

## **Sm. Chandrawati vs L. Suraj Narain on 1 September, 1954**

**Equivalent citations: AIR1955ALL387, AIR 1955 ALLAHABAD 387**

**Author: V. Bhargava**

**Bench: V. Bhargava**

### **JUDGMENT**

Malik. C.J.

1. This appeal was filed on behalf of the plaintiff on 7-11-1946, against an order passed by the learned Civil Judge of Moradabad directing the return of the plaint for presentation to the proper Court on the ground that the Court of the learned Civil Judge of Moradabad had no jurisdiction to entertain the suit.

2. The plaintiff, Chandrawati, was married to Lala Suraj Narain in the year 1927 in Moradabad. She lived with her husband for a period of ten years and was thereafter turned out by her husband, who, it is alleged, had started illtreating her and had become a man of bad character. She started living with her mother-in-law but the mother-in-law died in 1943. The defendant, the husband of the plaintiff, had by then shifted to Delhi and the plaintiff went to Delhi to live with him but she was again turned out and she came back to Moradabad. In October, 1944, the defendant remarried.

The plaintiff filed the suit, out of which this appeal has arisen, in the year 1946 claiming arrears of maintenance at the rate of Rs. 400/-per mensem, the claim being for Rs. 12,800/-, for return of certain ornaments valued at Rs. 10,000/-, and for future maintenance at the rate of Rs. 400/- per mensem. The suit was filed in 'forma pauperis'. The leave was granted by the learned Judge and the suit was registered.

3. In the written statement the defendant took up the plea that as he was living in Delhi and the plaintiff had alleged that he had turned her out a second time when she went to Delhi to live with him, the cause of action must be deemed to have arisen in Delhi and the Moradabad court had, therefore, no jurisdiction.

4. The learned Judge held in favour of the defendant and directed the return of the plaint as mentioned above.

5. The plaintiff filed First Appeal from Order No. 268 of 1946 against the order returning the plaint and made several attempts to serve the defendant with notice of the appeal. Notices were sent to an address which was given in the written statement. Ultimately the Court directed substituted service by publication of the summons in the Hindustan Times. After such publication the appeal came up before a Bench of this Court on 10-2-1949, and as the respondent did not appear the Court heard the

plaintiff-appellant and came to the conclusion that a part of the cause of action for maintenance arose at the place where the marriage had taken place and under Section 20, Civil P. C. the Moradabad court had, therefore, jurisdiction. The order of the lower Court was set aside and the case was sent back to that Court for being tried according to law.

6. The learned Judge thereafter heard the case and passed a decree in favour of the plaintiff on 30-8-1949. On the 19-8-1949, before the lower Court had decreed the plaintiff's suit, an application was filed by Suraj Narain defendant, which was registered as Civil Miscellaneous No. 184 of 1949, for setting aside the 'ex parte' order dated 10-2-1949. Notice Of this application was issued on the same day by a learned single Judge, but before that application could be heard and disposed of, the lower Court passed the decree dated 30-8-1949.

On 3-1-1951, when the application came up for hearing before the same Bench which had passed the order of 10-2-1949, the Bench was of the opinion that it was possible that the applicant might not have come to know of the hearing of the appeal in this Court, accepted his statement in that regard and vacated the order of 10-2-1949, on payment of a sum of Rs. 200/- within one month. Presumably this amount was paid within the time allowed as no complaint of non-payment has been made before us.

As a result of the order of the 3-1-1951, First Appeal from Order No. 268 of 1945 was restored to its original number and has come up before us today for decision. It was listed on a previous occasion on 4-5-1954, but as there was some talk of compromise we gave the parties time to settle their disputes, if possible, out of Court. No settlement has been arrived at and we have, therefore, to decide this appeal on the merits.

7. Besides the view of law taken by Raghubar Dayal and Agarwala JJ., on 10-2-1949, with which we fully agree, there is another unreported decision of this Court, -- 'Bhagwati Devi v. Raghubir Saran', P. A. F. O. No. 270 of 1936, decided by Collister and Bajpai JJ., on 6-5-1938 (A)'. In that case the plaintiff had been married at Ghaziabad in the year 1906. The suit was filed in the year 1936 in the court of the Second Subordinate Judge of Meerut. The husband, who was impleaded as the defendant, was living at Delhi and he had re-married there and had refused to live with the plaintiff. The lower court held that as the desertion had taken place at Delhi the cause of action had arisen there and the plaintiff's suit must be filed in Delhi and not in Meerut, within the jurisdiction of which Ghaziabad, the place where the marriage had taken place, was situate. It was held by the learned Judges that the cause of action partly arose at Ghaziabad and the court at Meerut had jurisdiction to entertain the plaintiff's suit.

8. At the time of the marriage the husband undertakes the liability to maintain the wife and this liability continues so long as .the wife does not disqualify herself from her right to maintenance either by reason of her misconduct or by reason of her refusing to perform her marital duties. It cannot be said that the wife is entitled to be maintained only when sue is living with her husband at his place of residence, even if through no fault of hers she has to live separately.

9. In the case before us, the liability of the husband to maintain the wife being there, it having arisen by reason of the marriage having been performed at Moradabad, within the jurisdiction of the learned Civil Judge of Moradabad, a part of the cause of action must be deemed to have arisen there. Under Section 20, Civil P. C., therefore, the plaintiff could bring her suit within the jurisdiction of the Moradabad Court.

10. It is not necessary for us to deal at length as to what 'cause of action' means. It is now well settled that 'cause of action' means "every fact which it would be necessary for the plaintiff to prove, if traversed, In order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact, which is necessary to be proved." -- 'Per Lord Esher, Master of the Rolls, in -- 'Read v. Brown', (1888) 22 QBD 128 (B). In the same case Lord Justice Fry said "Everything which, if not proved, gives the defendant an immediate right, must be part of the cause of action."

Lord Justice Lopes said "It includes every fact which it would be necessary to prove, if traversed, in order to enable a plaintiff to sustain his action."

11. We are, therefore, satisfied that the judgment of the lower court was wrong, and we hold that the learned Civil Judge had jurisdiction to decide the suit.

12. Learned counsel for the respondent has urged that the effect of the order of Raghubar Dayal and Agarwala JJ., dated 3-1-1951, was that the decree passed on 30-8-1949, stood vacated, and by reason of our order of this date the case must go back to the trial Court afresh for decision. We have held that the trial Court had jurisdiction to decide the case and it, therefore, had jurisdiction to decree the suit on 30-8-1949. That decree is under appeal in this Court and it will not be right for us to express any opinion as to the merits of that appeal.

13. For the reasons given by us this appeal is allowed and the order passed by the lower court on 10-8-1946, is set aside. The plaintiff is entitled to her costs.