
(1981) 04 MAD CK 0006
In the Madras High Court
Case No : A.A.O. No. 7 of 1980

Annamalai Chettiar

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 01-04-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20, 20(c), 80

Citation : (1981) 04 MAD CK 0006

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Advocate : S. Sudarsan and Thirunavukarasu, for the Appellant; P.S. Srisailam, for the Respondent

Judgement

Ratnam, J.—The plaintiff in O.S. No. 220 of 1972, Sub Court, Thanjavur, is the appellant in this appeal and the question debated relates to

the jurisdiction of the Sub Court, Thanjavur, to entertain the suit. The appellant booked 100 bags of green gram at Boodhalur railway station of the

Southern Railway on 10th May, 1970 to be carried to Naya Bazar railway station in New Delhi of Northern railway under railway receipt No. A.

073860. The consignment reached the destination on 22nd June, 1970 and the consignee, Vinodhkumar of New Delhi who had agreed to take

delivery of the consignment by paying the hundi and producing the railway receipt, refused to do so as the green gram bags were in a damaged

condition, as a result of which the appellant claimed that he had to persuade Messrs. Musadilal to take delivery after an assessment of the damage

to 74 bags of gram in respect of which a certificate was also issued. Alleging that the appellant sustained damages as a result of the negligence of

the respondent, the appellant laid the suit O.S. No. 220 of 1975 before the Sub

Court, Thanjavur, against the respondent herein for the recovery of a sum of Rs. 7,265. That suit was resisted by the respondent herein on the ground that there was no negligence or misconduct on its part or on the part of its servants in the carriage of the goods and that the damages claimed were unreasonable and excessive. In an additional written statement, the respondent raised a plea that the Sub Court, at Thanjavur, had no jurisdiction to entertain the suit as the alleged negligence was that of the Southern Railway against whom the suit had not been filed and the respondent did not have any place of business or office within the jurisdiction of the Sub Court, Thanjavur, but had its office only in New Delhi. Thereupon, the appellant filed a reply statement contending that the cause of action for the suit arose at Boodhalur within the jurisdiction of the Sub-Court, Thanjavur, and it is not open to the respondent to raise a question of jurisdiction belatedly.

2. On these rival claims of the parties, the learned Subordinate Judge, Thanjavur, framed the necessary issues and held that the loss of and damage to the goods were caused by the negligence of the railways belonging to the Indian Union and that the appellant is entitled to damages as claimed.

On the question of jurisdiction the learned Subordinate Judge held that the Sub Court at Thanjavur had jurisdiction to try the suit even though the

suit was instituted against the Union of India, represented by the General Manager of Northern Railway. Consequent to these findings, the suit was

decreed. Aggrieved by this the respondent herein preferred an appeal in A.S. No. 65 of 1979 to the District Court, Thanjavur. Before the learned

District Judge the respondent raised the only plea that the Sub Court, Thanjavur, did not have jurisdiction to entertain the suit and consequently, the

decree passed by it cannot be sustained. This contention was accepted by the learned District Judge, who held that the suit as laid could not be

entertained by the Sub Court, Thanjavur, as it did not have any jurisdiction, vacated the decree and directed the return of the plaint to the appellant

for presentation to the proper Court. It is the correctness of this order that is challenged in this appeal.

3. The learned counsel for the appellant contends that S. 20, C.P.C. deals with the local limits as to jurisdiction of courts to entertain suits and

under S. 20(c) thereof, having regard to the booking of the goods at Boodhalur

railway station within the jurisdiction of the Sub Court, Thanjavur, part of the cause of action arose within the jurisdiction of that Court and therefore, the suit can be maintained before the Sub Court, Thanjavur. It is also further contended that S. 20(c), C.P.C. as well as S. 80 of the Indian Railways Act can co-exist and therefore, no valid objection could be taken to the territorial jurisdiction of the Sub Court, at Thanjavur. In this connection, the learned counsel for the appellant relied upon the decision in *M/s. Assam Cold Storage Co. v. Union of India* AIR 1971 Assam and Nagaland 69 . Further contention was also raised by the learned counsel for the appellant that the objection as regards the jurisdiction should not be permitted to be raised unless there has been a consequent failure of justice. On the other hand, the learned counsel for the respondent railway administration contends that though S. 20, C.P.C. may be a general provision with reference to the institution of suits, yet, having regard to the special provisions in S. 80 of the Indian Railways Act, that Section will govern the institution of any suit claiming compensation against the railways and since the suit, in the present case had not been instituted in accordance with that provision before the courts mentioned in that section, the Sub Court at Thanjavur will not have any jurisdiction to entertain the suit instituted by the appellant. Reliance in this connection is placed by the learned counsel for the respondents on the decision in *Union of India represented through Us General Manager, North Eastern Rly. v. G. Swaminatha Mudaliar and Sons*, through its Mg. partner *Moria Joseph* 1970-1-M.L.J. 272=82 L.W. 647 and *The Union of India Vs. C.R. Prabhanna and Sons*, . In addition, it is also pointed out by the learned counsel for the respondent that the objection as regards the jurisdiction had been raised at the earliest point of time even in the course of the additional written statement and an issue had also been raised in that regard and therefore, the appellant cannot be heard to object that no plea touching the jurisdiction of the court can be raised, unless there has been a consequent failure of justice.

