
(1972) 08 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 160 of 1960

Union of India

APPELLANT

Vs

Chhattar Singh and Another

RESPONDENT

Date of Decision : 23-08-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Post Office Savings Bank General Rules, 1981 — Rule 21

Citation : AIR 1973 P&H 339

Hon'ble Judges : P.C. Pandit, J;Bhopinder Singh Dhillon, J

Bench : Division Bench

Judgement

Pandit, J.—Chattar Singh had a Savings Account in Jullundur City Post Office. Rs. 5324/14/- were lying to his credit in the said account. It appears that he lost his post office pass book of this account somewhere between 14th may 1956, and 14th June, 1956. He however, applied for a duplicate of the same in October, 1956 and when it was issued to him on 26th November, 1956, he found that his account was less by Rs. 5200/-, which, according to the entries in the pass book had been withdrawn on 3rd July, 1956. Thereupon, he had some correspondence with the postal authorities to the effect that he had not withdrawn the said amount. When he did not receive any satisfactory reply, he filed the suit, in July 1958 for the recovery of Rs. 5200/-. The suit was brought against the Union of India and Karam Chand, the postal clerk of the said Post Office at the relevant time, defendants Nos. 1 and 2, after issuing a notice u/s 80, CPC to defendant No. 1 only.

2. The suit was contested by both the defendants. According to defendant No. 1 Rs. 5200/- had actually been withdrawn from the Savings Bank Account of the plaintiff on the date mentioned in the pass-book but the said amount had been paid on the presentation of the pass-book and the withdrawal form, duly signed by the depositor, as required under the rules. According to the defendant No. 1, the plaintiff had been negligent about the pass book and had not taken any steps to inform the postal authorities soon after its loss. Defendant No. 1 was not

responsible for the said loss. The Post Office did not accept any responsibility for the loss occasioned to the depositor by the loss of the pass-book and the consequent fraudulent withdrawal vide rule 21 of the Savings Bank Rules, 1881, the relevant portion of which reads: "they (depositors) should also be careful to keep their pass book in their own possession as the post office does not accept responsibility for any loss caused to the depositor if through his negligence, any person shall obtain possession of the book and fraudulently obtain payment of any sum belonging to the depositor." Defendant No. 2 also contested the suit and according to him, the plaintiff had no cause of action against him. He pleaded that no notice u/s 80. Code of Civil Procedure, had been issued to him and- therefore, the suit merited dismissal on that ground alone.

3. On the pleadings of the parties the following issues were framed:--

1. Whether the defendants discharged their liability for payment to the depositor according to law?
2. Whether the plaintiff informed the defendant of the loss of the pass book in proper time. If not its effect?
3. Whether the plaint discloses any cause of action against defendant No. 2, its effect?
4. Whether the notice served on defendant No. 1 is invalid and what is the effect of not serving defendant No. 2 with a notice u/s 80. Civil Procedure Code?
5. Whether plaintiff is the real depositor?
6. Whether the plaintiff is entitled to Rs. 5200/- on the grounds stated in para 3 of the plaint?
7. Relief, and against whom?

4. After trial, the learned Judge held that the defendants had not discharged their liability for the payment of the amount in question to the plaintiff. The plaintiff had informed the defendants about the loss of the pass book in proper time. It was held that the plaint did not disclose any cause of action against defendant No. 2. The notice served on defendant No. 1 was found to be valid. The learned Judge was of the view that it was essential to serve a notice u/s 80. CPC on defendant No. 2 as well. The non-service of the notice and the non-disclosure of the cause of action against him in the plaint would, according to the trial Court, result in the rejection of the plaint so far as defendant No. 2 was concerned. On these findings, the plaintiff's suit was decreed for Rs. 5, 200/- against defendant No. 1 alone and the plaint against defendant No. 2 was rejected. Against this decision, defendant No. 1 has come here in appeal.

5. Learned counsel for the appellant argued that the trial Judge was in error in holding that the plaint did not disclose any cause of action against defendant No. 2. He further submitted that the learned Judge should have dismissed the entire suit, because no notice u/s 80, Code of Civil Procedure, had, admittedly,

been given to defendant No. 2.

