
(1985) 05 PAT CK 0011
In the Patna High Court
Case No : F.A. No. 855 of 1970

Amrit Jute Co. and Another APPELLANT
Vs
State of Bihar and Others RESPONDENT

Date of Decision : 03-05-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1986) 34 BLJR 485 : (1986) PLJR 1061

Hon'ble Judges : P.S. Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.S. Mishra, J.—The plaintiff-appellants' suit based upon weighment of certain food-grains by the respondents has been dismissed by the learned Subordinate Judge, Purnea on the sole ground that notice as contemplated u/s 80 of the CPC has not been validly served upon them. The plaintiffs have appealed and maintained that there has been no defect in the suit for want of notice. The facts are not in controversy.

2. Under a certain grains supply scheme of the State Government, the plaintiffs were appointed food grains stockistcum-transporting agents in the year 1958. The plaintiffs executed an agreement in favour of the State Government, under which they were entitled to be remunerated for their acts as the agent and the stockist of the food grains in their godown. The said agreement expired on 31.3.1961. Although the agreement expired, the stock of food grains with the plaintiffs were not removed till June, 1962, by the respondents. The plaintiffs had deposited security money to the extent of Rs. 7,000/- with the respondent-State Government. They were not paid any rent nor their security deposit was refunded. They had other outstanding claims. They, accordingly, served a notice u/s 80 of the CPC upon the respondents and after the expiry of the period of notice, filed a money suit. On all other issues, that were raised on behalf of the parties, the suit has been decided in favour of the appellants. They have been

defeated on the sole ground that the notice u/s 80 had not been validly served. The respondents in their written statement did not rely upon the 1956 agreement, but relied upon the agreement between the parties created in the year 1962 and said that under the new agreement, the plaintiffs were not entitled to any rent for the stock in their possession. They further said that there were claims for the damages caused to the food grains when incustody of the plaintiffs and the respondents were entitled to adjust their claims and claim set off accordingly.

3. The learned Subordinate Judge has held that the plaintiffs are entitled to get a decree for Rs. 4,669.56 for the balance of the bills which have been checked and passed but partly paid a sum of Rs, 1,674.66, Rs. 371.37, and Rs. 386.22 and, thus, are entitled to a decree of Rs. 6,101.81 minus the price of the shortage of grains found on physical verification at the gazette rate after deducting the price of 1% permissible shortage therefrom-The learned Subordinate Judge has also found that the plaintiffs are entitled to get refund of their security money. Having so held, he has, however, held that the suit has got to fail, as the notice u/s 80 of the CPC had not been validly served.

4. That a notice has been served is not in dispute, the notice served was accompanied by a copy of the plaint is also admitted, that the plaint envisaged a suit by plaintiff-company (plaintiff No. 1) and plaintiff No. 2, namely, Bochai Sahu is also not disputed. The notice was served through a counsel, who however, recited in it that he had been instructed to do so by plaintiff No. 2. The contentions of learned Counsel for the State that such a notice was not valid notice has been accepted by the learned Subordinate Judge.

5. Section 80 of the CPC before 1966 amendment contemplated that it should be by the person who sues, that is to say, there should be identity of the person who issues the notice with the person who brings the suit. Where a notice is given on behalf of one plaintiff stating that he proposes to sue on a certain cause of action, another person cannot sue on the basis of the said notice in cases in which notice is given by one person and the suit is instituted by him but along with other persons also, the courts have taken the view that the notice is not in conformity with Section 80 of the Code of Civil Procedure. But all such cases have proceeded, in substance, to decide whether the State or its officers, who are sued, were aware of the claims of the parties or not.

6. In S.N. Dutt Vs. Union of India (UOI), . cases on the point of notice decided by various courts, including the Supreme Court, have been considered. In Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI), . the judgment of the Privy Council in AIR 1927 176 (Privy Council) . has been taken notice of. It has been pointed out by the Supreme Court-"The Privy Council no doubt laid down in AIR 1927 176 (Privy Council) that the terms of this section should be strictly complied with. That does not, however, mean that the terms of the notice should be scrutinised in a pedantic manner or in the manner completely divorced from common sense. As was stated by Pollock C.B. in Jones v. Nicholes (1844)

153 E.R. 149 Page 150. we must import a little common sense into notice of this kind". Beaumont C.J. also observed in Chandulal Vadilal Vs. Government of The Province of Bombay, . "one must construe Section 80 with some regard to common sense and to the object with which it appears to have been faced". In The State of Madras Vs. C.P. Agencies and Another, . also it has been pointed that it is not necessary to state everything but the cause of action in a notice u/s 80 of the CPC should be stated. In S.N. Butt case (Supra) the Supreme Court said nothing beyond reiterating the law laid down in the earlier two cases, but it has said--"...But where it is a question of the name of the plaintiff there is, in our opinion, little scope for the use of common sense for either the name of the person suing is there in the notice or it is not. No amount of common sense will put the name of the plaintiff there, if it is not there".

7. After posing the question as aforesaid, the Supreme Court has in S.N. Butt's case (supra) concluded--"...Where an individual carries on business in some name and style the notice has to be given by the individual in his own name, for the suit can only be filed in the name of the individual.... Therefore comparing the notices given in the suit with the plaint, and remembering that S.N. Dutt and Co. is not a partnership firm and style but merely a name in which an individual trades, the conclusion is inescapable that the person giving the notice is not the same as the person suing". Although observing, as I have already noticed, that no amount of common sense will put the name of the plaintiff there if they are not in the plaint, the Supreme Court has, in fact, considered, whether a notice by the firm was a notice by the sole proprietor or not, and on facts decided that the notice was not a valid notice.

8. On the facts of the instant case, however, the identity of the plaintiffs is not in doubt. The copy of the plaint served upon the respondents by plaintiff No. 2, assuming that the description by his counsel in the notice will mean that he was giving the notice on behalf of plaintiff No. 2, only, contained the name of Messrs Amrit Jute Co., Plaintiff No. 1 and Bochai Sah, plaintiff No. 2. There is no manner of doubt that the notice in the instant case was one by the plaintiffs, namely, the firm, plaintiff No. 1, and the individual, plaintiff No. 2. The finding as to the validity of the notice recorded by the learned Subordinate Judge is erroneous. The judgment of the trial court, therefore, in my view, is fit to be set aside.

9. In the result, this appeal is allowed and the plaintiffs' suit to the extent found by the learned Subordinate Judge is decreed. There shall be no order as to costs.