4. Before proceeding to consider these rival contentions, it is necessary to advert to a few undisputed facts. The goods were consigned at Boodhalur Railway Station within the jurisdiction of the Sub Court, Thanvur, to Naya Bazar, a place on the Northern Railway. The claim which

preceded the suit and the suit were laid against the Union of India, represented by the General Manager Northern Railway, New Delhi. Though

prima facie, it may appear that under S. 20(c), C. P. C. part of the cause of action had arisen in Boodhalur within the jurisdiction of the Sub Court,

Thanjavur, and therefore, the appellant is entitled to institute the suit before that court, yet, a little further but deeper consideration of the matter

would disclose that it cannot be so done. The respondent in the present case is the Union of India, represented by the General Manager, Northern

Railway and it is certainly not the case of the appellant that the Northern Railway has any office within the jurisdiction of the Sub Court, Thanjavur.

Therefore, the only basis upon which the appellant can seek to justify the institution of the suit before the Sub Court. Thanjavur, is part of the cause

of action, viz, the booking of the goods at Boodhalur within the jurisdiction of the Sub Court, Thanjavur. This may accord with S. 20(c) C. P. C.

But, the provisions of S. 80 of the Indian Railways Act have also to be taken into account as that section deals with suits for compensation. Such a

suit for compensation for loss of the life or personal injury to a passenger or for loss, destruction, damage, deterioration or non-delivery of animals

or goods may be instituted in the manner provided thereunder. Broadly stated, according to the provisions of S. 80 of the Indian Railways Act a

suit may be instituted against the railway where the goods were delivered for carriage or against the railway administration, on whose railway the

loss, injury, destruction or deterioration occurred. The Court which has jurisdiction to entertain such a suit has also been specified. That section

provides that the suit may be instituted in a court having jurisdiction over the place from which the purchaser obtained his pass or bought his ticket

or the animals or goods were delivered for carriage as the case may be or over the place in which the destination station lies or the loss, injury,

destruction, damage or deterioration occurred. It is thus clear that one part of S. 80 of the Indian Railways Act provides that any one of the several

administrations over which the goods travelled can be sued and the latter part provides that the court having jurisdiction over the place at which the

particular incident happened, such as whether the ticket was purchased or goods were delivered or whether the damage had occurred would be

the proper court to entertain suits. In the present case, the appellant framed the suit in such manner to make it appear that the Northern Railway is

the administration that is liable to pay compensation for the damage caused to the goods, because the claim had also been earlier made only against that Railway and the plaintiff also proceeded to allege that the damage to the goods was caused only by the Northern Railway administration. It is, therefore, obvious that the Sub Court, Thanjavur, cannot have any territorial jurisdiction over the place where, even according to the appellant, the damage to the goods, occurred.

5. The question now is whether the provisions of S. 20, C.P.C. would make any difference. The appellant would seek to sustain the institution of the suit before the Sub-Court, Thanjavur, only on the ground that the goods were booked from Boodhalur within the jurisdiction of the Sub Court, Thanjavur, and this, according to the appellant, would be covered by S. 20(c), C.P.C. In my view, it is not possible to accept this contention. S.

80 of the Indian Railways Act was substituted for the then existing provision by Act 39 of 1961 and it provides for a complete and self-contained

Code regarding the courts before which the suit referred to in that section can be instituted, S. 20, C.P.C. had been in existence at the time when

S. 80 of the Indian Railways Act was substituted by Act 39 of 1961 and even so the Parliament thought fit to provide for the institution of suits

claiming compensation against railways only before certain courts under the circumstances set out in S. 80 of the Indian Railways Act. If it had

been intended that S. 20, C.P.C. should continue to be applicable even with reference to the institution of such suits claiming compensation against

railways, there was no need for specifying and enumerating in S. 80 such courts before which alone suits claiming compensation and referred to in

