
(1932) 02 AHC CK 0011
In the Allahabad High Court

Mela Ram Gorwara

APPELLANT

Vs

Secy. of State

RESPONDENT

Date of Decision : 18-02-1932

Acts Referred:

Citation : AIR 1932 All 381 : 137 Ind. Cas. 205

Hon'ble Judges : Niamatullah, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Niamatullah, J.—This is an application for revision from the decree passed by the Judge of the Court of Small Causes at Allahabad dismissing the plaintiff-applicant's suit for refund of overcharge realized from him by a railway company in respect of a consignment sent by him, from Lohgara railway station to Ultadanga. The sole ground on which the suit was dismissed by the lower Court was that no notice u/s 77, Railways Act, was given and the fact that such, notice had been given was not mentioned, in the plaint.

2. The suit was instituted against four-defendants, namely : (1) Secretary of State for India in Council, (2) the G.I.P. Railway, (3) the East Indian Railway and (4) the Eastern Bengal Railway. The three railway administrations above mentioned are all State railways and were impleaded as the goods in question had to pass through them in transit. It is, not disputed that notices, purporting to be those u/s 80, Civil P.C. were given by the applicant within six months of the delivery of the goods and of the levy of the overcharge (which occurred on. the same day) and more than two months, before the institution of the suit. The fact was recited in para. 4 of the plaint. The lower Court apparently thought that the plaintiff should have stated that a notice u/s 77, Railways Act, had been given and that a reference to Section 80, Civil P.C. was not sufficient. The learned Judge seems also to have been of the opinion that a notice u/s 80, Civil P.O., cannot be accepted as one u/s 77, Railways Act.

3. It has not been denied before me, nor was it denied in the Court below, that notices given by the plaintiff-applicant complied with the provisions of Section 80, Civil P.C. in all respects. Section 77, Railways Act, debars a person from obtaining a refund of an overcharge in respect of goods carried by railways, unless his claim to the refund has been preferred in writing by him to the railway administration within six months from the date of the delivery of the goods. Section 140 of the same Act requires a notice or other document to be served on a railway administration to be served on the manager thereof in case that railway administration be the Government. In this case, notices u/s 80, Civil P.C. were given to the managers of the railways already mentioned. The notices given by the plaintiff-applicant substantially complied with the requirements of Sections 77 and 140, Railways Act, and the mere fact that Section 80, Civil P.C., was mentioned will not detract from their real character as demands made u/s 77. They were served in the manner provided by Section 140, Railways Act. There is nothing in either of the two sections which makes it imperative on a plaintiff to mention in the plaint that refund had been demanded from the railway administration in the manner required by law. If the fact is denied by the defendant but appears from the evidence, the plaintiff's suit is not liable to be dismissed. The requirements of Section 77, Railways Act, differ in this respect from those of Section 80, Civil P.C. which expressly provides that the fact of the notice being given should be mentioned in the plaint. Even if it were otherwise, a mention in the plaint of notices u/s 80, Civil P.C. would, in the circumstances of this case, be a sufficient compliance with such rule.

4. For these reasons, I am of opinion that the decree of the lower Court dismissing the plaintiff's suit is erroneous and should be set aside. Accordingly, this revision is allowed, the decree of the lower Court is set aside and the suit is remanded for disposal on the merits. The respondent will pay the costs of this revision.