

(1982) 04 CAL CK 0035
In the Calcutta High Court
Case No : Appeal No. 359 of 1974

Union of India (UOI)

APPELLANT

Vs

Ganpatrai Sagarmull and Another

RESPONDENT

Date of Decision : 26-04-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20, 4, 9
Contract Act, 1872 — Section 180
Railways Act, 1890 — Section 50, 77, 80

Citation : AIR 1983 Cal 14

Hon'ble Judges : S.C. Ghose, C.J; R.N. Pyne, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.N. Pyne, J.—The respondents Messrs. Ganpatrai Sagarmull and K. P. Ramaswami Nadar, as plaintiffs in the Court of the first instance, filed Suit No. 456 of 1965 against Union of India, the defendant in the suit and the appellant before us, for a decree for Rs. 10,017/- in favour of either or alternatively, an enquiry into damages and a decree for such sum as might be found due, interests, costs and other reliefs.

2-3. The respondents case as stated in the plaint was as follows:--

The respondent No. 1, Ganpatrai Sagarmull acted as a commission agent of the respondent No. 2, K. P. Ramaswami, that in any event if the respondent No. 1 was not competent to maintain the suit, the respondent No. 2 was entitled to the said sum by way of damages for non-delivery. After service of the due notices u/s 77 of the Railways Act, 1890 and Section 80 of C. P. C. the respondents on or about 16th March, 1965 filed the said suit against the appellant in the ordinary original civil jurisdiction of this Court.

4. The written statement filed on behalf of the appellant (who was the defendant in the trial Court) mainly consists of denials, It was alleged that in view of the

assignment of the Railway Receipt and the passing of property in the goods thereby by the respondent No. 2 in favour of the said K. P. Ramaswamy Nadar Sons & Co., the respondent No. 2 ceased to have any right, title or interest in the said Railway Receipt or the goods thereunder. Therefore, the respondent No. 2 was not entitled to and could not maintain the action or claim any relief on the said Railway Receipt or in respect of the goods thereunder.

5. It was further alleged that the endorsement or assignment of the Receipt and the passing of the property having been made in favour of the respondent No. 1 as the commission agent of the said K. P. Ramaswamy Nadar Sons & Co. and the respondent No. 1 having acted for or on behalf of the said K. P. Ramaswamy Nadar Sons & Co. as such agents, the respondent No. 1 was also not entitled to and could not maintain any action or claim any relief on the said Railway Receipt or the goods covered thereby. According to the Union of India, the suit was not maintainable.

6. Following issues were raised and settled at the trial :--

(1) Were 8 bags of small cardamoms booked under the Railway Receipt No. C 558753, dated 10th April, 1964?

(2) Have the plaintiffs Nos. 1 and/or 2 any cause of action against the defendant?

(3) Has this Court jurisdiction to entertain this suit?

(4) Were the goods lost due to circumstances beyond the control of the defendant as alleged in paragraph 9 of the written statement?

(5) Is the value of the said 8 bags of cardamoms Rs. 10,017/- as alleged?

(6) To what relief, if any, are the plaintiffs entitled?

7. Learned trial judge answered issues Nos. 1, 3 and 5 in the affirmative and in favour of the plaintiffs, that is, the respondents in this appeal. Regarding issue No. 2, the learned trial Judge held that the plaintiff No. 2, (the respondent No. 2 in this appeal), K. P. Ramaswami Nadar, had no cause of action in the suit and to that extent it was answered in the negative and in favour of the defendant i.e. the appellant in this appeal. Issue No. 4, however, was not pressed by the defendant. The learned trial Judge passed a decree in favour of the plaintiff No. 1 (i. e.. respondent No. 1) for Rupees 7,632/- with interest at 6% per annum and cost

8. In this appeal parties argued only on the question of jurisdiction. The controversy is whether any part of the cause of action had arisen within the ordinary Original Civil Jurisdiction of this Court and whether the jurisdiction conferred upon this Court by Clause 12 of the Letters Patent has, in any way, been affected by Section 80 of the Railways Act. In the above view of the matter, any discussion on the other issues raised in the suit does not appear to be necessary.

9. On the question of jurisdiction, the learned trial Judge came to the conclusion that the plaintiff No. 1 (i.e., respondent No. 1 herein) had a valid cause of action in the suit against the defendant (i. e., the appellant) and further inasmuch as a part of such cause of action had arisen within the original jurisdiction of this High Court and as the suit was filed with leave under Clause 12 of the Letters Patent it was maintainable.

