
(1950) 07 AHC CK 0022
In the Allahabad High Court
Case No : Civil Revision No. 637 of 1948

Dominion of India

APPELLANT

Vs

Roop Chand

RESPONDENT

Date of Decision : 26-07-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1950) 20 AWR 657

Hon'ble Judges : Desai, J

Bench : Single Bench

Advocate : Gopal Ji Mehrotra, for the Appellant;

Final Decision : Allowed

Judgement

Desai, J.—The short question for decision in this revision is whether the notice given by the Plaintiff opposite party u/s 80, Code of Civil Procedure, to the Defendant applicant is invalid merely on the ground that it describes the number of the railway receipt as 460064 instead of 760064. The court below thought that this is a clerical error and did not invalidate the notice and decreed the suit in spite of objection of the applicant.

2. There are no authorities on the question whether a clerical error in a notice given u/s 80 CPC makes it invalid or not. I, therefore, have to decide the question without any assistance of authorities. u/s 80 no suit can be instituted against the Crown etc. unless a notice is given "stating the cause of action, the name, description and the place of residence of the Plaintiff and the relief which he claims". If the notice given by the Plaintiff in the present instance has stated the cause of action, even though it has given a wrong number of the receipt, Section 80 must be held to have been sufficiently complied with. If, on the other hand, the mistake in the number amounts to not stating the cause of action, it will have to be held that the section has not been complied with. So the question comes to this "Has the Plaintiff not stated the cause of action in notice?"

3. The consignment was booked by the National Iron Foundry at Jamuna Bridge Railway Station and was addressed to itself. The railway receipt was endorsed by the consignor in favour of Loti Ram Rup Chandra, a firm represented by the Plaintiff. The Plaintiff was entitled to receive delivery of the consignment at the destination on the basis of this railway receipt. This railway receipt formed his title deed. It follows that the endorsement on the railway receipt, bearing No. 760064, in favour of Loti Ram Rup Chandra, is a part of the cause of action accruing in the Plaintiffs favour. If the endorsement was not there on the receipt the Plaintiff would have had no cause of action to sue for non-delivery of the consignment. The Plaintiff, therefore, had to state, as a part of his cause of action that the railway receipt No. 760064 had been endorsed in his favour by the consignor. But when he stated in the notice that a receipt bearing No. 460064 had been endorsed in his favour by the consignor it amounts to his not stating in full his cause of action. The suit is based on his being the holder, through endorsement, of the receipt No. 760064 but in the notice he claimed to be the holder, through endorsement, another notice. As has been observed by their Lordships of the Judicial Committee the provisions of Section 80 CPC must be strictly construed. When the Plaintiff sued on one cause of action and had mentioned a different cause of action in the notice, he was bound to fail. Whether the difference is great or small is immaterial.

4. It was contended by Mr. Kazmi that the mistake in giving the number of the railway receipt did not cause any prejudice to the railway authorities because they could have found out that there was a mistake in giving the number and would have had no difficulty in finding what was the real number and tracing the consignment. The provisions of Section 80 CPC are absolute and do not depend upon whether any prejudice is caused to the Crown or not. The Legislature has not left a suitor to decide whether the giving of a notice is essential or not and whether the omission to give a notice would cause the Crown prejudice or not. He must give a notice regardless of the effect of not giving it. Similarly he must state the cause of action regardless of the effect of not stating it. Moreover the notice is intended to be read as it is given and must be construed strictly against the giver. It is not open to a notice giver to call upon the recipient of the notice to read it after correcting it if necessary. There is no reason why a recipient of a notice should think that there is any clerical mistake in the notice and not that it is based on an absolutely false or bogus cause of action. Suppose X gives a notice claiming property A from Y, Y is not in possession of property A at all and knows that X has absolutely no concern with it, and Y is possessed of property B, and has reason to think that X meant property A when he mentioned property B in the notice Still Y is not required by any law to treat the notice as meant for property B, and is not precluded from thinking that X made an absolutely false or bogus claim over property A. Similarly there was nothing to prevent the Crown from thinking that the Plaintiff has made a bogus claim on the basis of railway a receipt No. 460064 it was not bound to read the notice as if it were in respect of railway receipt No. 760064.

5. I, therefore, hold that the Plaintiff did not state the cause of action in the notice.

6. The application is allowed, the decree of the court below is set aside and the suit is dismissed with costs in both the courts.