

(1975) 02 PAT CK 0005
In the Patna High Court
Case No : A.F.O.D. No. 432 of 1965

Sheo Prasad Santhelia and Another	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 18-02-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 80
Contract Act, 1872 — Section 70
Limitation Act, 1908 — Article 26, 64

Citation : AIR 1975 Patna 321 : (1975) 8 PLJR 368 : (1975) PLJR 368

Hon'ble Judges : S.K. Choudhuri, J; Madan Mohan Prasad, J

Bench : Division Bench

Advocate : J.C. Sinha and Bishwanath Agrawal, for the Appellant; S.B.N. Singh and Dilip Kumar Sinha, for the Respondent

Final Decision : Partly Allowed

Judgement

S.K. Choudhuri, J.—This appeal has been preferred by the plaintiffs against the judgment and decree passed by the Additional Subordinate Judge, Madhepura.

2. A suit was filed by the plaintiffs for recovery of Rs. 12,201/- on account of the dues which remained with the defendants on different items as mentioned in the plaint, for declaration that certificate case No. 147 of 1961-62 filed in the Court of the Certificate Officer. Supaul is illegal and liable to be cancelled and for the relief of a permanent injunction restraining the defendants from proceeding with the said certificate case. The plaintiffs case in short is that he was stockist of foodgrains for the Supply and Price Control Department. Supaul and plaintiff No. 2 had no concern with the aforesaid business at any time. The plaint states that plaintiff No. 1 was appointed as stockist on the 27th of May, 1955 and he executed a letter of undertaking Which was signed by plaintiff No. 1 on the one hand and by defendant No. 4, Welfare Officer, Koshi Project on the other. A copy of this agreement has been made annexure "A" to the plaint. It is said that plaintiff No. 1 continued to work as stockist from 1955 till April, 1957 and an

unilateral agreement was signed by plaintiff No. 1 alone on 18-6-1955. copy of which has been made annexure "A"/1A to the plaint.

The plaint further states that in May 1955, plaintiff No. 1 received 4837 Mds 37 seers of local rice from Nirmali and the said stock remained undisposed of in the Sodown of plaintiff No. 1 for about one and half years which resulted in the deterioration of the said foodgrains which became infested with worms. The department called tender for the disposal of the said stock but ultimately it was not disposed of. In December. 1956, there was a verification of the stock and it has been alleged that shortage found was 119 mds 37 seers 4 chataks. The further case of the plaintiff is that some time in May, 1956. Burma Arwa rice which wag stored at Allahabad for two years and deteriorated and infested with worms and insects was received by plaintiff No. 1 amounting to 9579 mds 37 seers 8 chataks. Thia stock remained with the plaintiff and had further deteriorated and became unfit even for storage and therefore plaintiff No. 1 requested the department to dispose of the said stock but the department did not pay any heed to the said request.

It is said that there was a serious loss, deterioration and shortage of grain which wag beyond the control of plaintiff No. 1. The rice was used to be given to the dealer from time to time in presence of the Welfare Inspector after getting the same cleaned and separating the refuse from it which was the main cause of shortage. It has further been alleged by the plaintiff that in December, 1956, there was a partial verification of the aforesaid stock of Burma rice and on its basis calculation of shortage was made for the whole stock which came to 301 mds 36 seers 4 chataks. The plaint further states that in March and April, 1957, plaintiff No. 1 delivered the entire stock after clearing and seiving the foodgrain which caused huge shortage. This was done in presence of the Welfare Inspector and thus by the end of April. 1957 the whole stock was exhausted. The shortage was due to no fault of plaintiff No. I. It has been alleged that the rice used to be sold with gunny bags and the price realised by the Welfare Officer and plaintiff No. 1 had nothing to do with that.

The dealers returned 3340 bags which were old and damaged and 392 bags remained in the godown of the plaintiff. Plaintiff No. 1 was always ready and willing to deliver the aforesaid bags to the department but the department never took delivery of the aforesaid bags. Plaintiff No. 1 has therefore claimed rent for the godown for keening the aforesaid bags. The plaint also gives the detail of items of accounts of claims in paragraphs 21 to 25 and 28 of the plaint. It has been further pleaded in the plaint that the department behind the back of the plaintiffs filed certificate case No. 1 of 1957-58 against the plaintiff No. 1 in which the latter filed an objection which was rejected but ultimately in appeal the same was allowed by the Additional Collector, Saharsa, who was pleased to remand the case by his order dated 10-6-1959. Thereafter the department withdrew the certificate case and accordingly it was dropped by an order dated 9-11-1959. Plaintiff No. 1 thereafter asked the department to pay his dues but

no heed was paid by them. Thereafter the plaintiff No. 1 sent a notice u/s 80. Civil P. C. to the defendant in July, 1961.

