

(1972) 07 GAU CK 0017
In the Gauhati High Court
Case No : Second Appeal No 118 (H) of 1970

U. Hasaia Pohshna and another	Vs	APPELLANT
U. Kill Dhur and another		RESPONDENT

Date of Decision : 13-07-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : AIR 1972 Guw 86

Hon'ble Judges : Baharul Islam, J

Bench : Single Bench

Advocate : S.C. Das, for the Appellant; D.C. Goswami, for the Respondent

Final Decision : Dismissed

Judgement

Baharul Islam, J.—This second appeal by the defendants is directed against the judgment and decree passed by the Judge, District Council Court, Jowai, in Civil Appeal No. 2 of 1970. The facts of the plaintiffs case, material for the purpose of this appeal, are as follows:-

2. There is a Durbar of three villages, namely, Padu Bah. Padu Mawsku and Mowngap. On 24-10-1964. the defendants, who are father and daughter, were elected treasurers of the Durbar for a term of three years commencing from 24-10-1964, aforesaid. On the said date, the fund of the Durbar amounting to Rs. 3,000/- was deposited with the defendants. After the terms of the treasurers was over, on 29-1-1968, the aforesaid Durbar was convened for electing new office bearers and the defendants also had been asked to attend the meeting with the aforesaid sum of Rs. 3,000/- On 29-1-1968, U Bok Pohshna and Ka Mon Sumer Pohshna were elected as new treasurers of the said Durbar. The Durbar then demanded of the defendants the amount of Rs. 3,000/- so that it could be deposited with the new treasurers. Defendant No. 1, who was present in that meeting, refused to pay the amount and referred the Durbar to the Court for the purpose. The Durbar then on that very day decided to file a case against the defendants and authorised the plaintiffs, who are respectively the Secretary and

the President of the Durbar, to file a suit against the defendants for the recovery of the amount.

3. The plaintiffs obtained necessary permission from the Judge of the District Council Court, Jowai. The Judge gave the permission by his order dated 1-4-1968 in Misc. Suit No. 1 of 1968.

4. The defendants have filed a joint written statement. Their case is that the Durbar was really held on 4-1-1968 and in that Durbar, the defendants were re-elected treasurers. The Durbar held on 29-1-1968 "was the creation of the plaintiffs with their few interested friends". Their case is that they still continue to be the treasurers and are entitled to retain the amount. The plaintiffs had no locus standi to file the suit. The defendants did not deny that the amount of Rs. 3,000/- belonging to the Durbar had been deposited with them and that they are liable to pay that amount to the Durbar; but their contention is that they are entitled to retain it as they were re-elected treasurers.

5. The learned Subordinate District Council Court, Jowai framed the following four issues:-

1. Whether the plaintiffs have got any cause of action against the defendants. 2. Whether the Durbar of the three villages, namely, Padu Bah, Padu Mawsku and Mawngap was held on 29-1-1968 for electing new office bearers. If so, whether the said meeting of the Durbar was proper.

3. Whether the defendants refused to hand over the Durbar money of Rs. 3,000/- as demanded by the Durbar. If so, whether the Durbar has a right to get back the said money or in lieu thereof, to take the lands of the defendants as mentioned in the agreement dated 24-10-1964.

4. What relief or reliefs the parties are entitled to.

6. After trial, the learned trial Court decreed the suit. On appeal, the learned District Council Court upheld the judgment and decree of the trial Court. Hence this second appeal.

7. The first point urged on behalf of the appellants is that the plaintiffs having filed the suit in a representative character, have not complied with the requirements of Order 1, Rule 8 of the Civil P. C. and as such the trial and the impugned decree have been vitiated, Order 1. Rule 8, Civil P. C. provides-

(1) Where there are numerous persons having the same interest in one suit, one or more of such persons may with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of all persons so interested. But the Court shall in such case give, at the plaintiff's expenses, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct. (2) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1)

may apply to the Court to be made a party to such suit.

