(1974) 09 PAT CK 0009

In the Patna High Court

Case No : A.F.A.D. No. 551 of 1970

Principal, Regional Institute of Technology and Another — APPELLANT

Vs

Rama Kantha Singh — RESPONDENT

Date of Decision : 04-09-1974

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1

Citation : AIR 1975 Patna 152 : (1975) 8 PLJR 208 : (1975) PLJR 208

Hon'ble Judges : H.L. Agrawal, J

Bench : Single Bench

Advocate : Balbhadra Prasad Singh, General and Bhupendra Narain Singh, for the Appellant; J.C. Singh and Anish Chandra Sinha, for the Respondent

Final Decision : Allowed

Judgement

H.L. Agrawal, J.—This second appeal is by the defendants. The plaintiff instituted a money suit for recovery of a sum of Rupees 9558.78 on account of the price of the vegetables, alleged to have been supplied to the mess of the Technology Co-operative Consumer''s Store Ltd. (hereinafter referred to as ''the Store''). The suit was initially instituted against H. P. Varma and Jai Prakash Verma, being the Chairman and the Manager/Superintendent respectively of the said Store. It was alleged by the plaintiff that defendant No. 2 being the Manager of the store used to place orders with the plaintiff for the supply of vegetables and that during the period 29-9-1962 to 8-4-1963 vegetables were supplied on credit of different values and after adjusting the payments, the said amount was still due, which was not being paid in spite of repeated demands by the said defendant. The State of Bihar was also impleaded as party defendant on the allegations that the Regional Institute was a State Government concern. Notice u/s 80 of the CPC was also alleged to have been served accordingly on the Secretary of the Department of Education.

2. Sometime after the institution of the suit a petition for amendment of the plaint was filed on behalf of the plaintiff for deleting the names of the aforesaid

two defendants and inserting the names of (1) Principal, Regional Institute of Technology, Adityapur, and the Chairman of the Technology Co-operative Consumer''s Stores of Regional Institute of Technology, Adityapur, and (2) Manager/ Superintendent, Technology Co-operative Consumers'' Stores, Regional Institute of Technology, Adityapur. It was stated in this petition for amendment that the original first defendant, who had been transferred from the institution, had already left India, and the second defendant was also not at Adityapur, therefore the suit should proceed in the names of the official capacity of the two proposed defendants so that in the event of the transfers, if any, in future, it should not be necessary for the plaintiff to bring the successors on record by way of amendment. This petition was allowed and the original defendants 1 and 2 were expunged from the record and in their place the aforesaid two defendants were inserted.

3. One of the points that was pleaded on behalf of the contesting defendants 1 and 3 in defence against the plaintiff''s claim and with which we are concerned now in this court, was that the suit as framed was not maintainable, having been filed not against proper persons.

4. The trial court decreed the suit in full as against defendant No. 1 and ex parte against defendant No. 2, and dismissed the same against defendant No. 3 on a finding that defendant No. 2, Jai Prakash Varma had the necessary authority to order for and sign on behalf of the Store for the purchases in question. It also held that the suit was maintainable against defendants 1 and 2 in its present form. On appeal by the appellants in the court below, the learned Additional District Judge, relying upon a Bench decision of this court is the case of Radhe Lal and Another Vs. East Indian Railway and Others, , held that an order of amendment of the plaint dated 10-3-1969 did not bring any change in the identity of the original defendants and the suit in substance was against the Sotre through its agents, the two defendants, namely, defendants 1 and 2. That court, however, held, that the claim of the plaintiff to the extent of Rupees 2265/35 was barred by limitation and, accordingly, allowed the appeal to that extent and modified the decree of the trial court.

5. The learned Advocate-General appearing in support of this appeal in this court has seriously challenged the legality of the finding of the court below on the question of maintainability of the suit as framed against defendants 1 and 2. He contended that the two defendants as described, were neither any legal entity nor any person but were merely two officers of the stores and no decree could be passed against these two defendants as such. With reference to the provisions of Order 7, Rule 1 (c) of the CPC it was contended that the plaint must describe the name of the defendant, description and his place of residence, so far as they could be ascertained. What learned counsel meant by this submission was that unless a defendant was body corporate or such an institution, which was a legal entity in the eye of law and could be sued in that name, a suit in the name of merely an office was not maintainable and no effective decree could be passed

by a court of law. In support of this proposition reliance was placed upon the cases of the The Sheriff of Bombay Vs. Hakmaji Motaji and Co., ; Manahem S. Yeshoova Vs. Union of India and Others, and P.B. Shah and Co. and Others Vs. Chief Executive Officer and Others, .

6. As the question raised is of some interest and importance, I propose to discuss the cases relied upon by the learned Advocate General in some detail. In the first case of the Bombay High Court, cited by him a judgment debtor escaped from the custody of the bailiffs of the Sheriff of Bombay. The plaintiffs after giving a notice claiming damages for the escape of the prisoner, brought a suit against "the Sheriff of Bombay." Appearance was made on behalf of the then Sherif of Bombay Mr. Ishwardas Lakhmidas in July, 1924, and written statement was filed on his behalf. When Mr. Ishwardas Lakhmidas was succeeded by another Sheriff, the plaint was amended in 1926 and thereafter until the delivery of judgment the Sheriff changed 3 or 4 times. One of the points raised in the suit by the defendant was that the suit did not lie in the form in which it was filed against "the Sheriff of Bombay." The suit was, however, decreed by the trial court in part. The learned Judges of the Bombay High Court, when the matter went before them, in answer to this question, held that a public servant cannot be sued in his official name and the suit if any, that could be brought, should have been brought in the personal name of the Sheriff concerned, if he was personally liable for the action and defaults of his bailiffs, and the suit was dismissed on this ground. With reference to Sections 79 to 82 and Order 27 of the CPC it was further observed that neither the sections nor the order gave any warrant for the contention that the action could be brought in any other way except against the individual as an individual, holding such office, with, respect to an act purporting to have been done by him in his official capacity.