S. 80, could be filed.

6. This view expressed by me is supported by the decision of this Court in Union of India (UOI) Vs. G. Swaminatha Mudaliar Sons, . In that case

also, the respondents filed the suit against the Union of India, represented through its General Manager, North Eastern Railway, claiming damages

in respect of loss of goods in transit consigned from Madurai station to a place on the North eastern railway. An objection was raised that the suit

was not maintainable under S. 80 of the Railways Act before the District Munsif's Court, Madurai, and that was overruled. In revision, the railway

contended that since the Southern Railway was not a party to the suit, the court

at Madurai had no jurisdiction to entertain the suit. That objection was upheld by this court. In the present case also, it has already been seen that the Southern Railway to which the goods were delivered, had not been made a defendant in the suit instituted by the appellant and therefore, the Sub Court at Thanjavur certainly did not have any jurisdiction. So far as the Northern Railway is concerned, it has already been pointed out that the Northern Railway does not have any office within the jurisdiction of the Sub Court, Thanjavur, and therefore, the only other course that was open to the appellant was to have instituted the suit in accordance with S. 80 of the Indian Railways Act. The suit in the present instance should have been brought as against the respondent herein before a court having jurisdiction over the place in which the destination station lies or the loss, injury, destruction, damage or deterioration occurred. That would mean, the suit laid by the appellant against the respondent would be certainly not entertainable by the Sub Court, Thanjavur. The mere circumstance that the Union of India is the owner of all the railways in this country would not enable a suitor claiming compensation to institute suits against the railway administration wherever he may think fit, as such an interpretation would lead to complications and would also render S. 80 of the Indian Railways Act which had been enacted to assist not only the suits to claim compensation but also to afford protection to the railways, nugatory.

7. In Union of India (UOI) Vs. G. Swaminatha Mudaliar Sons, the impact of S. 80 of the Indian Railways Act on S. 20, C.P.C., was not considered in detail by this Court but was dealt with in just one sentence to the effect that the question of jurisdiction under S. 20, C.P.C. would also be in conformity with it. From the above discussion on the scope and purport of S. 80 of the Railways Act it is obvious that both S. 20, C. P. C. and S. 80 of the Railways Act cannot co-exist and be given effect to for the purpose of institution of suits claiming compensation against railways. As stated earlier, the provisions of S. 20, C.P.C. were in force at the time when S. 80 of the Railways Act was enacted and the object of S. 80 of the Railways Act was to specify the courts having jurisdiction to try suits for compensation and to this extent the provisions of S. 20, C.P.C. have to be read as not being applicable to suits falling under S. 80 of the Railways Act after the coming into force of S. 80 of the Railways

Act introduced by Act 30 of 1961.

8. This view is supposed by the decision of The Union of India Vs. C.R. Prabhanna and Sons, where the learned Judge has referred to the

decision in M/s. Assam Cold Storage Co. v. Union of India AIR 1977 Assam and Nagaland 69 and expressed his inability to agree with the view

taken in that decision. It may also be stated that the C.P.C. contains general provisions with reference to the jurisdiction of the courts in respect of

institution of suits. The provision under S. 80 of the Railways Act has been enacted thereafter in 1961 and, as pointed out earlier, the two

provisions cannot stand together, particularly when the Parliament had in mind the provisions of the C.P.C. when it enacted S. 80 of the Railways

Act and it may even be stated that S. 80 of the Railways Act is an exception to S. 80, C.P.C. with reference to the institution of suits claiming

compensation against railways. It is in this view that the decision in M/s Assam Cold Storage Co. v. The Union of India AIR 1977 Assam and

Nagaland 69 , cannot be applied to the present case. With respect, I agree with the view expressed by Venkataramaiah, J. in the The Union of

India Vs. C.R. Prabhanna and Sons, . Under these circumstances, the learned District Judge was perfectly correct when he held that the Sub-

Court, Thanjavur, did not have any jurisdiction to try the suit. The other objection raised by the appellant as regards jurisdiction has no merit it has

already been pointed out that the question of jurisdiction of the Sub Court, Thanjavur, was clearly and pointedly raised in the course of the

additional written statement filed by the respondent and an issue was framed touching that aspect. The parties had gone to trial on that issue being

fully alive to the objection raised. Under these circumstances it cannot be said that the appellant had either been taken by surprise or did not have

any adequate opportunity of meeting the objection raised by the respondent. Consequently, it cannot be said that the objection regarding the

jurisdiction of the court cannot be permitted to be raised by the appellant. For the aforesaid reasons, the order of the learned District Judge

directing the return of the plaint to the appellant for presentation to the proper court is perfectly correct. The civil miscellaneous appeal fails and is

dismissed. Both the parties will bear their costs throughout. The appellant is granted two months time from this day to take return of the plaint and

for representing it before proper court.