Parties having their ancestral home in the Gurdaspur District, where part of the partnership capital was subscribed, entered into a partnership to carry on a shop at Ramkot in the Jammu State. The plaintiff, alleging that owing to malversation on the part of the defendant it was impossible to carry on the business at a profit, sued at Gurdaspur for dissolution of partnership and rendition of accounts.

Held, that the causes of action set up by the plaintiff arose wholly at Ramkot in the Jammu State, and that, therefore, the Gurudaspur Court had no jurisdiction to hear the suit.

[P. 261, C. 1 & 2.]

Rambhaj Datta—for Appellant.

Sohan Lal—for Respondents.

Judgment.—The facts of this case are briefly that the plaintiff and defendant, both of whom had their ancestral home in the village of Sukhu Chak in the Gurdaspur District, entered into partnership to carry on a shop at Ramkot in the Jammu State. The plaintiff, alleging that owing to malversation on the part of the defendant it is impossible to carry on the business at a profit, has sued for dissolution of partnership and for rendition of accounts. The suit was instituted in the Court of the Subordinate Judge of Gurdaspur, who held that he had no jurisdiction because the cause of action had arisen in the Jammu State. The plaintiff then appealed to the Divisional Judge at Sialkot, who reversing the decision of the Subordinate Judge remanded the suit for decision on its merits. The defendant has now preferred an appeal to this Court.

It appears that a part of the capital required to start the partnership was subscribed by the plaintiff at Sukhu Chak in the Gurdaspur District and it is on this fact alone that the decision of the Divisional Judge is based. He has remarked that it is clear that the case is well within the authority cited in Woodroffe and Amir Ali's Civil Procedure Code, pages 176 to 180, but Counsel for the respondent has been unable to show as any ruling cited either there or elsewhere in which it has ever been held that the *forum* for a suit for a dissolution of partnership and rendition of account could be governed by the place in which capital for the partnership is subscribed. The causes of action which the plaintiff sets up in this case are the misconduct of his partner and the fact that the business can only be carried on at a loss—*vide* sub-Ss. 5 and 6 of S. 254 of the Indian Contract Act—and those causes of action arose wholly at Ramkot in the Jammu State. In the case of such a suit the place where a part or even the whole of the capital was subscribed appears to us quite immaterial.

Counsel for the plaintiff-respondent has before us advanced a fresh argument that his client's suit can be brought within the jurisdiction of a Court at Gurdaspur by virtue of Explanation I to S. 20 of Act V of 1908, but there has never been any allegation that the residence of the defendant at Ramkot was of a temporary character and there is no reason for allowing the plaintiff to set up a fresh case now.

We hold, therefore, that the Subordinate Judge of Gurdaspur had no jurisdiction to hear the suit and accordingly we accept the appeal, set aside the order of the Divisional Judge and restore the decree of the first Court. The defendant-appellant will get costs throughout.

R.M./R.K.

Appeal accepted.

A. I. R. 1916 Lahore 261

SHADI LAL, J.

Khalil and *others* — Plaintiffs—Petitioners.

v.

Yaqin-Ud-Din and *others*—Defendants—Opposite Parties.

Civil Misc. Case No. 261 of 1915 and Civil Appeal No. 460 of 1915, decided on 29th June, 1916, from the Order of Kensington, J., dated 4th March, 1914.

Civil P. C. (5 of 1908), O. 47, R. 1—Judgment erroneous—No ground to obtain review.

An application for review cannot be granted when it is made not on the ground of the discovery of new and important matter but on the ground that the judgment is erroneous on the merits. The applicant is not entitled to reargue the whole case. 14 I. C. 837 and A. I. R. (1914) Lah. 418, ref. to.

[P. 261, C. 2 & P. 262, C. 1.]

Kishen Chand – for Petitioners.

Muhammad Iqbal — for Opposite Parties.