10. Regarding the question as to whether this Court had jurisdiction to try the suit, two questions came up for consideration i.e., (i) whether any part of the cause of action arose within the original side jurisdiction of the Court and (ii) whether Section 80 of the Railways Act in any way affected the original side jurisdiction of this Court conferred by Clause 12 of the Letters Patent.

11. On the question as to whether any part of the cause of action had arisen within the jurisdiction of this Court the learned trial Judge considered various decisions, as will fully appear from the judgment, relating to the point as to whether an endorsement of the railway receipt for valuable consideration would confer upon the endorsee any right to sue the Railway for damage, loss or non-delivery of the goods covered thereby. The learned trial Judge, however, relying on a decision of the Supreme Court in the case of *The Morvi Mercantile Bank Ltd. and Another Vs. Union of India (UOI)*, came to the conclusion that the plaintiff No. 1 (respondent No. 1 herein) acquired a valuable right to the goods in the nature of a pledge or a security and that its position in the instant case appeared to be the same as that of the Bank in the above case. Mainly relying on the above decision the learned trial Judge came to the conclusion that the plaintiff No. 1 (respondent No. 1 herein) had a valid cause of action in the suit and the same arose within the original jurisdiction of this Court.

12. On the question as to whether Section 80 of the Railways Act had, in any way, affected the original jurisdiction of this Court the learned Judge also considered various decisions relevant to the point as will appear from his judgment and upon such consideration his Lordship held that so far as this Court is concerned Section 80 of the Railways Act did not affect the jurisdiction of this Court to try suits against the Railway where any part of the cause of action had arisen within the original jurisdiction of this Court and leave was obtained under Clause 12 of the Letters Patent. On the above point the learned trial Judge observed as follows:--

"It is to be noted that this suit has been filed in this Court under Clause 12 of the Letters Patent. Under this clause this Court is empowered to try and determine suits of every description, in all cases, if the cause of action shall have arisen in part within the local limits of the ordinary original jurisdiction of this Court in case the leave of the Court has been obtained first. The only limitation imposed by this clause is that the High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Calcutta. The language of Clause 12 is not the language of Section 4 of the Civil P. C. Therefore, even if it be held that Clause 12 of the Letters Patent affects the

special jurisdiction conferred, by Section 80 of the Railways Act, in the absence of any inherent limiting clause as in Section 4 of the Civil P. C., Section 80 of the Railways Act should not be so construed as to take away the jurisdiction of this Court to try such suits.

Section 80 of the Railways Act by itself does not profess to override all other laws or any particular law for the time being in force."

13. Relying on the various decisions of the Supreme Court as will appear from the judgment the learned trial Judge observed that exclusion of the jurisdiction of Civil Court was not to be readily inferred and that Section 80 of the Railways Act did not create special rights or special liabilities nor did it constitute any special Tribunal for adjudication of such right or liabilities.

14. On the question of jurisdiction the respective contentions of the parties may be stated.

15. According to the appellant Union of India the endorsement of the railway receipt even for valuable consideration would not entitle the endorsee to sue the Railway for loss, damage or non-delivery of the goods and as such it does not form a part of the cause of action. Further, Section 80 of the Railways Act as amended, has affected the jurisdiction of this Court conferred by Clause 12 of the Letters Patent in respect of the suits mentioned in Section 80 of the Railways Act.

16. According to the respondent No. 1, in the instant case, endorsement of the railway receipt for valuable consideration in its favour has conferred upon it a right of the pledgee and such right can be enforced against the Railway. Further, Section 80 of the Railways Act, has not in any way, affected the original jurisdiction of this Court conferred by Clause 12 of the Letters Patent.

17. As stated earlier mainly relying on the decision of the Supreme Court in the case of *The Morvi Mercantile Bank Ltd. and Another Vs. Union of India (UOI)*, , the learned trial Judge came to the conclusion that the respondent No. 1 had a valid cause of action against the appellant. Hence a reference to the said case may be made.

18. In *The Morvi Mercantile Bank Ltd. and Another Vs. Union of India (UOI)*, the facts were that the consignor endorsed three railway receipts in favour of the plaintiff-Bank against an advance of a sum of money which was less than the actual value of the goods. The consignment under the railway receipts did not reach their destination. The Bank as an endorsee for Valuable consideration sued the Union of India for recovery of full value of the goods by way of damages. The Supreme Court found on the evidence adduced that the Bank had advanced money on the security of the railway receipt and the transactions relating thereto, i. e., advance of a loan, the execution of Promissory Notes and the endorsement of the railway receipts together formed one transaction, and their combined effect was that the Bank was in the control of the goods consigned

under the said railway receipts. The majority decision in Morvi Bank's case was that the Bank as a pledgee could maintain the suit for the full value of the consignment. It however left open the point whether the transfer of a railway receipt would necessarily transfer the contract of carriage embodied therein.

