Privy Council Appeal No. 42 *of* 1932.

Chaturbhuj Piramal (a firm) - - - - - *Appellants*

v.

Chunilal Oomkarmal (a firm) - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 23RD MARCH, 1933.

Present at the Hearing :

LORD ATKIN.
LORD THANKERTON.
LORD MACMILLAN.
SIR JOHN WALLIS.
SIR GEORGE LOWNDES.

[*Delivered by* LORD ATKIN.]

This is an appeal from a judgment of the High Court at Bombay, in its appellate jurisdiction reversing a judgment of Kemp J. who had made a decree in favour of the plaintiffs, the present appellants. The question is one of competing claims to a debt owed by the defendant in the action, the respondent Oomkarmal to one Shankarrao. The plaintiffs are judgment creditors of Shankarrao, and they claim to have effectively attached the debt; the defendant alleges that at the time of the attachment the debt had already been seized by the State of Indore. The plaintiffs do not claim that they acquired any right in respect of the debt until late on May 15, 1924, or the morning of May 16, 1924, when a warrant of attachment before judgment was served on the defendant. The material facts appear to be as follows, and have to be considered in reference to the date just mentioned.

Shankarrao was a Court official in the service of the Maharajah of Indore, a State which for the present purpose is to be considered a sovereign independent State. In March, 1924, he was arrested charged with sedition and criminal breach of trust, and sentenced to seven years imprisonment. He was said to have applied large amounts of State funds to his private purposes. The Maharajah resolved to confiscate his property towards satisfaction of the amount due to the State. Delay was considered prejudicial, and it was determined to seize the property by executive act, or act of State as it was styled by the Prime Minister of Indore, who gave evidence for the defendant. Shankarrao was resident in and a national of Indore. He had had large dealings with Oomkarmal, also a resident in and a national of Indore. Oomkarmal was an agent who bought and sold commodities on commission. His head office was in Indore. In 1930 he had traded 40 to 45 years in Indore, and about 10 years in Bombay. For about two or three years before 1924 he had done business for Shankarrao through his Indore office, and for about one and a-half years also through his Bombay office. The dealings appear to have been chiefly forward transactions in various commodities, cotton, linseed, wheat and gold. Separate accounts were kept at Indore and Bombay. The exact course of business must be considered in more detail later on. At present it is sufficient to say that Shankarrao opened two accounts at both Indore and Bombay one in his own name, the other in that of his wife, but both were in fact his own. At the time of Shankarrao's arrest, the accounts at Indore appear to have been even : but the accounts at Bombay showed a credit of Rs. 1,44,420 on his own account and Rs. 80,462 on his wife's account. There was an outstanding purchase of 1,000 tons of linseed for the May account which involved a purchase to the amount of nearly three lacs, and was closed on the instructions of the State by the 9th of May at a loss of Rs. 26,385. The net sum involved in this case is therefore Rs. 1,98,497. On April 12, 1924, the Prime Minister of Indore issued an order to the Inspector-General of Police to place under attachment certain house property in Indore and " any other properties funds and rights belonging to Mr. Shankarrao Gawde which after necessary inquiries may come to his knowledge." On the 17th April, a notice by the Inspector-General was served on the defendant as follows :

> Notice is being given to you to the following effect :—
>
> As per order of Holkar Government in respect of the attachment of property and rights of Shankerrao Baburao Gawde an order of the Prime Minister was issued to that effect and consequently this notice is being given to you that in Khata (Account) of your shop at Bombay a sum of Rs. two lacs nearly is found claimable in the name of Shankerrao Baburao. Whereas several lacs of rupees are also claimable by the Government from Shankerrao Gawde, therefore you are being informed by this notice that you will produce the abovenamed amount of monies within eight days and full account of his dealings within 4 days before the Prime Minister Saheb and obtain a receipt in respect of monies, otherwise after the expiry

of the (said) period steps will be taken according to law. This is all. The date the 17-4-24.

GULAM MAHOMED
Inspector General
Commissioner,
Indore State Police.

