment was allowed and amended written statement was filed, in the amended reply also, the defendants had stated that the jurisdiction of the court was "admitted".

The counsel submitted that even on merits, no case had been made out by the defendants. At the most, it was a case of accrual of cause of action in more than one court. As Clause 28 of the agreement specifically provided that the transaction would be subject to the jurisdiction of Delhi Court, institution of suit in Delhi Court by the plaintiff could not have been objected to and no order could have been passed by the trial court holding that it had no jurisdiction and the plaint was required to be returned to the plaintiff for presentation to the proper court.

Clause 28 of the agreement reads thus;

"The Delhi High Court or Courts subordinate to it, alone shall have jurisdiction in all matters arising out of touching and/or concerning this transaction."

Finally, it was submitted that at the time of granting leave and admitting appeal, this Court permitted the trial court to proceed with the matter. Accordingly, the evidence was led by the parties and the trial is concluded. In view of the order of this Court, the trial court could not deliver the judgment. Considering the fact that the agreement was executed in August, 1985 and more than two decades have passed, this Court may issue necessary direction to the trial court to deliver judgment.

Mr. Rohatgi, Senior Advocate appearing for the respondents, on the other hand, supported the order passed by the trial court and confirmed by the High Court. He submitted that the suit relates to specific performance of agreement relating to immovable property. In accordance with the provisions of Section 16 of the Code, such suit can be instituted where the immovable property is situate. Admittedly the property is situate in Gurgaon (Haryana). Delhi Court, therefore, has no jurisdiction to entertain the suit which is for specific performance of agreement of purchase of a plot - immovable property - situate outside Delhi. According to the counsel, even if it was not contended by the defendants that Delhi Court had no jurisdiction or there was an admission that Delhi Court had jurisdiction, it was totally irrelevant and immaterial. If the court had no jurisdiction, parties by consent cannot confer jurisdiction on it. The counsel also submitted that this is not a case in which two or more courts have jurisdiction and parties have agreed to jurisdiction of one court. According to Mr. Rohatgi, Section 20 of the Code would apply where two courts have jurisdiction and the parties agree as to jurisdiction of one such courts by restricting their right to that forum instead of the other. When Delhi Court had no jurisdiction whatsoever, no reliance could be placed either on Section 20 of the Code or on Clause 28 of the agreement. The order passed by the trial court and confirmed by the High Court is, therefore, legal and lawful and the appeal deserves to be dismissed, submitted the counsel.

Having heard learned counsel for the parties and having considered the relevant provisions of the Code as also the decisions cited before us, in our opinion, the order passed by the trial court and confirmed by the High Court deserves no interference. As stated above, it is an admitted fact that the suit relates to the recovery of immovable property, a plot admeasuring 264 sq. mtrs. in the Residential Colony DLF Qutub Enclave Complex, Gurgaon. It is not in dispute by and between the parties that the property is situate in Haryana. It is no doubt true that the defendants are having their Head Office at Delhi. It is also true that the agreement was entered into between the parties at Delhi. It also cannot be denied that the payment was to be made at Delhi and some instalments were also paid at Delhi. The pertinent and material question, however, is in which court a suit for specific performance of agreement relating to immovable property would lie?

Now, Sections 15 to 20 of the Code contain detailed provisions relating to jurisdiction of courts. They regulate forum for institution of suits. They deal with the matters of domestic concern and provide for the multitude of suits which can be brought in different courts. Section 15 requires the suitor to institute a suit in the court of the lowest grade competent to try it. Section 16 enacts that the suits for recovery of immovable property, or for partition of immovable property, or for foreclosure, sale or redemption of mortgage property, or for determination of any other right or interest in immovable property, or for compensation for wrong to immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate. Proviso to Section 16 declares that where the relief sought can be obtained through the personal obedience of

the defendant, the suit can be instituted either in the court within whose jurisdiction the property is situate or in the court where the defendant actually or voluntarily resides, or carries on business, or personally works for gain. Section 17 supplements Section 16 and is virtually another proviso to that section. It deals with those cases where immovable property is situate within the jurisdiction of different courts. Section 18 applies where local limits of jurisdiction of different courts is uncertain. Section 19 is a special provision and applies to suits for compensation for wrongs to a person or to movable property. Section 20 is a residuary section and covers all those cases not dealt with or covered by Sections 15 to 19.