After receipt of notice, the plaintiff states, the defendants wrongfully filed a certificate case against plaintiffs Nos. 1 and 2 being certificate case No. 147 of 1961-62 claiming Rs. 9,903.43 paise besides interest after adjusting the security deposit. It has been pleaded in the plaint that the statement of accounts given with the said certificate case is wrong and nothing, is due to the department, plaintiff No. 2 was or is neither a partner with plaintiff No. 1 nor plaintiff No. 2 has executed any agreement with the department. He was never a stockist and he had nothing to do with the business and has been dragged in the aforesaid certificate case unnecessarily. The plaintiffs thereafter filed an objection to the aforesaid certificate case which was rejected by an order dated 21-7-1962. It has been further pleaded that the certificate officer had no jurisdiction to issue the aforesaid certificate and that the defendants have waived the notice u/s 80. Civil P. C. as they had secured orders for the distress warrant returnable within one month, that is before the expiry of two months as required u/s 80, Civil P. C. With the aforesaid allegations the present suit has been filed.

3. The defendants have jointly filed a written statement contesting the suit. They have however admitted that plaintiff No. 1 was the stockist of food-grain at Supaul under the Supply and Price Control Department from 1955 to April, 1957, and that he deposited Rupees 5,945/- as security deposit. It has been further admitted that the plaintiff was entitled to commission at the rate of 1 per cent on the value of the stock moved or sold and that a room was taken on rent from the plaintiff from 1-6-1955 to 31-12-1958 at the rate of Rs. 25/- per month which was the fair rent fixed for the said room. It has been further pleaded in defence that plaintiff No. 1 executed an agreement and he was removed from the stockist by a letter of the department dated 12-4-1957. The plaintiffs were responsible for the shortage found by the department and the said shortage was not due to any fault of the department but due to negligence of the plaintiffs.

It has also been pleaded in defence that the correct amount payable under various heads to the plaintiffs was Rupees 6,353/12/9 as contained in the statement of account which has been made a part of their written statement. The correct account has been furnished in certificate case No. 147 of 1961-62 and as per the said account the department is entitled to Rs. 9,903.43 paise which is the price of rice found short after adjustment of the dues payable to the plaintiffs. The further defence is that the suit is barred by limitation and notice under S. 80, Civil P- C. given by the plaintiffs is invalid and that on account of non-compliance of the provision of the said Section 80. Civil P. C. which is a mandatory one the suit is liable to be dismissed. The defendants have never waived the requirement of the aforesaid notice. With the aforesaid allegations the defendants have pleaded that the plaintiffs are not entitled to any relief and the suit is liable to be dismissed.

4. The trial Court after discussion of the evidence on the record and hearing of

the parties by its judgment decided all the issues in favour of the plaintiffs except issue No. 5. The said issue namely No. 5 as worded by the trial Court is as follows:

"Whether the suit is bad for want of compliance with Section 80, Civil P. C. and whether in the present case the defendants will be deemed to have waived the notice u/s 80, Civil P. C." On this issue the trial Court has given a finding that there has been non-compliance of the mandatory provision of Section 80, Civil P. C. and there is no evidence to show that this provision has been waived by the Government. On this finding, though on merits, the trial Court has held in favour of the plaintiffs, it dismissed the suit in toto. It will be proper to state here the other findings recorded by the trial Court and they are as follows:

- (1) The plaintiffs have succeeded in proving the claim as made in the plaint.
- (2) The contract or agreement between the parties not being in conformity with Section 175(3) of the Government of India Act and Article 299 of the Constitution of India, the certificate case No. 147 of 1961-62 directing recovery of the amount by distress warrant is fit to be cancelled and set aside.
- (3) The amount in the certificate case is not recoverable as a public demand as the agreement between the parties is not valid.
- (4) The suit is not barred by limitation.
- (5) The claim in the present suit is recoverable u/s 70 of the Contract Act, though the contract is void and hit by Section 175(3) of the Government of India Act and Article 299 of the Constitution of India.

5. Being aggrieved by the ultimate decision of the trial Court dismissing the suit for non-compliance of the mandatory provision of Section 80, Civil P. C., the plaintiffs have preferred this present appeal. During the pendency of this appeal the plaintiffs filed an application for amendment of the plaint on 12-7-1974. This petition for amendment was pressed at the time of hearing of the present appeal.