Oomkarmal on receipt wrote to the Prime Minister that he had written to Bombay for the account, and that it would take 10 or 12 days to have it copied and sent and immediately on receipt he would make his submission " in connection with the payment of the account which may be found due by me." By May 2, the account had been received in Indore, and on that day, in pursuance of a written direction from the Prime Minister, the Inspector of Police addressed the following order to Oomkarmal : " With reference to the schedule of accounts submitted by you on the 30th April, 1924, in connection with Mr. Shankarrao Gawde's dealings with your firm, I have the honour to request you under order of His Highness's Government to kindly remit to the Huzur Treasury through this office a sum of Rs. 1,44,420-9-6, which your firm owes to Mr. Shankarrao Gawde as soon as possible." On 5th May, Oomkarmal wrote to the Inspector-General that the amount was very large and asked him to convey to His Highness a request for a year's time " to pay up the amount you have asked me to pay in the State Treasury." On 9th May, the Inspector-General, acting on instructions, wrote to Oomkarmal that the Government did not think it expedient to grant his request. " Kindly, therefore, see that you remit to the Huzur Khajana the above sum at once, and send me the Treasury receipt." In the meantime the State had discovered the account at Bombay in the name of Shankarrao's wife. They had obtained a copy of the account from Oomkarmal and on 9th May they served him with a similar notice to that relating to the account in his name. On 7th May, Oomkarmal had received orders from the Inspector-General to close the linseed purchase, and on 9th May the loss on this transaction was reported by telegram from Bombay, amounting to Rs. 26,385. On 12th May, Oomkarmal wrote again pressing for time, and undertaking not to deal with his immoveable property within the State until he had paid off the amount. On the 14th, the Inspector of Police had an interview with Oomkarmal and asked him to transfer the Bombay account to the Indore office, and to credit the balance in the name of the Government. This was done, and on 15th May, an entry was made in Oomkarmal's books crediting the Maharajah of Indore with Rs. 1,98,497 the balance of Shankarrao's account. It is necessary to state that according to the evidence of the Inspector-General and Oomkarmal, Shankarrao had agreed in March that his Bombay account should be transferred to the books at Indore, though it is not suggested that the agreement provided for a further transfer of the balance to the Maharajah. Shankarrao denied the agreement,

and the trial judge decided against it. This finding was accepted by the Appellate Court and must be treated as correct. Except that it shows that all the acts done at Indore were as regards Shankarrao *in invitum*, and is a further illustration of the tendency of some people both in India and elsewhere to seek to support, by false evidence, what may be a good case, it appears to their Lordships, as it did to the Appellate Court, not to affect the result. On 14th May, the present appellants commenced a suit in the Bombay Court against Shankarrao to recover the sum of over two lakhs which was apparently due on similar transactions to those with Oomkarmal. On 15th May, they obtained an order under Order 21, r. 46, and Order 38, r. 5 of the Code of Civil Procedure for the attachment before judgment of the debt due from Oomkarmal to Shankarrao, and on the same day a warrant of attachment of the debt was issued and served at Oomkarmal's place of business at Bombay on May 16. Written notice of the order and the warrant was given to Oomkarmal's office about 5.30 on the evening of 15th May. Oomkarmal's solicitors replied that there was no amount due as the account had been squared up. On 3rd September, 1924, the plaintiffs recovered a decree against Shankarrao who made no appearances for Rs. 2,37,064 and costs, and on 25th September, 1924, obtained an order continuing the order of 15th May, prohibiting Oomkarmal from giving over the debt to Shankarrao, and giving leave to the plaintiffs to file a suit against Oomkarmal for a declaration that the alleged payment of the debt was collusive and fraudulent, and that the debt still remained payable to Shankarrao. In what must be supposed to be pursuance of that order, the present suit was brought by the plaintiffs against Oomkarmal, asking not merely for a declaration as stated in the order, but that the plaintiffs were entitled to payment of the debt and for an order upon the defendants to pay the amount of it to the plaintiffs. The suit was not brought to trial until 1930, probably because Shankarrao was a material witness for the plaintiffs, and had not been released until 1928. Mr. Justice Kemp was of opinion that Shankarrao dealt directly with the Bombay shop, that Shankarrao could have sued Oomkarmal's Bombay shop in Bombay : and that a liability due to Shankarrao in British India could not be affected by a transfer in Indore not sanctioned by Shankarrao. He thought that the *situs* of the debt was in Bombay, as it was properly recoverable there. He also thought that the Court could determine the validity of any act of a foreign State affecting the rights of a subject of that State in British India. Accordingly by decree of 4th February, 1931, he declared that the defendants were indebted to Shankarrao in Rs. 1,98,497, at the date of the warrant of attachment and ordered that the defendant pay to the plaintiffs the said sum by agreed instalments. On appeal the Appellate Court Beaumont C.J., and Rangnekar J. came to the conclusion that the debt was situated in Indore, that

