

(1991) 07 MP CK 0047
In the Madhya Pradesh High Court
Case No : S.A. No. 156 of 1976 (G.)

B.S. Yadav

APPELLANT

Vs

Prabhudayal

RESPONDENT

Date of Decision : 02-07-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Limitation Act, 1963 — Article 72
Madhya Pradesh Land Revenue Code, 1959 — Section 248

Citation : (1991) 2 MPJR 302

Hon'ble Judges : K.M. Pandey, J

Bench : Single Bench

Advocate : R.S. Bajpai, for the Appellant; K.B. Chaturvedi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.M. Pandey, J.

This second appeal has come up before this Court against the judgment and decree dated 19-3-1976 passed by Shri Ravi Varma, Additional District Judge, Shivpuri in Civil Appeal No. 12-B of 1974.

The brief facts are that the Respondent filed a suit for damages against the State of Madhya Pradesh and the Appellant alleging that he was owner of the disputed land and had constructed 4 flush latrines in the land and an amount of Rs. 4,000/- was spent by him for the said construction. The Tahsildar treating the said construction to be an encroachment started proceedings u/s 248 of the M. P. Land Revenue Code, 1959, and the aforesaid construction were demolished on 29-7-68. The Plaintiff's contention was that he was the owner of the property and the constructions could not have been treated as an encroachment on Government land. Besides this, other legal pleas of jurisdiction, limitation, Section 80 C. P. C. were also taken. The learned trial Court dismissed the suit holding it as time barred. An appeal was preferred against that judgment and

decree and the learned first appellate Court reversed the decree of the trial Court and has decreed the suit for the recovery of a sum of Rs. 4,000/- against the Appellant.

The appeal before me was pressed on the legal points:-

- (1) The suit was barred by time; and
- (2) The suit is liable to be dismissed for want of any notice against the Appellant u/s 80 C. P. C.

Consequently no decree can be passed against him for damages for an action which was lawfully conducted as Tahsildar.

Point No. (1)-It is common case that the impugned construction was demolished on 29-7-1968 and the present suit for damages was filed on 1-10-1971. It was contended before me that Article 72 of the Indian Limitation Act was applicable in this case and the limitation for the suit was only one year. Article 72 of the Limitation Act, 1963, prescribes a limitation of one year for compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in the territories to which this Act extends. The starting point of limitation is the time when the act or omission taken place.

It cannot be denied that the Tahsildar who initiated the proceedings for the removal of the encroachment acted in exercise of his statutory powers. The object of Article 72 is the protection of public officials who, while bona fide purporting to act in the exercise of a statutory power, have exceeded that power and have committed a tortious act (AIR 1936 Pat. 513 (DB)). In another case Shariful Hasan Vs. Lachmi Narain, it was held that an act may be done maliciously but yet under the honest belief that it is authorised by the enactment. In such cases this article will apply. The result is that the Tahsildar who acted in exercise of his powers under an enactment i. e. the M. P. Land Revenue Code, 1959, is to be governed by Article 72. Art 113 of the Limitation Act is a residuary article and it will apply only in such cases wherein no period of limitation has been provided elsewhere in this Schedule (Limitation Act). The learned first appellate Court committed an error in holding that the limitation in this case is to be governed by Article 113. The statute itself provides a limitation in such cases and consequently the assistance of Article 113 is not available.

Point No. (2) -It has been vehemently argued before me that the suit is barred u/s 80 C. P. C. because no notice was served on the Appellant before bringing the suit. In para 13 of the plaint which has been introduced by an amendment dated 15-3-1974 it has been said that notice u/s 80 Code of CPC was sent to the Collector and the Chief Secretary on 14-6-71 which was received by the Collector on 17-6-71. It is significant to note that there is no mention of any notice having been sent to the Appellant. It may be pointed out that the suit against the State Government has been dismissed even by the first appellate Court. The suit stands decreed against the present Appellant.

The question arises as to whether a suit for damages against the Tahsildar could have been brought without serving a notice u/s 80 Code of CPC on him. Section 80 C. P. C. says that no suit shall be instituted against the Government or a public officer in respect of any act purporting to be done by such public officer in his official capacity until the expiration of two months next after notice in writing has been delivered to him (public officer) or left at his office stating the cause of action, the name description and place of residence of the Plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left. No doubt in para 11 of the plaint it was said that a notice u/s 80 C. P. C. was served on Defendant No. 2 but in fact no notice was addressed to him in accordance with law. The learned Counsel for the Respondent Shri Chaturvedi has carried me through the copy of the notice alleged to have been sent to the Appellant. It is dated 6-7-1968. It may be pointed out that this notice u/s 80 C. P. C. was addressed to the State Government of Madhya Pradesh and the service was made through the Collector Shivpuri. No independent notice was addressed to the Appellant. Copies of the notice u/s 80 C. P. C. sent to the State Government were sent to the Chief Secretary, Revenue Secretary and the Tahsildar. It was contended that it was sufficient compliance of the provisions of S. 80 C. P. C. if a copy of the said notice addressed to the State of Madhya Pradesh was also sent to the Tahsildar concerned. It cannot be said to be a notice u/s 80 C. P. C. delivered to the official concerned and the bar against the institution of the suit before serving a notice u/s 80 C. P. C. is not lifted by merely sending a copy of the notice which was addressed to the State of Madhya Pradesh. The law envisages that a notice u/s 80 C. P. C. has got to be delivered to the official concerned.

Besides this, no claim for damages was made in this notice dated 6-7-1968 and it is also significant that the disputed flush latrines were not demolished by that time and consequently the occasion for claiming damages against the Tahsildar had not accrued. The notice is dated 6-7-1968 and the demolition was made on 29-7-1968 possibly realising the mistake another notice dated 12-6-1971 was sent to the State of Madhya Pradesh and the Chief Secretary, Madhya Pradesh. No notice was sent of this date to the Appellant. It was contended before me by Shri Chaturvedi, Counsel for the Respondent, that the notice dated 12-6-1971 was not addressed to the Defendant-Appellant.

The result is that the bar against the institution of the suit itself without delivering a notice u/s 80 C. P. C. to the public official was not lifted and the suit was barred n/S. 80 C. P. C. For the first time a claim for Rs. 4,000/- was mentioned in the notice dated 12-6-1971. As this notice was not delivered to the Defendant-Appellant, the bar against the institution of the suit was never lifted.

The Counsel for the Respondent relied on the cases, namely P.P. Abubacker Vs. The Union of India (UOI), and Samrathmal and Another Vs. Union of India (UOI) and Others, this point was not at all involved. In that case a legal notice u/s 80 C. P. C. was served. The only question was in respect of his formal proof of

service of the notice. In that case the Defendant had not denied the receipt of notice. In *Samrathmal and Another Vs. Union of India (UOI) and Others*, it was held that the notice u/s 80 C. P. C. should not be construed as if it were a pleading. It need not contain all the details or facts of the case. This case also has no bearing in the present case because the present one is a case of non-delivery of the notice at all u/s 80 C. P. C.

The appeal is, therefore, allowed. The suit is dismissed with costs against the Appellant as well. The judgment and decree of the first appellate Court stands modified accordingly.