
(1914) 07 AHC CK 0019
In the Allahabad High Court

Baldeo Prasad and Another	Vs	APPELLANT
The Collector of Pilibhit		RESPONDENT

Date of Decision : 11-07-1914

Acts Referred:

Citation : (1915) ILR (All) 13

Hon'ble Judges : Henry Richards, C.J.;Tudball, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Henry Richards, C.J. and Tudball, J.—This appeal arises out of a suit in which the plaintiff claimed to recover the sum of Rs. 1,990-2-0. As originally framed this sum was said to be the amount of a promissory note, dated the 20th of November, 1909, together with interest thereon. The maker of the promissory note was one Pohkar Singh. The Collector of Pilibhit was sued as manager of the estate of Pohkar Singh in charge of the Court of Wards. The defence was that the promissory note was made after the estate had been taken over by the Court of Wards. On this defence being raised the plaintiffs applied for an amendment of their plaint, so as to enable them to fall back on a previous promissory note, dated the 15th of November, 1907. The court of first instance allowed the amendment and decreed the plaintiffs' suit. The amendment as made was, to say the least of it, inartistic.

2. The defendant objected to the amendment and in his memorandum of appeal a ground was taken that the amendment ought not to have been allowed. The lower appellate court considered that the amendment ought not to have been allowed and dismissed the plaintiffs' suit. Hence the appeal.

3. Before the institution of the suit the plaintiff served a notice on the Court of Wards in order to comply with the provisions of Section 48 of the Court of Wards Act, which provides that "no suit relating to the person or property of any ward shall be instituted until after the expiration of two months after notice in writing

has been delivered, stating the name and place of abode, the cause of action, and the relief which he claims." The form that the notice took was a copy of the intended plaint. In our opinion if the amendment which was made by the court of first instance is allowed to stand, the plaintiffs' claim cannot be dismissed on the ground that the provisions of Section 48 were not complied with. The notice required by Section 48 was in fact served, as provided by the section, and the suit is the same suit notwithstanding that a substantial change has been made as the result of the amendment.

4. The defendant, however, contends that the amendment ought never to have been allowed and that he was entitled in the lower appellate court to challenge the propriety of the amendment under the provisions of Section 105 of the Code of Civil Procedure. There is one reason, and one reason only, why the amendment should not have been made, subject, of course, to such terms as the court should think just. The reason would be that the amendment allowed the introduction of a new cause of action and the defendant was entitled u/s 48 of the Court of Wards Act to two months' notice in writing before a suit on foot of the new cause of action was instituted. See *McInerny v. The Secretary of State for India* ILR (1911) Cal. 797.

5. Two questions arise first, whether the amendment ought to have been allowed, and, secondly, whether the notice which the plaintiffs delivered was a sufficient notice of the suit as set forth in the amended plaint. We think that if the effect of the amendment was to introduce a new "cause of action" which was not stated in the notice, then the amendment should not have been allowed, because the defendant would not have received the two months' notice to which he was entitled under the provisions of Section 48. If, on the other hand, the cause of action as set forth on the amended plaint was sufficiently stated in the notice which the plaintiffs served, then we think that the amendment was properly allowed.

6. We now proceed to deal with the case upon the principle which we have mentioned above. We have already stated that the notice which the plaintiffs delivered consisted of a copy of their plaint before the amendment. In this plaint the name and abode of the intending plaintiffs were set forth. So was the relief which they claimed. In paragraph 2, the following statement was made : "For a long time there were money dealings between the shop of the plaintiffs and Kunwar Pohkar Singh. Accordingly on the 20th of November, 1909, the said Pohkar Singh having adjusted his accounts under the former promissory note executed on the 15th of November, 1907, executed the promissory note sued on." Now suppose that the plaintiffs, after having delivered to the defendant a copy of this plaint as the compliance with Section 48 of the Court of Wards Act, and suppose that prior to the filing of the plaint they had come to the conclusion that they could not succeed on the basis of the promissory note of the 20th of November, 1909, and that they themselves had altered their plaint by alleging that they sued on the note of the 15th of November, 1909, using the note of the

20th of November, 1909, as an acknowledgment. Supposing further that after the filing of their plaint the defendant had pleaded that Section 48 of the Court of Wards Act had not been complied with on the ground that the "cause of action" had not been stated as provided by Section 48. On the assumptions which we have made, would such a defence have succeeded? If it would, then we think the amendment "ought not to have been allowed and that the plaintiffs suit was rightly dismissed by the lower appellate court.

7. But on the other hand it is necessary to see whether or not the plaint which the plaintiff delivered as a notice u/s 48 sufficiently states the "cause of action" as set forth in the amended plaint.

8. The expression "cause of action" has been defined to be "every fact which it would be necessary for the plaintiff to prove, if traversed, to support his right to the Judgment of the Court." In paragraph 2 of the unamended plaint the plaintiffs set forth that there had been for a long time money dealings; that the account had been adjusted and a former promissory note given, and that on the 20th of November, 1909, another promissory note had been given. Bearing in mind that the object of Section 48 was to give the Collector time to consider the nature of claim against the ward in order that the manager might investigate the matter and if necessary meet the claim without incurring needless costs, we find it impossible to hold that the "notice" delivered by the plaintiff in the present case was not a sufficient statement of the "cause of action" as set forth in the amended plaint. It gave all the information necessary to enable the Collector to investigate the claim and the two promissory notes are practically all the plaintiffs need have proved. If we are correct in this then the amendment was properly made and the plaintiffs' suit ought not to have been dismissed on the ground that the amendment was improper.

9. It is clear that the plaintiff is not entitled to interest upon the entire amount of the second promissory note. This document can now only be used as an acknowledgment of the previous debt. We have gone into the account and we find that the sum which the plaintiff is entitled to is the sum of Rs. 1,810, for principal and interest up to the date of the suit. From the date of the suit until payment he will get 6 per cent. simple interest on this amount. Inasmuch as in all probability all the litigation was caused by the plaintiffs in the first instance entering into a contract with Pohkar Singh after the estate had been taken over, and bearing in mind also that in order to sustain the suit it was necessary that the plaint should be amended, we think that the parties should pay their own costs in all courts. We accordingly grant the plaintiff a decree for the sum of Rs. 1,810, principal and interest up to the date of the suit. From the date of the institution of the suit until payment he will receive interest at the rate of 6 per cent. per annum on the sum of Rs. 1,810, until payment.