by the 15th May, the debt had been seized by the Government of Indore, and that it was not open to the Bombay Court to question the legality of acts done by a foreign government against its own subjects in respect of property situate in its own territory. They therefore allowed the appeal and dismissed the action.

The argument before this Board turned upon the *situs* of the debt and the power of the Indore Government to seize it. It was apparently not in dispute on either side that if the Government had not seized the debt before the plaintiffs obtained the order on May 15, 1924, the plaintiffs would have been entitled to succeed in the action. It therefore has been unnecessary to examine the proceedings in Bombay, or to have explained how the *ex parte* order of September 25, 1924, could lead to a suit which determined the property in the debt in the absence of the Indore Government; or how an order permitting a suit for a declaration as to the title of Shankarrao could lead to a suit claiming title in the plaintiffs and payment to them; and to a decree granting such relief. Their Lordships express no opinion upon these topics.

The first question that arises is whether the debt was property situate within the territory of Indore. The plaintiffs, while conceding a general rule that the *situs* of a debt is the residence of the debtor, contend that there is either a parallel rule of equal validity or at any rate an exception to the general rule of the residence of the debtor to be found in situating the debt in the place where it is properly payable. This appears to mean either the sole place fixed by the contract for payment, or possibly the place primarily fixed for payment by the contract with the necessity to prove default in that place before the debtor can be sued elsewhere for either debt or damages for default as the case may be. In view of the nature of the dealings which gave rise to the debt in question their Lordships find it unnecessary to discuss the numerous cases which have considered the problem of the *situs* of debt; or finally to define exhaustively the rules which will determine that problem in India. In the present case they have debtor and creditor both resident in and (if for this purpose it is relevant) nationals of Indore. Unless it can be shown that the contract expressly or impliedly provided for payment in Bombay, either solely or it may be primarily, or, which is not suggested, made the debt enforceable only in the Bombay courts, there is no test of *situs* which can be suggested, whether in India or elsewhere, which could make the debt not situate in Indore. On examination of the contract it appears that the principal Shankarrao employed the agent Oomkarmal to enter into executory contracts of purchase and sale for him both in Indore and in Bombay. It is presumed that the agent became personally liable upon the contracts and paid upon them: in any case, he became entitled to be indemnified against his liabilities. The agent's head place of business was in Indore:

and while separate accounts were kept in Indore and Bombay, and the transactions were kept distinct, it is plain from the evidence and from the nature of things that Shankarrao, who was employed at the Court of Indore, was in the habit of giving orders for his Bombay account in Indore where they were transmitted if necessary at his expense by telegram to Bombay, and made and received payments in respect of the Bombay account in Indore. The agent was under a liability at any time to account to the principal for his transactions, and to pay to the principal any balance due on such accounting. The accounting would in ordinary circumstances take place in Indore where the head office of the agent was, and where both parties resided. It would not be part of the obligation of the agent that he should have to pay to the principal sums due on one account without setting against them sums due to the agent on another account. In other words for determining the existence of a debt between the principal and agent it was necessary to consider the accounts as a whole. No doubt the parties might, if so minded, have come to an express agreement varying these simple business obligations, but there is no evidence of any express terms of the agency arranged between the parties. The fact mainly relied on to support the view that the debt on the Bombay account was solely or primarily payable in Bombay was a statement by Oomkarmal in cross-examination that Shankarrao transactions with Bombay firms were entered in Bombay books and could not be transferred to Indore books. The manager of the Bombay business, indeed, stated in cross-examination that they could transfer the account without Shankarrao's consent. But without relying on the manager Oomkarmal's statement seems to mean no more than that the transactions were to be kept separate: and Bombay transactions not to be introduced into the Indore account. This is an obvious intention in opening two accounts: and in no way displaces the primary obligations above referred to arising between principal and agent. Shankarrao himself stated that it was his desire to keep his property in Bombay: and that as far as possible he wanted moneys to remain in Bombay, as he was afraid of the State. There is no evidence that this desire was communicated to Oomkarmal; but even if it had been there would be no foundation for inferring an implied agreement that moneys due on the Bombay account were to be paid either solely or primarily in Bombay. It appears to their Lordships that there was no evidence to displace the ordinary obligations that would arise in the ordinary course of a business such as this that on the balance of account Shankarrao was bound to pay Oomkarmal where he resided in Indore: and similarly Oomkarmal was bound to pay Shankarrao in Indore. That there was not a right to sue Shankarrao in Indore could hardly be contended. It is difficult to think that he could only be sued in Bombay, where he did not reside, and had no place of business. In these circumstances there being no sole or primary obligation