It may be mentioned here that R. 37 of the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills provides that the High Court and the Courts of the Deputy Commissioner or the Additional Deputy Commissioner and his Assistants shall be guided by the spirit, but not bound by the letters of the Code of Civil Procedure. As the case comes from the Khasi and Jaintia Hills, strict compliance of O. 1, R. 8, Civil P. C. cannot be insisted on Sub-rule (1) of R. 8 of O. 1 consists of two parts. Under the first part, when one or more persons seek to file a suit on behalf of numerous persons, they are to obtain the permission of the Court to file the suit on behalf of or for the benefit of all the persons so interested. The second part enjoins that the Court in such a case shall give at the plaintiff's expense a notice of the institution of the suit to all persons either by personal service or by public advertisement, when there are numerous persons who cannot be reasonably practicably served with notices. In the instant case, the learned Courts below have found that the plaintiffs had obtained the necessary permission of the Court before the suit was filed. Learned counsel submits that the cause of action of the suit arose on 29-1-1968 on which date the defendants refused to pay the amount; but the plaintiff's obtained permission by their application dated 8-1-1968 which is prima facie absurd or collusive. The defendants examined in the case the Sheristadar of the Court who produced the original application dated 8-1-1968 of the plaintiff's. From the petition it has been found that the court-fee fixed on the petition was paid on 8-2-1968 and it was filed on 9-2-1968 on which day, the case was registered as Misc. Case No. 1 of 1968. The learned lower appellate Court has found that apparently the date "8-1-1968" was wrongly put; the correct date was "8-2-1968". Undoubtedly therefore the first part of sub-rule (1) of R. 8 of O. 1 has been complied with, both in letter and spirit.

8. The second part of the aforesaid sub-rule has of course apparently not been complied with. The purpose of the rule is that when a suit is going to be filed in a representative character by one or more persons representing numerous persons, or against one or more persons representing numerous persons, those numerous persons interested in the suit are to know that the suit to be filed is not out of any collusion between the plaintiffs and the defendants on record, but it is for their benefit. Mr. S. C. Das, learned counsel appearing for the defendant-appellants submits that the numerous persons of the aforesaid three villages were not served with notice and in the absence of the fulfilment of the second part of the rule, the trial and the decree have been vitiated. In my view, all the numerous inhabitants of the three villages are not entitled to notice. The persons entitled to notice are only their representatives who are the members of the Durbar. In the instant case, the meeting held on 29-1-1968 took a resolution authorising the plaintiffs to file the suit and all the members who were present in the meeting knew that a suit was going to be filed by the two plaintiffs on behalf of the Durbar or all its members. In the suit the relief is sought only against the two defendants in their individual capacity, and as such nobody else could or

would claim to be joined as defendants. In the instant case, formal compliance of the second part of sub-rule (1) of R. 8 was not necessary.

9. The next submission of learned counsel is that the finding of the learned lower appellate Court that the election was held on 29-1-1968 and not on 4-1-1968 is perverse, as according to him, the evidence on record has not been fully discussed. The learned lower appellate Court has found that it is a fact that the Durbar was convened on 4-1-1968. One of the items of the agenda was election of office bearers of the Durbar. But as on that day, the defendant No. 1 representing defendant No. 2 as well, attended the meeting without the amount of Rs. 3.000/-. the meeting was adjourned till 29-1-1968, in order to enable the defendants to come prepared with the money. Ext. 1(3) is the copy of the proceedings of the Durbar dated 4-1-1968. Exit. 1(1) is the copy of the proceedings of the meeting of the Durbar held on 29-1-1968. The evidence of defendant No. 1 is that as all the old office bearers and the Executive Members were reelected, proceedings were not recorded. He has denied the meeting held on 29-1-1968 although in the written statement he admitted the holding of the meeting, but averred that the meeting was confined to a few members friendly to the plaintiffs. The evidence of the plaintiff and his witnesses is that a meeting was held on 29-1-1968 and in that meeting, defendant No. 1, who also represented his daughter, defendant No. 2, was present; but he was not ready with the money. Their evidence is that the defendants were not reelected treasurers; but U Bok Pohshna and Ka Man Sumer Pohshna were elected new treasurers. In that meeting, a resolution was passed authorising the Secretary and the Chairman to institute a suit against the present defendants. Considering the documentary evidence, namely, Exts. 1(1) and 1(3) and the oral evidence of the plaintiff No. 1 and his witnesses and defendant No. 1 and the D. Ws., the learned Courts below have disbelieved the defence case and accepted the plaintiffs and have concurrently held that a meeting of the Durbar was duly held on 29-1-1968 in which the two new treasurers, namely. U Bok Pohshna and Ka Man Sumer Pohshna were elected and that the defendants were not reelected treasurers. The submission of learned counsel that the finding of the Courts below in this regard is perverse has no substance.

10. In the result, this appeal has no merit and is dismissed with costs. The decrees of the Courts below are upheld.

Appeal dismissed.