6. Mr. J.C. Sinha, learned counsel appearing on behalf of the plaintiff-appellants has pressed this application for amendment at the initial stage of the argument and has contended that it is a fit case where the present amendment sought for ought to be allowed. According to him the amendment sought for is of simple nature and does not change the nature of the suit in any way nor the cause of action. By the amendment petition his client wants merely to delete the name of plaintiff No. 2 from the plaint and also to delete the two reliefs namely reliefs Nos. 2 and 3 of the plaint and no question of prejudice arises to the defendant-respondent.

7. I shall first dispose the aforesaid petition before I enter into any other question that has been canvassed at the bar. The question is as to whether the amendment sought for before this Court can be allowed on the facts and in the circumstances of the case. As already stated all the issues have been decided in

favour of the plaintiff-appellants except issue No. 5 upon which the decision resulted in the dismissal of the suit. As aforesaid during the pendency of this appeal an application for amendment of the plaint under Order 6. Rule 17 read with Section 151, Civil P. C. has been filed before this Court on 12-7-1974. In paragraph 13 of the said application, the appellants have prayed for the following amendment namely;

(a) Jagdish Prasad Santhalia should be deleted from the category of plaintiffs.

(b) Wherever the word "plaintiffs" occurred in the plaint it should be read as plaintiff and wherever the word "plaintiff No. 1" occurs in the plaint it should be read as plaintiff.

(c) In paragraph 3 "the plaintiff and his brother Jagdish Prasad Santhalia are separate" should be read in place of the words "the plaintiff and his brothers but they are separate."

(d) The plaintiff No. 2 in the plaint should, read as Jasdish Prasad Santhalia.

(e) Reliefs Nos. II and III in paragraph 47 of the plaint should be deleted." The aforesaid amendment has been sought for by the appellants to meet the decision on issue No. 5 aforesaid which has gone against them and which has resulted in the dismissal of the suit. The only question for determination with regard to the present amendment is as to whether the amendment sought for changes the nature of the suit or introduces a new cause of action and a different case altogether. Learned counsel for the respondent has however objected to the present amendment to be allowed on the ground that such amendment if allowed would intro duce a new case and the respondent would be prejudiced at this stage. In support of the aforesaid contention put forward on behalf of the appellants. Mr. J. C. Sinha. learned counsel has relied upon a decision of the Supreme Court in the case of A.K. Gupta and Sons Vs. Damodar Valley Corporation, .

He has contended that the said case will apply on all fours to the present case. In that case a declaration was sought for by the plaintiffs respondents that on a proper interpretation of the clause of the agreement it was entitled to an enhancement of 20 per cent over the tendered rates. No consequential relief was prayed for in the said suit and court-fee on the basis of the declaration sought for was paid. The trial Court decreed the suit. In appeal the High Court at Patna reversed the said decision. It held that the suit was hit by Section 42 of the Specific Relief Act and dismissed the same. The amendment sought for before the High Court was for adding an extra relief to the following effect:

"That a decree for Rs. 65,000/- or such other amount which may be found due on proper account being taken may be passed in favour of the plaintiff against the defendant."

The said amendment application was rejected by the High Court. Thus the suit stood dismissed by the decision of the Patna High Court. The matter came up in

appeal before the Supreme Court and the amendment application which was rejected by the Patna High Court was pressed. It has been held in that case in paragraphs 7, 8 and 9 as follows :

"It is not in dispute that at the date of the application for amendment a suit for a money claim under the contract was barred. The general rule, no doubt is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred. *Weldon v. Neale*. (1887) 19 QBD 394. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts the amendment will be allowed even after the expiry of the statutory period of limitation : see AIR 1921 50 (Privy Council) and *L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.*, .

The principal reasons that have led to the rule last mentioned are first, that the object of Courts and rule of procedure is to decide the rights of the parties and not to punish them for their mistakes (*Cropper v. Smith*. (1884) 26 Ch D 700 (710-711)) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended (*Kisandas Rupchand v. Rachappa Vithoba*. (1309) ILR 33 Bom 644 approved in *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others*, .

