
(1923) 02 BOM CK 0016
In the Bombay High Court
Case No : Second Appeal No. 285 of 1922

Damodar Jagjivan

APPELLANT

Vs

Govindji Jivabhai

RESPONDENT

Date of Decision : 01-02-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : AIR 1923 Bom 392 : (1923) 25 BOMLR 378 : 73 Ind. Cas. 240

Hon'ble Judges : Norman Macleod, J;Crump, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Norman Macleod, Kt., C.J.—The plaintiff sued to recover possession of the land and tram-cars, which he alleged he purchased from the first defendant on January 7, 1908. He lost possession owing to Govindji Jivabhai acting in collusion with the second defendant Balkrishna Jagannath Patil. Govindji had been adjudicated an insolvent, and the Official Assignee could have been made a party. It appears that plaintiff intended to make him a party, but in the title of the suit "Govindji Jivabhai insolvent and on behalf of him the Official Assignee" is absolutely wrong. The Official Assignee ought to have been sued personally, so that if the plaintiff wished to sue him, Govindji would have been the first defendant, the Official Assignee, as assignee of the estate and effects of the insolvent Govindji, the second defendant, and Balkrishna Jagunnath, the third defendant. The suit was decreed in the lower Court. In appeal, the Judge on the merits was in favour of that decision, but considered that the plaintiff's suit was bad for want of notice u/s 80 of the Civil Procedure Code. That provides that where a suit is instituted against a public officer in respect of any act purporting to be done by such public officer in his official capacity, notice should be given. It is not clear in respect of what act of the Official Assignee the suit was brought. It appears to me that the plaintiff suing on title was justified in filing the suit without giving notice. In the note to Section 80 of Mr. Mulla's CPC it is said:

The only class of suits in which it is necessary to give notice to a public officer is where the suit is founded upon tort, in other words, where the suit is for damages for some wrong inadvertently committed by him in the discharge of his official duties, and no notice is necessary if the suit is founded upon contract or any other cause of action.

2. What the plaintiff stated in his plaint was "defendant Govindji has applied in the High Court of Bombay for being adjudged insolvent and all his property is vested in the Official Assignee, who has objected to the entry of the land in the name of the plaintiff in the Record of Rights". That is the act of which really the plaintiff is complaining. He is suing for a declaration of his title to get possession. In my opinion he can do so without having to give notice u/s 80, The appeal is allowed, the decree of the lower appellate Court set aside and the decree of the trial Court restored with costs throughout.

Crump, J.

3. I agree, I can find no act on the part of the Official Assignee in this case which comes within the scope of Section 80 of the Code of Civil Procedure. All that is alleged in the plaint is that the Official Assignee objected to the entry of the land in the name of the plaintiff in the Record of Rights. The real cause of action is that the plaintiff being dispossessed is suing to recover possession, with which suit the Official Assignee had nothing whatever to do. If the Official Assignee has taken up a certain attitude with regard to the first defendant's property, it is not such an act as is contemplated by Section 80 of the Code, and beyond this attitude on the part of the Official Assignee there is nothing to show that the Official Assignee has any connection with the present suit. I`t, therefore, appears idle to contend that any notice is required to be given before the suit is instituted.