

**(1938) 01 PAT CK 0047**  
**In the Patna High Court**

Srinivas Mull and Another

APPELLANT

Vs

Secretary of State

RESPONDENT

---

**Date of Decision :** 27-01-1938

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 80  
Police Act, 1861 — Section 15

**Citation :** AIR 1938 Patna 556

**Hon'ble Judges :** Yarma, J;Wort, J

**Bench :** Full Bench

---

## **Judgement**

Wort, J.—This appeal arises out of an action in which the plaintiffs claimed from the Secretary of State a sum of Rs. 2500 which they contended had been illegally assessed upon them, Government purporting to act u/s 15, Police Act, 1861, as amended by the Act of 1922. The action, was dismissed in limine as it was held by the Court below that Section 80, Civil P.C., had not been sufficiently complied with. The contention in support of that decision by the learned Government Pleader is that by the notice purporting to be u/s 80 the plaintiffs have not sufficiently stated their cause of action.

2. The case made out in the plaint, it appears, is shortly this that the Deputy Magistrate purporting to act for the District Magistrate under Sub-section (4) of Section 15 had made the apportionment and issued the notice, whereas the Section demanded an apportionment and notice by the Magistrate of the District. Now, by the notice which the plaintiffs gave u/s 80 they stated as follows in para. 5:

That the Deputy Magistrate purporting to act for the District Magistrate of Monghyr has served a notice upon my client dated 27th July 1933 making a demand of Rs. 2600-12-0 as an apportioned amount payable by him for up-keep of the additional police force there.

3. The learned Government Pleader, acting on a number of well-known decisions on the question of "what is a cause of action" has contended that what was

necessary in the notice was a statement of the facts which went to make up the plaintiffs' cause of action. The decision most often quoted with regard to what is meant by the expression "cause of action" is in *Cooke v. Gill* (1873) 8 C.P. 107 where Bovill C.J. and two other Judges were considering the question whether certain cause of action arose within the jurisdiction of Lord Mayor's Court of the City of London, and in the course of the judgment by Brett, J., this statement was made:

Cause of action has been held from the earliest time to mean every fact which is material to be proved to entitle the plaintiff to succeed.

4. A similar statement of the law was made in *Read v. Brown* (1889) 22 Q.B.D. 128 by Lord Esher M.R. where the same question came up for decision in what place the cause of action arose. There are a number of decisions in India following the decisions to which I have just referred. But it must be remembered that what was being discussed there was not the expression "stating the cause of action", but what was the cause of action. To state a cause of action it may be sufficient to give a legal description by which a particular cause of action is known, such as, damages for breach of contract and "damages for negligence". But even supposing that the contention of the learned Government Pleader on this point is to be supported, it will be difficult in my judgment to hold that in this case the plaintiffs have not sufficiently stated their cause of action.

5. There are a number of paragraphs in their notice u/s 80 which must under the circumstances be held to be irrelevant. But para. 5 thereof read together with a later paragraph (para. 11) to the effect

that my client asserts that the assessment of costs against him is illegal and ultra vires and secondly the sum assessed is too high

must be held in my opinion to comply with the provisions of Section 80, Civil P.C. Whether the plaintiffs make out, in the action when it is tried, what they have asserted in their notice u/s 80 and in their plaint is entirely another matter. But although para. 5 of the notice may be worded loosely, I think it is impossible to contend that there is not a sufficient indication there that what is complained of is that the Deputy Magistrate was purporting to act u/s 15, Police Act, for the District Magistrate, and that act by the Deputy Magistrate was illegal and ultra vires, and therefore the plaintiffs were entitled to recover under the notice the money paid by them.

6. I purposely omit to give any expression of view as to the merits of the plaintiffs' case; but on the question whether Section 80 had been complied with in the service of notice by the plaintiffs to the Secretary of State, I Unhesitatingly come to the conclusion that there had been sufficient compliance.

7. For those reasons I would hold that the judgments of the Courts below must be set aside and the case remanded to be heard and determined according to law on its merits. Costs will abide the hearing in the Court below.

Yarma, J.

8. I agree. This second appeal arises out of Suit No. 233 of 1934 before the Second Munsif of Monghyr. He dismissed this suit and his order was confirmed by the lower Appellate Court on the ground that notice u/s 80, Civil P.C., was not served on the Secretary of State. A notice was served but the Courts below have held that it does not comply with the requirements of Section 80 of the Code because all the details mentioned in the plaint have not been given in the notice. Section 80, Civil P.C., makes the service of notice by the plaintiff on the Secretary of State imperative and the Section also mentions as to what the notice should contain. The Section says that the notice should be served stating the cause of action, the name of description and place of residence of the plaintiff and the relief which he claims.

9. The question is, whether the notice that was served by the plaintiffs in this case satisfies the requirements of Section 80, Civil P.C. We have looked into the notice and have come across two paragraphs in it which answer the question. Para. 5 states:

That the Deputy Magistrate purporting to act for the District Magistrate of Monghyr has served a notice upon my client dated 27th July 1933 making a demand of Rs. 2500-12-0 as an apportioned amount payable by him for up-keep of the additional police force there.

10. Then after a few intervening paragraphs referring to the plaintiff's position in life and the nature of business that he was carrying on, we come to para. 11 which runs as follows:

That my client asserts that the assessment of costs against him is illegal and ultra vires and secondly the sum assessed is too high.

11. Now, a notice, as I have already mentioned u/s 80, Civil P.C., requires amongst other things the statement of the cause of action. The question is whether the notice out of which I have quoted paras. 5 and 11 has made a statement of the cause of action or not? "Cause of action" has been defined in various decisions and the definition that seems to have been generally accepted is that:

A cause of action means every act which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to the judgment of the Court.

12. Now, I am of opinion on the various decisions mentioned by my learned brother and the accepted definition of "cause of action" that there is no doubt that the cause of action was indicated in the notice that was served by the plaintiffs. As that is the only point on which the case has been disposed of I agree that this appeal should be allowed and the case remanded for decision on its merits.