6. We have gone through the plaint and I am of the view that according to the allegations of the plaintiff himself mentioned both in the plaint and the replication, defendant No. 2 was necessary party to the suit and the plaint did disclose a cause of action against him. As a matter of fact, it was because of his negligence that defendant No. 1 was made liable. In the plaint it had been clearly stated that both Karam Chand and the Union of India were liable to pay the amount in question to the plaintiff. The reasons given for this were:

"(a) The postal employees of the Union Government, who paid the amount Rs. 5200/- to an unknown stranger from the pass-book of the plaintiff are guilty of gross-negligence and wrongful omission to take adequate and appropriate precautions while acting within the scope of their office or employment.....
(c) The Postal employee connected with the withdrawal gravely contravened the rules and regulations and departmental instructions in aiding, abetting and permitting this withdrawal of the amount-----
(e) The signature on the warrant of payment of the unauthorised withdrawal did not tally with the signature of the depositor. G. L. Saini, the alleged attestor, was entirely a fictitious person. The postal officials were not vigilant enough to see through the same. (f) Union of India is liable for loss and injury caused to the plaintiff, which has resulted from an act done by its servants under colour of Municipal Law. (g) This wrongful act of the postal employees has been ratified by the Union Government by its conduct."

7. Then again in para 3 of the replication, it had been said:

"Defendant No. 2 and the Union of India are liable to pay this amount to the plaintiff. The Postal Authorities were duly informed of the loss of the pass book. The defendant No. 2 did not act according to the Post Office Rules. He was connected with the withdrawal and gravely contravened the rules and regulations and departmental instructions in aiding, abetting and permitting this withdrawal of the amount. Defendant No. 2 is also liable along with defendant No. 1 and the plaintiff's suit is liable to be decreed with costs. Both the defendants are equally liable as the liability is co-extensive and hardly any question of agency arises."

8. From what has been stated above, it is quite clear that the case of the plaintiff himself was that defendant No. 2 had been negligent in his duties and by his negligence, the plaintiff had suffered a loss of Rs. 5,200/- and it was due to the negligence of the Postal Clerk that the Union of India whose employee he was, was also liable for the said loss. The decree was claimed against both the defendants. It is not a case where no employee of the Union of India was impleaded as a defendant. Karam Chand, who was the postal clerk and who had actually paid the money to somebody else, as alleged by the plaintiff, had actually been made a defendant and the plaintiff was wanting a decree against him as well. He had made it clear that it was Karam Chand, who was negligent in his duties and had not properly compared the signatures of the depositor and

thereby given the money to a wrong person, with the result that the plaintiff had suffered a loss of Rs. 5200/-. Both the employer and the employee had, therefore, been made liable by the plaintiff and a decree was sought against them. It is undisputed that when defendant No. 2 was acting as a Postal Clerk and paying the money to a stranger he was a public officer acting in his official capacity. On the allegations made in the plaint itself, in my opinion defendant No. 2 was a necessary party and the learned trial Judge was in error in holding that the plaint did not disclose any cause of action against him. Under issue No. 3 the learned Judge had observed that the plaintiff had not even alleged in the plaint that defendant No. 2 was negligent in making the payment in question. This observation is contrary to facts. The said allegation had been made as would be apparent from the quotation from the plaint given above.

9. Since I am of the view that the plaintiff himself had impleaded Karam Chand and on the allegations made in the plaint itself, he was a necessary party it was essential that before a suit could be brought against him a notice u/s 80, CPC should have been issued to him as well. As pointed out by the Privy Council in AIR 1927 176 (Privy Council), if the suit had been a joint proceeding right from the start and it was begun and prosecuted as a joint one, the whole suit should fail, if notice u/s 80 had not been given to all the defendants. I would, therefore, hold that in the circumstances of this case, a notice u/s 80, CPC should have been given to defendant No. 2 as well. I further hold that the failure to give the said notice to him, would result in the dismissal of the entire suit.

10. In this view of the matter it is needless to examine the other points raised by the learned counsel for the appellant.

11. The result is that this appeal succeeds, the judgment and decree passed by the trial Judge against defendant No. 1 is set aside and the suit dismissed against it. In the circumstances of this case, however, I will leave the parties to bear their own costs throughout.

Dhillon, J.

12. I agree.

13. Appeal allowed.