Section 16 thus recognizes a well established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. Proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on well known maxim "equity acts in personam, recognized by Chancery Courts in England. Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that courts could grant relief in suits respecting immovable property situate abroad by enforcing their judgments by process in personam, i.e. by arrest of defendant or by attachment of his property.

In *Ewing v. Ewing*, (1883) 9 AC 34 : 53 LJ Ch 435, Lord Selborne observed :

"The Courts of Equity in England are, and always have been, courts of conscience operating in personam and not in rem; and in the exercise of this personal jurisdiction they have always been accustomed to compel the performance of contracts in trusts as to subjects which were not either locally or *ratione domicilli* within their jurisdiction. They have done so, as to land, in Scotland, in Ireland, in the Colonies, in foreign countries."

The proviso is thus an exception to the main part of the section which in our considered opinion, cannot be interpreted or construed to enlarge the scope of the principal provision. It would apply only if the suit falls within one of the categories specified in the main part of the section and the relief sought could entirely be obtained by personal obedience of the defendant.

In the instant case, the proviso has no application. The relief sought by the plaintiff is for specific performance of agreement respecting immovable property by directing the defendant No. 1 to execute sale-deed in favour of the plaintiff and to deliver possession to him. The trial court was, therefore, right in holding that the suit was covered by clause (d) of Section 16 of the Code and the proviso had no application.

In our opinion, the submission of the learned counsel for the appellant that the parties had agreed that Delhi Court alone had jurisdiction in the matters arising out of the transaction has also no

force. Such a provision, in our opinion, would apply to those cases where two or more courts have jurisdiction to entertain a suit and the parties have agreed to submit to the jurisdiction of one court.

Plain reading of Section 20 of the Code leaves no room of doubt that it is a residuary provision and covers those cases not falling within the limitations of Sections 15 to 19. The opening words of the section "Subject to the limitations aforesaid" are significant and make it abundantly clear that the section takes within its sweep all personal actions. A suit falling under Section 20 thus may be instituted in a court within whose jurisdiction the defendant resides, or carries on business, or personally works for gain or cause of action wholly or partly arises.

It is, no doubt true, as submitted by Ms. Malhotra that where two or more courts have jurisdiction to entertain a suit, parties may by agreement submit to the jurisdiction of one court to the exclusion of the other court or courts. Such agreement is not hit by Section 28 of the Contract Act, 1872, nor such a contract can be said to be against public policy. It is legal, valid and enforceable.

Before more than thirty years, such question came up for consideration before this Court in *Hakam Singh v. Gamon (India) Ltd.*, (1971) 3 SCR 314. It was the first leading decision of this Court on the point. There, a contract was entered into by the parties for construction of work. An agreement provided that notwithstanding where the work was to be executed, the contract 'shall be deemed to have been entered into at Bombay' and Bombay Court 'alone shall have jurisdiction to adjudicate' the dispute between the parties. The question before this Court was whether the court at Bombay alone had jurisdiction to resolve such dispute.

Upholding the contention and considering the provisions of the Code as also of the Contract Act, this Court stated :

"By Clause 13 of the agreement it was expressly stipulated between the parties that the contract shall be deemed to have been entered into by the parties concerned in the city of Bombay. In any event the respondents have their principal office in Bombay and they were liable in respect of a cause of action arising under the terms of the tender to be sued in the courts of Bombay. It is not open to the parties by agreement to confer by their agreement jurisdiction on a court which it does not possess under the Code. But where two courts or more have under the Code of Civil Procedure jurisdiction to try a suit or proceeding on agreement between the parties that the dispute between them shall be tried in one of such courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act."