Order.—This is an application for the review of an order passed by the Hon'ble Sir Alfred Kensington on the 4th of March, 1915, dismissing the petitioners appeal *in limine*. I am invited to review the judgment of my predecessor, not on the ground of the discovery of new and

important matter, but on the ground that the judgment is erroneous on the merits. Now, the question whether the vendee was a proprietor in the village at the time of the sale was considered and decided by all the three Courts against the pre-emptor, and I do not think that he is entitled to re-argue the whole case upon the merits, vide *Nga La* v. *Nga Than* (1) and *Must. Hussaina* v. *Must. Sahib Nur* (2). It appears that the sale by which the vendee became proprietor was the subject-matter of a pre-emption suit by one Nazra, who, after obtaining a decree for pre-emption, re-sold the property to the vendee. The exact effect of this transaction on the status of the vendee is a matter which is not free from difficulty, but it is clear that it should have been argued before the Courts at the proper time.

For the aforesaid reason I am unable to hold that there is any adequate ground for granting the application for review. Accordingly I reject the application, but direct the parties to bear their own costs in this Court.

R.M./R.K.

Application rejected.

(1) (1912) 14 I. C. 837.
(2) A. I. R, (1914) Lah. 418=22 I.C. 785.

A. I. R. 1916 Lahore 262

RATTIGAN, J.

Gappa Mal Mangal Ram and *others*—Plaintiffs—Appellants.

v.

Piara Lal and *others*—Defendants—Respondents.

First Appeal No. 1732 of 1915, decided on 2nd January, 1916, from the Decree of Dist. Judge, Simla, dated 20th December, 1913.

(a) Civil P. C. (5 of 1908), O. 7, R. 14—Document relied upon in the possession of third party may be produced in course of trial.

As a rule all documents that a plaintiff seeks to rely on should be produced at the opening of the suit. But a document which is in the possession of a third party and is called for in order to rebut a plea raised by the defendant may be produced in the course of the trial.

[P. 264, C. 1.]

(b) Practice—Procedure—Refusal to take a particular oath—No sufficient ground to decide issue against.

A mere refusal on the part of a party to a suit to take particular oath is not a sufficient ground for deciding an issue against him. 22 Bom. 680, foll. [P. 264, C. 2.]

Tek Chand—for Appellants.

Tajuddin—for Respondents.

Judgment.—This is a first appeal from the decree of the District Judge, Simla, dated 20th December, 1913, dismissing plaintiffs' claim to recover the sum of Rs. 3,373-8-3 as compensation for damages and loss sustained by reason of defendants' breach of contract. The appeal was originally preferred to the Divisional Judge of Ambala, but the memorandum of appeal was returned to the appellant for presentation to this Court upon the authority of *Mengens* v. *Sutlej Flour Mills, Ferozepore* (1).

The facts are sufficiently stated in the judgment under appeal. The District Judge dismissed plaintiff's suit on the ground that it was the plaintiff himself and not the defendant who was responsible for the breach of the contract, and that the parties had in point of fact "squared their accounts" by a settlement arrived at subsequently between them. At the same time, the learned Judge found on issues 3 and 4, that plaintiff's accounts as to the sums advanced by him to defendant and paid to other contractors who completed the work must be accepted as correct. This latter finding has not been challenged by defendant and no cross objections as to it have been filed in this Court.

The only questions then before me for determination are (1) whether it was plaintiff or defendant who was responsible for the non-completion of the contract undertaken by defendant, and (2) whether the parties settled their differences by an amicable arrangement before suit.

As regards the *first* point, I find it impossible to accept the conclusions of the District Judge and the grounds upon which those conclusions are based. The plaintiff has adduced evidence to prove that after the lapse of some six weeks, the defendant had had the timber conveyed to a distance of only about $1\frac{1}{4}$ or $1\frac{1}{2}$ mile, and as time was obviously of the essence of the contract, plaintiff's contention is that under the terms of his agreement he was fully justified in putting an end to the contract with defendant and making it over to another contractor. This evidence was given by

(1) (1915) 30 P. R. 1915=27 I. C. 625.