The expression "cause of action" in the present context does not mean "every fact which it is material to be proved to entitle the plaintiff to succeed" as was said in *Cooke v. Gill* (1873) 8 CP 107 (116), in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want change or add an immaterial allegation by amendment. That expression for the present purpose only means a new claim made on a new basis constituted by new facts. Such a view was taken in *Robinson v. Unicos Property Corporation Ltd*. 1962-2 All ER 24, and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words "new case" have been understood to mean "new set of ideas" *Dornan v. J.W. Ellis and Co. Ltd*. 1962-1 All ER 303. This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time." Applying the aforesaid principles the Supreme Court allowed the amendment sought for in that case by allowing the extra relief to be added and ultimately allowed the appeal. In my opinion, the submission made by learned counsel for the appellants is correct and applying the aforesaid decision in the present case the amendment sought for has to be allowed. The present amendment, in my opinion, does not introduce a new cause of action or a new case. The plaintiffs have sought for deletion of the two reliefs in the plaint namely reliefs Nos. II and III in paragraph 47 of the plaint and the name of the plaintiff No. 2 from the category of plaintiffs. by such amendment the respondents are not in any way prejudiced. It

has been pleaded by the plaintiffs in the original plaint that plaintiff No. 2 has no concern with or interest in the business of plaintiff No. 1 and plaintiff No. 1 alone was the stockist of foodgrains under the Supply and Price Control Department, Supaul.

No new facts have been introduced in the plaint which the respondents would have to answer and no fresh evidence would also be necessary to be adduced by the parties if such amendment be allowed. I therefore allow the prayer for amendment of the plaint. The plaint is now to be read as it stands after the aforesaid amendment. Thus it is now a suit by plaintiff No. 1 alone as the sole plaintiff for recovery of Rs. 12,201/- along with a prayer for general reliefs for costs and any another reliefs. This contention on behalf of the appellants is thus accepted and decided in favour of the appellants. I further hold that amendment having been allowed the point that notice u/s 80, Civil P. C. was given by the plaintiff No. 1 alone whereas the present suit has been filed by two persons as plaintiffs is no longer available to the respondents.

8. Learned counsel for the appellants basing his argument on the original plaint as it stood before the amendment next contended that the Court below has wrongly decided that the suit was bound to fail for the non-compliance of the mandatory provision of Section 80, Civil P. C. His argument was that reliefs Nos. 2 and 3 of the plaint were ancillary to relief No. 1 which was the main relief claimed in the suit and therefore the suit could not fail for joining plaintiff No. 2 in the suit and for asking for reliefs 2 and 3 which became available only after the certificate case No. 147 of 1961-62 was filed. He contended that thus certificate case having been filed after service of notice upon the defendants the plaintiffs were entitled to claim reliefs Nos. 2 and 3 and no fresh notice u/s 80 was necessary. I am afraid I cannot accept the aforesaid contention.

In this case notice u/s 80, Civil P. C was given on the 1st of July, 1961 which was duly received by the defendants. After service of notice a fresh certificate case being No. C. C. No. 147 of 1961-62 was filed on 21-7-1962 and the present suit was filed thereafter on the 20th August, 1962. But looking to paragraph 47 of the plaint it will appear that relief No. 1 was for passing a decree for Rs. 12,201/- after accounting. Relief No. 2 was for cancelling the certificate case and relief No. 3 was for restraining the defendants permanently from proceeding with the said certificate case. In my opinion if the original plaint would have stood unamended then it was necessary to give a fresh notice u/s 80, Civil P. C. to the defendant before the present suit could have been filed, but it appears that no fresh notice u/s 80, Civil P. C. was given before filing the original plaint with reliefs Nos. 2 and 3.

It is true that the dispute in the suit and the dispute in the aforesaid certificate case arose out of the rights and obligation created between the parties under the same contract and the decision in the suit with regard to the claim for relief No 1 will finally settle the dispute between the parties which will be binding in the certificate case also. In my opinion, if the aforesaid amendment would have been

disallowed then plaintiff No, 1 having joined with plaintiff No. 2 and they having claimed reliefs 2 and 3 as well it was necessary for the plaintiffs to serve a fresh notice u/s 80, Civil p. C. But as I have already allowed the amendment of the plaint and after such amendment the suit as it now stands is by plaintiff No. 1 alone for the relief No. 1 only, which conform on all fours with the notice issued u/s 80, Civil P. C. the adverse decision recorded by me on this point will not affect the plaintiffs' suit in any way.