(emphasis supplied) *Hakam Singh* was followed and principle laid down therein reiterated in several cases thereafter. (See *Globe Transport Corporation v. Triveni Engineering Works & Anr.*, (1983) 4 SCC 707, *A.B.C. Laminart (P) Ltd. & Anr. v. A.P. Agency, Salem*, (1989) 2 SCR 1, *Patel Roadways Ltd., Bombay v. Prasad Trading Co.*, (1991) 4 SCC 270, *R.S.D.V. Finance Co. (P) Ltd. v. Shree Vallabh Glass Works Ltd.*, (1993) 2 SCC 130, *Angile Insulations v. Devy Ashmore India Ltd. & Anr.*, (1995) 4 SCC 153, *Shriram City Union Finance Corporation Ltd. v. Rama Mishra*, (2002) 9 SCC

613, New Moga Transport Co. v. United India Insurance Co. Ltd. & Others (2004) 4 SCC 677).

The question, however, is whether Delhi Court has jurisdiction in the matter. If the answer to that question is in the affirmative, the contention of the plaintiff must be upheld that since Delhi Court has also jurisdiction to entertain the suit and parties by an agreement had submitted to the jurisdiction of that court, the case is covered by Section 20 of the Code and in view of the choice of forum, the plaintiff can be compelled to approach that court as per the agreement even if other court has jurisdiction. If, on the other hand, the contention of the defendant is accepted and it is held that the case is covered by Section 16 of the Code and the proviso to Section 16 has no application, nor Section 20 would apply as a residuary clause and Delhi Court has no jurisdiction in the matter, the order impugned in the present appeal cannot be said to be contrary to law. As we have already indicated, the suit relates to specific performance of an agreement of immovable property and for possession of plot. It is, therefore, covered by the main part of Section 16. Neither proviso to Section 16 would get attracted nor Section 20 (residuary provision) would apply and hence Delhi Court lacks inherent jurisdiction to entertain, deal with and decide the cause.

The High Court considered the submission of the plaintiff that Delhi Court had jurisdiction to entertain the suit but negated it. The Court, after referring to various decisions cited at the Bar, concluded;

"From the aforesaid principles laid down by the Supreme Court it is abundantly clear that where the parties to a contract agreed to vest jurisdiction to a particular Court although cause of action has arisen within the jurisdiction of different Courts, including that particular Court, the same cannot be said to be void or to be against the public policy. It was also made clear in the said decision that if however a particular Court does not have any jurisdiction to deal with the matter and no part of cause of action has arisen within the jurisdiction of that Court, the parties by their consent and mutual agreement cannot vest jurisdiction in the said Court. Therefore, a clause vesting jurisdiction on a Court which otherwise does not have jurisdiction to decide the matter, would be void as being against the public policy."

We are in agreement with the above observations and hold that they lay down correct proposition of law.

Ms. Malhotra, then contended that Section 21 of the Code, requires that the objection to the jurisdiction must be taken by the party at the earliest possible opportunity and in any case where the issues are settled at or before settlement of such issues. In the instant case, the suit was filed by the plaintiff in 1988 and written statement was filed by the defendants in 1989 wherein jurisdiction of the court was 'admitted'. On the basis of the pleadings of the parties, issues were framed by the court in February, 1997. In view of the admission of jurisdiction of court, no issue as to jurisdiction of the court was framed. It was only in 1998 that an application for amendment of written statement was filed raising a plea as to absence of jurisdiction of the court. Both the courts were wholly wrong in allowing the amendment and in ignoring Section 21 of the Code. Our attention in this connection was invited by the learned counsel to Hira Lal v. Kali Nath, (1962) 2 SCR 747 and Bahrein Petroleum

Co. v. Pappu, 1966 (1) SCR 461.

We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.

In Halsbury's Laws of England, (4th edn.), Reissue, Vol. 10; para 317; it is stated;

317. Consent and waiver. Where, by reason of any limitation imposed by statute, charter or commission, a court is without jurisdiction to entertain any particular claim or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court, nor can consent give a court jurisdiction if a condition which goes to the jurisdiction has not been performed or fulfilled. Where the court has jurisdiction over the particular subject matter of the claim or the particular parties and the only objection is whether, in the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case; or a defendant by entering an appearance without protest, or by taking steps in the proceedings, may waive his right to object to the court taking cognizance of the proceedings. No appearance or answer, however, can give jurisdiction to a limited court, nor can a private individual impose on a judge the jurisdiction or duty to adjudicate on a matter. A statute limiting the jurisdiction of a court may contain provisions enabling the parties to extend the jurisdiction by consent."