7. A learned single Judge of the same High Court in the case of Manahem S. Yeshoova Vs. Union of India and Others, had to consider a similar question. In this case a suit was instituted for certain declarations and for a money decree by the plaintiff of that suit whose 310 tolas of gold was seized by the Custom Officials while he was travelling by a ship, by an order dated 29-12-1950 passed by the then Collector of Customs for violation of certain provisions of the Sea Customs Act. Having failed in his attempts in the departmental proceedings, he instituted a suit against the ''Collector of Customs'', who was the second defendant in the action, the first defendant being the Union of India. On a question being raised regarding the maintainability of the suit against ''the Collector of Customs'', it was held that the Collector of Customs was not a legal entity but merely an office occupied by several persons from time to time as appointed by the authorities. On prima facie grounds a suit cannot be filed against any one who is not a legal entity. The Collector of Customs was not a legal entity or a person against whom the suit could be filed and, accordingly, the suit against the second defendant in official description was not maintainable.

8. In the case before the Calcutta High Court in the case of P. B. Shah (supra) a

suit was instituted challenging the validity of the order of demolition of some premises passed by the then Commissioner, Corporation of Calcutta, in April, 1958. The first defendant was described as follows :--

"Chief Executive Officer, Corporation of Calcutta working for gain at No. 5, Surendra Nath Banerjee Road, Calcutta."

Bachawat, J., (as he then was), who delivered judgment for the court while answering the question as to whether the suit against the first defendant was competent, held that the chief Executive Officer was not a corporate body nor there was any provision in the Calcutta Municipal Act, 1951, to the effect that the person occupying those offices might sue or be sued by their official title and designation. In that view of the matter, the ordinary law applicable to suits, as already referred to by me, namely, Order 7, Rule 1 (c) of the Code, must be followed and it is, in view of the aforesaid decisions, clear that if the plaintiff intends to sue any person who for the time being occupies any public office, he must implead such person in his individual name and he cannot be sued by his official title unless there is provision in some Statute for that purpose.

9. The relevant provision of the Bihar and Orissa Co-operative Societies Act, 1935, is contained in Section 13, which provides that the registration of a society shall render it a body corporate by the name under which it is registered, which can institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted. There is, therefore, no authority in the relevant provision of the said Act under which the Manager or the Superintendent of that Society could be sued, in the name of his office only.

10. Now I may deal with the decision of this court, which has been relied upon by the learned Subordinate Judge and upon which strong reliance was placed by Mr. J. C. Sinha, learned counsel appearing on behalf of the respondents here as well. It is the case of Radhe Lal and Another Vs. East Indian Railway and Others, . This was a case for compensation against the then East Indian Railway Company for non-delivery of certain bail of cloth, which was described as agent of the East India Railway. In the plaint, allegation for the loss was made in several paragraphs against the Railway Administration and the process that was ordered to be issued was against the East Indian Railway Company; the defendant, which appeared in the suit, was not the agent but the Railway Company itself and filed the written statement as such. An abjection was, however, taken subsequently after several adjournments that the suit against the agent was not competent. From this fact it is manifest that although the defendant Railway was described through its agent, the Railway Administration itself entered appearance and contested the suit in its own name. On these facts it was held by this court that the description of the defendant was a mere mis-description and the suit was decreed. It was pointedly observed that if upon a fair reading of the plaint it was made out that the description of the defendant was a mere error and that the Company was the real defendant then the suit might proceed against the company. The facts of this case have no bearing on the case in hand and the

principle laid down therein cannot be relied upon for passing a decree in favour of the plaintiff.

11. I have already referred to the petition for amendment of the plaint filed by the plaintiff, from which it cannot be argued That the consumer store was intended to be impleaded as defendant and the mention of the first two defendants was its mere mis-description. I may also refer to the provision contained in Section 230 of the Indian Contract Act, which lays down that in the absence of any contract to that effect, an agent cannot personally enforce contracts entered into nor the same could be enforced against him. It is not the case of the plaintiff that the Principal as such could not have been sued. Taking a different view will also bring in very anomalous position. The decree of the courts below as passed in the present form will be executable against the persons who happen merely to be occupying those offices for the time being and the moment they are out of their offices, their liability ceases. It has already been seen that the two officers, namely, Mr. H. P. Verma and Mr. Jai Prakash Verma, who were originally impleaded as defendants, had left the Store from their respective offices. Those two offices must have been filled up successively by different persons and this process will go on till the execution is levied. Court of law cannot pass such an ambiguous decree.

12. I am, therefore, definite, in my view, that the suit of the plaintiff against the defendants was incompetent and has been wrongly decreed by the courts below. For the foregoing reasons I allow this appeal, set aside the judgment and the decree of the court below and dismiss the plaintiff''s suit but on the facts and in the circumstances of the case there shall be no order as to costs.

