

(1962) 02 PAT CK 0016
In the Patna High Court
Case No : A.F.A.D. No. 83 of 1961

Satya Kinkar Chatterjee

APPELLANT

Vs

Babulal Rajwar

RESPONDENT

Date of Decision : 22-02-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 35
Limitation Act, 1908 — Article 102, 7

Citation : AIR 1962 Patna 356

Hon'ble Judges : K. Ahmad, J

Bench : Single Bench

Advocate : Sushil Kumar Mazumdar, for the Appellant; Balbhadra Prasad Singh and S.B. Sanyal, for the Respondent

Judgement

K. Ahmad, J.—Defendant is the appellant. The claim of the plaintiff was that he worked as a driver of the defendant from 1st September 1953 to the 18th September, 1956, on a monthly salary of Rs. 100/- per month. But during all that period what he got was only Rs. 480/-; hence the suit for recovery of balance which according to him amounted to Rupees 1980/-. The defence pleaded was that the plaintiff never worked under the defendant either as his driver or in any other capacity and, therefore, the plaintiff was not entitled to the decree prayed for. Therefore, the main question that arose for consideration in the two Courts below was whether the plaintiff was a driver of the defendant as alleged by him. On this point, the Courts below have taken opposite views. The trial Court held that the Plaintiff had failed to prove the relationship of master and servant between him and the defendant; accordingly, dismissed the suit. In appeal, that finding has been reversed. The lower appellate Court has come to the conclusion that the plaintiff did work as a driver of the defendant during the aforesaid period. Accordingly it has decreed the suit. Hence, this appeal by the defendant.

2. In my opinion, so far as the relationship of master and servant is concerned,

that is now concluded by findings of fact. Mr. Mazumdar, however, appearing for the appellant, has raised three other points in support of this appeal; (1) that the Court below should have held that the suit as framed is barred under Article 7 of the First Schedule of the Limitation Act; (2) that the amount decreed by the Court below should have been less by Rs. 50/- and (3) that, in any view of the matter, the court below is wrong in allowing the entire cost to the plaintiff; on the contrary, it should have allowed only proper proportionate cost.

3. Now, so far as the first point is concerned, that depends on the interpretation of Article 7 of the First Schedule of the Limitation Act. That Article reads-- "For the wages of a household servant, artisan or a labourer. As against that, there is another Article, viz. Article 102 which provides limitation, for "wages not otherwise expressly provided for by this Schedule." The question, therefore that arises in this connection is whether a driver in the present case can be held to be as either a household servant, or an artisan; for, in any case, he is not a labourer. In my opinion, the question whether the position of a particular individual is that of a household servant or an artisan depends much on the type of the work that he undertakes or does in the family of the employer. In the present case, the defence pleaded by the defendant was that the plaintiff never worked as his driver. Therefore, on the records of the present case, there is no material sufficient to hold whether the plaintiff can be included within, the definition of the words "household servant or artisan" as given in Article 7.

Mr. Mazumdar has, in support of his contention that the driver in this case is in the position of a household servant and artisan, drawn my attention to the authority in Noor Ali Vs. Kanpur Omnibus Service Ltd., . As against that, Mr. Balbhadra Prasad Singli appearing for the respondent in support of his contention that the Court below has rightly held that on the facts of the present case the Article which applies is Article 102, has placed reliance on the decision in Maniklal Upadhyaya Vs. Ramesh Chandra Acharya, .

I have already stated that on the records of this case there is no material sufficient to find the nature of the work which the plaintiff used to do in the house of his employer. Therefore, broadly speaking he can be taken nothing but to be a driver alone. That being so, it is difficult to hold that he comes, on the facts of the present case either within, the category of household servant or artisan. Household servant is obviously one who works within the house or does anything in connection therewith. An artisan is one who as explained in the Webster Dictionary is "trained to manual dexterity in some mechanic art or trade". In the latter sense, a driver may or may not be an artisan as held in the aforesaid decision in Maniklal Upadhyaya Vs. Ramesh Chandra Acharya, . If, in fact, a driver is also a mechanic, he may be classified as an artisan; but in the present case there is no material on the record, as stated above, that the present plaintiff is a mechanic as well. For these reasons, I think, the Court below has rightly held that on the facts of the present case the Article which is applicable is Article 102 and not Article 7.

4. The second point raised by Mr. Mazumdar related to the question of decree passed by the lower appellate Court. According to the submission made by him that amount should have been less by Rs. 50/-. In my opinion, there is no substance in this contention. The Court below has found that the rate at which, the plaintiff is entitled to get his salary is Rs. 60/- and out of it Rs. 480/-, as admitted by him, is to be set off. Thus worked, the arrear comes to the amount as decreed by the Court below. Therefore, this point too failed.

5. The third point, however, is not without substance. The claim regarding salary made by the plaintiff was at the rate of Rs. 100/- per month but what has been decreed is only at the rate of Rs. 60/- per month. Therefore, in my opinion, the costs of the two Courts below should have been given to the plaintiff in proportion to the success of his claim and not beyond that.

6. Accordingly, the appeal is dismissed with costs, subject to the modification as stated above.