In Bahrein Petroleum Co., this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well-settled and needs no authority that 'where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing.' A decree passed by a court having no jurisdiction is non-est and its validity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non iudice.

In Kiran Singh v. Chaman Paswan, (1955) 1 SCR 117 : AIR 1954 SC 340, this Court declared;

"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties." (emphasis supplied) The case on hand relates to specific performance of a

contract and possession of immovable property. Section 16 deals with such cases and jurisdiction of competent court where such suits can be instituted. Under the said provision, a suit can be instituted where the property is situate. No court other than the court where the property is situate can entertain such suit. Hence, even if there is an agreement between the parties to the contract, it has no effect and cannot be enforced.

In *Setrucharlu v. Maharaja of Jeypore*, 46 IA 151 : AIR 1919 PC 150, a suit was instituted in subordinate court for possession of mortgage property partly situated in Vizagapatam and partly in a Schedule District to which the provisions of the Code did not apply. No objection as to jurisdiction of the court was taken by the defendant and the decree was passed. In appeal, however, such objection was taken by the defendant. Relying on Section 21 of the Code, the High Court overruled the objection. The defendant approached the Privy Council. Upholding the contention and partly reversing the decree, the Judicial Committee of the Privy Council stated;

"The learned Judges of the Court of Appeal thought that the matter was met by Section 21 of the Code, which provides that no objection as to the place of suing shall be allowed by any appellate court unless the objection was taken in the court of First Instance, which in this case had admittedly not been done. Their Lordships cannot agree with this view. This is not an objection as to the place of suing; it is an objection going to the nullity of the order on the ground of want of jurisdiction." (emphasis supplied) In *New Mofussil Co. Ltd. & Another v. Shankerlal Narayandas Mundade*, AIR 1941 Bom 247 : ILR 1941 Bom 361, almost a similar question came up for consideration before the High Court of Bombay. In that case, a suit for specific performance of contract and possession of immovable property situated at Dhulia was filed in the Court of First Class Subordinate Judge, Dhulia against defendant No. 1 Company in liquidation. The registered office of the Company was in Bombay and the agreement was finally concluded in Bombay. It was, therefore, contended that Dhulia Court had no jurisdiction to try the suit. It was, however, held by the High Court that the case was covered by Clause (d) of Section 16 of the Code, the Proviso had no application and since the property was situated at Dhulia, Subordinate Judge, Dhulia had jurisdiction to entertain and try the suit. (See also *Anand Bazar Patrika Ltd. v. Biswanath Prasad*, AIR 1986 Pat 57) In the instant case, Delhi Court has no jurisdiction since the property is not situate within the jurisdiction of that court. The trial court was, therefore, right in passing an order returning the plaint to the plaintiff for presentation to the proper court. Hence, even though the plaintiff is right in submitting that the defendants had agreed to the jurisdiction of Delhi Court and in the original written statement, they had admitted that Delhi Court had jurisdiction and even after the amendment in the written statement, the paragraph relating to jurisdiction had remained as it was, i.e. Delhi Court had jurisdiction, it cannot take away the right of the defendants to challenge the jurisdiction of the court nor it can confer jurisdiction on Delhi Court, which it did not possess. Since the suit was for specific performance of agreement and possession of immovable property situated

outside the jurisdiction of Delhi Court, the trial court was right in holding that it had no jurisdiction.

The learned counsel for the appellant drew out attention to Rule 32 of Order XXI of the Code which relates to execution. It, however, presupposes a decree passed in accordance with law. Only thereafter such decree can be executed in the manner laid down in Rules 32, 34 or 35 of Order XXI. Those provisions, therefore, have no relevance to the question raised in the present proceedings.

For the foregoing reasons, in our opinion, no case has been made out by the appellant against the order passed by the trial court and confirmed by the High Court. The appeal, therefore, deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.