9. While this point of notice was being argued at the Bar learned counsel for the appellants relied upon the case of Raghunath Das Vs. Union of India (UOI) and Another, ; Province of Bihar v. Kamakshya Narain Singh AIR 1950 Pat 366) and the State of Andhra Pradesh Vs. Gundugola Venkata Suryanarayana Garu, . None of these decisions has any application in the present appeal as will be found from the discussion which I am going to make. In the Supreme Court case Raghunath Das Vs. Union of India (UOI) and Another, a suit was brought by one Raghunath Das. Before he could bring the suit for recovery of certain amount of money he served .a notice u/s 80, Civil P. C. The said notice was sent by Raghunath Das Mulkrai but was signed by the aforesaid Raghunath Das as proprietor.

Strong reliance was placed at the time of argument of Raghunath Das's case on the case of S.N. Dutt Vs. Union of India (UOI), where it has been held that identity of the person issuing the notice was not the same as the person who brought the suit and therefore the notice u/s 80, Civil P. C. was invalid. Their Lordships of the Supreme Court held that the said case did not apply to the facts appearing in Raghunath Das's case. It has been held that as Raghunath Das signed the notice as proprietor of the firm it gave a clear indication that the firm Raghunath Das Mulkrai was a proprietor concern and there was no difficulty in understanding the identity of the would be plaintiff on reading the notice as a whole. In such circumstances, the Supreme Court following the decision in the case of Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI), had said in paragraph 9 as follows :

"In Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI), at page 2811 this Court observed that while the terms of Section 80, CPC must be strictly complied with that does not mean that the terms of the section should be construed in a pedantic manner or in a manner completely divorced from common sense."

Their Lordships of the Supreme Court therefore held that as there was no difficulty in the identity of the "would be plaintiff" the notice could not be said to be invalid and accordingly they allowed the appeal. This decision on the facts is distinguishable from the facts of the pre-sent case under consideration and has no application.

The next case which I shall discuss is State of Andhra Pradesh Vs. Gundugola Venkata Suryanarayana Garu, . This case also has no application. It is a case where two persons served the notice and ultimately one of them brought the

suit. The said two persons on behalf of all the Inamdars Save notice u/s 80. Civil P. C. but later on the suit was subsequently filed after the expiry of the statutory period of two months as required u/s 80, Civil P. C. by one of them in a representative capacity after obtaining the permission of the Court as required under Order 1. Rule 8, Civil P. C. Their Lordships pointed out that the notice sought to raise a grievance on behalf of all the Inamdars against issue of a notification under Madras Act 30 of 1947, in pursuance of which the Government treated the Inamdars as "Estate" within the meaning of Section 3 (2) (d) of the Madras Estates Land Act. 1908 and thereby sought to prevent the Tnamdars from collecting contractual or customary rent from the tenants who held lands under the said Inamdars.

Their Lordships referred to two decisions reported in Vellavan Chettiar v. Govt. of Province of Madras AIR 1947 PC 397) and AIR 1949 143 (Privy Council) , discussed them and distinguished them. They pointed out that in the case reported in AIR 1947 PC 197 the relevant claims made by the plaintiffs were personal but only one of them served the notice. In the latter case reported in AIR 1949 143 (Privy Council) two trustees served notice u/s 80, Civil P. C. but one of them died and two new trustees were appointed in his place. The suit was ultimately brought by two new trustees and the old surviving trustees as plaintiffs. In such circumstances, it has been held in that case that fresh notice was necessary. After distinguishing the aforesaid two cases of the Privy Council their Lordships have held inter alia as follows:

"The only departure from the notice was that two persons served a notice u/s 80 informing the Government that a proceeding would be started in default of compliance with the requisition for violation of the rights of the Inamdars and one person only out of the two instituted the suit. That in our judgment is not a defect which brings the case within the terms of Section 80. The right to institute a representative action may be exercised by one or more persons having interest which is common with others but it can only be exercised with the permission of the Court. If the Court grants permission to one person to institute such representative action if that person had served notice u/s 80 the circumstance that another person had joined him in serving the notice but did not effectuate that notice by joining in the suit would not in our judgment be a sufficient ground for regarding the suit as defective."

Their Lordships therefore negated the contention of the appellant (State of Madras) that the suit was liable to be dismissed because of absence of identity between the persons who served the notice u/s 80, Civil P. C. and the person who sued.

10. The next case relied upon is Province of Bihar Vs. Kamakshya Narain Singh, . It is enough to point out that this case was taken notice of in the case of the The State of Bihar and Another Vs. Jiwan Das Arya, . Paragraph 10 of the said judgment states as follows :

"In Province of Bihar Vs. Kamakshya Narain Singh, it was not decided that if the suit is in the nature of a bill quia timet, no notice u/s 80 of the Code is mandatory. This decision is often misunderstood. In paragraphs 8 and 9 of the Judgment of Ruben, J., as he then was, contentions in support of this view were noted and thereafter it was observed that these were difficult questions to be tried at the suit and hence the case before their Lordships was not a fit one where temporary injunction during the pendency of the suit should be refused."

