

(1927) 12 MAD CK 0045
In the Madras High Court

G.I.P. Ry. Co. and Another

APPELLANT

Vs

Majeti Sreeramulu

RESPONDENT

Date of Decision : 12-12-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railways Act, 1890 — Section 77

Citation : AIR 1928 Mad 599

Hon'ble Judges : Devadoss, J;Devadoos, J

Bench : Division Bench

Judgement

Devadoss, J.—This is an application to revise the decree of the District Munsif of Rajahmundry in Small Cause Suit No. 679 of 1925. The plaintiff's suit is for damages for loss of goods in transit and defendants 2 and 4 are the G. I, P. By. Co. and the Secretary of State for India in Council. The District Munsif decreed the suit. The Secretary of State has filed this petition.

2. The contention of Mr. Nambiar on behalf of the petitioner is that no notice was served on the Secretary of State as required u/s 80, Civil P.C. The plaintiff who consigned at Bombay some goods has brought this suit against the Railway Company and the Secretary of State for loss of goods in transit. He gave a notice as required u/s 77, Railways Act, within six months of the loss, that is, on 20th February 1925. The Railway Administration was taken over by the Secretary of State for India on 1st July 1925, and the suit was filed on 18th August 1925. The question is whether the suit is bad by reason of the want of notice u/s 80, Civil P.C. It is urged by Mr. Nambiar that the provisions of Section 80, Civil P.C., are imperative and before a suit could be filed against the Secretary of State the provisions of Section 80 should be strictly complied with as regards the names of parties, places of residence and other particulars and a suit could not be filed before the expiry of two months from the date of service of notice. Section 77, Railways Act runs as follows:

A person shall not be entitled to a refund of an overcharge in respect of animals

or goods carried by railway, or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the Railway Administration within six months from the date of the delivery of the animals or goods for carriage by railway.

3. Before a suit could be filed against the Railway Administration a claim as regards loss should be made within six months and in the absence of such notice a suit is not maintainable, and as this has been decided over and over again it is unnecessary to refer to the authorities on that point.

4. The question is whether in this case a second notice u/s 80, Civil P.C., is necessary. It is urged for the respondent by Mr. Vallabhacharyulu that notice u/s 77, Railways Act, has to be given to the Railway Administration and as u/s 3, Clause 6,

Railway Administration by the Government means the Manager of the Railway, and includes the Government,

and as u/s 140 a notice is required by this Act to be served on the Railway Administration it may be served in the case of a railway administration by the Government, on the Manager

by delivering a notice or other document to the Manager or his agent, or by leaving it at his office, or by forwarding it by post in a prepaid letter addressed to the Manager or agent at his office and registered under Part III, Post Office Act 1865

and that a notice to the Manager of the Railway Administration is sufficient notice to the Government, that is, to the Secretary of State. I do not think that a mere notice to the administration of the loss of goods is sufficient compliance with the requirements of Section 80, Civil P.C., for Section 80, Civil P.C., requires certain particulars to be mentioned and in the absence of such particulars the notice cannot be held valid.

5. It was held in *Radha Shyam, Basak v. Secretary of State* [1917] 44 Cal. 16, that a notice given u/s 80, Civil P.C., was sufficient compliance with the requirements of Section 77, Railways Act. In order to make the Railway Administration liable for loss a notice within six months is a condition precedent. Without giving such notice a Railway Administration cannot be made liable and in order to make the Secretary of State liable it is necessary that notice should be given u/s 80, Civil P.C. But it is open to a party to give a combined notice which would satisfy the requirements of Section 77, Railways Act, as well as the requirements of Section 80, Civil P.C. In this case, when the notice of the loss of goods was given to the Railway Administration the Railway Administration had not been taken over by the Secretary of State; in other words, the railway was not a State railway. The question is, after a party has complied with the requirements of law at the time when the railway was not a State railway, is he

to lose the benefit of what he has done by reason of the Secretary of State taking over the administration at a time when the right to sue, so far as the plaintiff is concerned, had matured? The contention on behalf of the petitioner is that even though the administration was taken over long after the notice was given, yet the Secretary of State is entitled to a fresh notice u/s 80, Civil P.C. I am unable to uphold this contention.

6. When the Secretary of State takes over the administration of a Railway Company, or when he buys the company, he takes or buys it subject to all the liabilities of the Railway Administration. It is not as if the plaintiff is seeking a remedy against the Secretary of State for anything done by any of his officers. At the time when the cause of action arose, if the cause of action arose by reason of anything done by the Secretary of State or by any of his officers notice u/s 80, Civil P.C., would be a condition precedent; but after the cause of action arose against the Railway Administration, and after the plaintiff had complied with the requirements of law in order to enable him to file a suit against the Railway Administration, it is not open to the Secretary of State to take over the administration and then ask the person who has got a valid claim against the Railway Administration to give further notice u/s 80, Civil P.C. The case would have been different if the Secretary of State was the owner of the railway at the time of the loss in which case the acts of the railway servants would have been acts of the Secretary of State and as such he would be entitled to notice u/s 80, Civil P.C. As I said it is open to a party to give a combined notice which would satisfy all the requirements of Section 77, Railways Act, and Section 80, Civil P.C. But if a party does not do that he must give a notice u/s 77 within six months in order to enable him to claim compensation for loss of goods and he must give a notice u/s 80, Civil P.C., in order to enable him to file a suit against the Secretary of State. But inasmuch as the Secretary of State has intervened at a later stage, that is, at a stage when the plaintiff had his claim ready against the Railway Company it is not open to him to say that he must have a fresh notice u/s 80, Civil P.C. It is unnecessary in this view to consider the Privy Council case reported in AIR 1927 176 (Privy Council), where their Lordships held that the provisions of Section 80, Civil P.C., were imperative. Lord Sumner observed:

To argue, as the appellants did, that the plaintiffs had a right urgently calling for a remedy while Section 80 is mere procedure, is fallacious, for Section 80 imposes a statutory and unqualified obligation upon the Court.

7. This observation does not in any way affect the present question. As I said, if the railway was a State railway under Government at the time the loss occurred notice u/s 80, Civil P.C., would be imperative. In *Radhesyam Basak v. Secretary of State* [1917] 44 Cal. 16 it was held that notice given to the Collector u/s 80, Civil P.C., was sufficient compliance with the provisions of Section 77, Railways Act. There the notice was given within six months and the suit was after two months after the date of notice so that the notice to the Collector u/s 80, Civil P.C., was held to be sufficient compliance with the provisions of Section 77,

Railways Act. In this case Exs. B and B (1) show that the plaintiff not only complained of the loss of goods and claimed compensation, but gave notice of suit inasmuch as he distinctly stated that he should have early remittance of the amount claimed and in default he would be put to the necessity of seeking relief in a Court of law. I think this is sufficient notice of suit so far as the Railway administration was concerned. The Secretary of State having taken over the Administration of the Railway Company stands in the shoes of the Railway Administration which he took over and, therefore, the suit which is good against the Railway Administration is also good against him. The petition fails and is dismissed with costs.