to pay in Bombay : and no exclusive right of suit in Bombay : and both parties being resident in Indore, it is impossible to displace the decision of the Appellate Court that the debt was situate in Indore.

The remaining question is whether the State of Indore had effectively transferred the property in the debt from Shankarrao to itself before the Bombay Court on May 15, 1924, purported to interfere with the disposition of the debt. The events which have already been narrated make it clear that before that date the Indore Government had taken every effective step to give themselves the *dominium* in the debt. They considered that Shankarrao was their debtor : they intended to apply his property in satisfaction of his debt : they made inquiry into debts due to him : they directed Oomkarmal to pay to them the debt which he owed to Shankarrao : Oomkarmal submitted to the order : he accepted the Government's authority to close a transaction open on Shankarrao's account, and he eventually, after asking for time to pay, completely attorned to the Government at their direction by entering them on his books as his creditors in place of Shankarrao. Short of payment, which is not transfer of a debt but discharge, it is difficult to discern what more effective steps would be taken by a Government to ensure the complete seizure of a debt.

Their Lordships have not adverted to the occurrences in Indore after May 15, which show that Oomkarmal was given time to the pay the debt to the Government on lodging with them security over his immoveable property and over certain debentures : and that the Government later made formal orders confirming the acts done before May. They appear to support the case of the defendant : but as they occurred after the time when the Bombay Court intervened, it is simpler to ignore them.

It seems to have been the opinion of Mr. Justice Kemp that the Bombay Court was bound to inquire into the validity of the acts of the Government of Indore : that in the absence of evidence to the contrary the law of Indore must be taken to be the law of British India, and as the Indian Government could not by executive act confiscate the property of a resident, the Indore Government must be held to be equally incapacitated. This seems to ignore the evidence of the Prime Minister of the State that the order of His Highness to confiscate the property of Shankarrao was an act of state and in perfect conformity with the laws of the State. But whether this be so or not their Lordships find themselves in complete agreement with the Appellate Court in accepting the law laid down in the two Russian cases in the Court of Appeal in the *Sagor* case [1921] 3 K.B. 532 and *Princess Paley Olga* v. *Weitz* [1929] 1 K.B. 718 and pithily stated by Lord Russell in the latter case, " This Court will not inquire into the legality of acts done by a foreign Government against its own subjects in respect of property situate in its own territory."

The proposition is well established as a rule governing the decisions of a domestic Court in relation to the acts of a foreign Government: and a departure from it is calculated to cause confusion. This is not the case of an action against an individual for a wrongful act done to the plaintiff. In such a case it may be that if the defendant seeks to justify under an order of a foreign State, the Courts may inquire into the scope of the authority: their Lordships express no opinion upon such a topic.

The present case is one of property seized and taken into possession by the Government of the foreign territory in which it is situate. In such a case the Court will not examine whether the Government acted validly or not within its own domestic laws.

For these reasons their Lordships are of opinion that this appeal should be dismissed, and they will humbly advise His Majesty accordingly. The appellants must pay the costs of the appeal.

In the Privy Council.

CHATURBHUJ PIRAMAL (A FIRM)

v.

CHUNILAL OOMKARMAL (A FIRM).

DELIVERED BY LORD ATKIN.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1933.