11. Thus my conclusion is that all the aforesaid three cases relied upon by learned counsel for the appellants have no application to the facts of the present case. We have however come across a Bench decision of this Court which has already been referred to by me above reported in The State of Bihar and Another Vs. Jiwan Das Arya, . This case is on the point of waiver but the learned counsel for the appellants has not addressed us on the point of waiver and that is why probably no reference was made at the Bar to the case reported in The State of Bihar and Another Vs. Jiwan Das Arya, and therefore this case does not require any further discussion.

12. Learned counsel for the respondent however contended that the Court below has erred in law that part of the claim in the suit by which the plaintiffs have asked for recovery of arrears of rent for the godown from 1-6-1955 till 31-12-1958 is clearly barred by limitation, as limitation for such claim is only three years. The present suit having been filed on 20-8-1962 is clearly beyond three years from such date. Learned counsel for the appellants on the other hand, contended that this claim in question is actually not a claim for rent but arose out of an obligation between the two parties by which the latter, that is, the defendants took advantage which fell within the ambit of Section 70 of the Contract Act. His contention therefore is that Article 120 of the Limitation Act will apply and not Article 64 of the Limitation Act as decided by the Court below. Learned counsel for the appellants concedes that if the aforesaid claim in question could be construed as a claim for recovery of arrears of rent then the same is clearly barred by three years rule of limitation. In order to decide this point it is necessary to look to the plaint itself to find out the nature of the claim so far this item relates. Paragraph 25 of the plaint relates to this item of the claim which runs as follows:--

"That the Welfare department of Kosi Project at Supaul took one room from the plaintiff No. 1 for keeping the materials and other purposes on monthly rental of Rs. 40/- and continued in occupation of the same from 1-6-1955 to 31-12-1958. The rent of the godown was fixed by the S. D. O. at the rate of Rs. 25/- per month behind the back of the plaintiff No. 1 later on. The department has not paid the rent of the godown and always gave assurance to the plaintiff that the rent of the godown will also be given at the time of final accounting which has not been done as yet. The plaintiff No. 1 claims the rent of the godown at the rate of Rs. 25/- per month and the plaintiff is entitled to get Rs. 1,075/- the rent of the godown which the department acknowledged by letter dated memo No.

242D/ 13-3-58."

Thus on reading of the plaint it is clear that this amount of Rs. 1,075/- has been claimed as godown rent for the period from 1-6-1955 to 31-12-1958, and it cannot be held from such pleadings aforesaid that this amount arose out of an obligation coming within the ambit of Section 70 of the Contract Act. In that view of the matter the following rulings relied upon by learned counsel for the appellants namely in the case of Kora Lukose Vs. Chacko Uthuppan, : Chetan Das Gulabchand v. State of Bihar AIR 1958 Pat 5121 and Bapiraju and Others Vs. Khun Btha-dur Mohammad Azimtulla Khan Sahob and Others, have no application. They are all cases u/s 70 of the Contract Act and the present claim dealt with above cannot be said to be a claim covered by Section 70 of the Contract Act. It is clearly a claim for godown rent and the same is covered by three years rule of limitation and therefore it is prima facie barred by limitation.

13. Before concluding I must say that the findings on the merits of the claim having been decided in favour of the appellants learned counsel for the appellants has not addressed us on them but confined his argument to the points already discussed by me above. Learned counsel for the respondents on the other hand replied to the argument put forward on behalf of the appellants. He did not challenge before us the findings recorded with regard to the different claims discussed and allowed by the trial Court except the item relating to the godown rent. I have perused the judgment of the trial Court and I am fully in agreement with the decisions arrived at on issue No. 1 by trial Court except the decision on godown rent. The trial Court has discussed the oral evidence of the parties thoroughly and also documentary evidence in detail relating to different items of claim made by the plaintiffs. In that view of the matter I uphold the findings recorded by the trial Court relating to different items of claim made by the appellants except the claim for Rs. 1,075/- charged as godown rent which has been held by me above to be barred by limitation. No other point was raised in this appeal.

14. In the result the appeal is allowed in part as indicated above but in the circumstances of the case the parties will bear their respective costs throughout.

Madan Mohan Prasad, J.

15. I agree.