18-A. The Supreme Court also held that :

"(a) An owner of goods can make a valid pledge by transferring the railway receipt representing the goods;

(b) Mercantile agents though they do not possess the full bundle of the rights of the consignor can make a valid pledge by bona fide transfer of Documents of Title and the same is true of owners with defective titles;

(c) Construing Section 180 of Contract Act, the Supreme Court held that a pledgee has the same remedy as the owner of the goods Would have against a third person for deprivation of the said goods or injury to them."

19. Applying the principle laid down in the above Supreme Court decision and on the basis of evidence given in the suit it was held that the plaintiff No. 1 (respondent No. 1 herein) had a valid cause of action in the suit. We respectfully agree with the conclusion of learned trial Judge and his reasons for the same.

20. Next point is if the jurisdiction of this Court as conferred by Clause 12 of the Letters Patent has been affected by Section 80 of the Railways Act in respect of suits mentioned in the section. This point was mainly contested in this appeal. The provisions of Section 80 of the Railways Act after 1961 amendment are as follows:--

"A suit for compensation for loss of the life of or personal injury to, a passenger or for loss, destruction, damage, deterioration or non-delivery of animals or goods may be instituted :--

(a) if the passenger was, or the animate or goods were booked from one station to another on the Railway of the same railway administration, against the railway administration,

(b) if the passenger was, or the animals or goods were booked through over the railway of two or more railway administrations, against the railway administration from which the passenger obtained his pass or purchased his ticket or to which the animals OT goods were delivered for carriage, as the case may be, or against the railway administration on whose railway the destination station lies or the loss, injury, destruction, damage or deterioration occurred; and in either case, the suit may be instituted in a Court having jurisdiction over the place at which the passenger obtained his pass or purchased his ticket or the animals or goods were delivered for carriage, as the case may be, or over the place in which the destination station lies, or the loss, injury, destruction, damage or deterioration occurred."

21. There are various decisions on the question as to the whether jurisdiction

conferred by Section 20 of C. P. C. has been affected by Section 80 of the Railways Act. Although such decisions are conflicting yet a brief reference thereto may be made.

22. A Division Bench presided over by Sankar Prosad Mitra, C. J. and A. K. Janah, J. in the case of Oghadmal Choudhury v. Union of India, 1974 Cal LJ 420, held that Section 20(c) of C. P. C. would not apply to a suit covered by Section 80 of the Railways Act. According to their Lordships the special provisions in the Railways Act are to be read in the light of Section 4 of C. P. C. Section 4 of the Code uses the expression "otherwise affect". The dictionary meaning of the word "affect" in the contest in which it is used u/s 4 of the Code is "to produce an effect or change upon". According to the Division Bench there is no doubt that Section 20(c) of the C. P. C produces an effect or change upon the special jurisdiction conferred by Section 80 of the Railways Act and from this point of view Section 20 (c) would not apply to a suit covered by Section 80 of the Railways Act.

23. In another Division Bench decision (presided over by M. M. Dutt and R. K. Sharma, JJ.) in the case of Bengal Coal Co. Ltd. v. Union of India (1979) 2 Cal LJ 363, it was held that u/s 80 of the Railways Act a suit can be instituted in a Court having jurisdiction over the place at which the goods were delivered for carriage or in the Court having jurisdiction over the place in which the destination station lies. But Section 80 of the Railways Act does not override the provisions of Section 20 of the C. P. C under which a suit can be instituted in a Court within the local limits of whose jurisdiction the defendant resides or carries on business or works for gain. Defendant South Eastern Railway carries on business at Garden Reach within the jurisdiction of Alipore Court. The suit was therefore rightly instituted there as per provision of Section 20, C. P. C. In addition to the forum where the suit can be instituted as per Section 26 of Civil P. C. the same can be instituted in other forums u/s 80 of the Railways Act, It however appears that in this case the effect of Section 4 of C. P. C. was not considered.

24. The above cases dealt with the question of jurisdiction conferred by Section 20 of C. P. C. and not by Clause 12 of the Letters Patent.

25. In connection with the question as to whether Clause 12 of the Letters Patent has been affected by Section 80 of the Railways Act the appellant relied on an unreported decision of a Division Bench presided over by A, K. Sarkar and D. C. Chakrabarti, JJ. in Appeal No. 191 of 1966 (Jagannath Chetram v. Union of India). In that case two points were decided. It has been held that a suit for compensation for loss or short delivery of the goods consigned is one based on the breach of the original contract and that an endorsement even though for valuable consideration only entitles the endorsee to a right to have delivery of the goods and not a right to sue on the basis of original consideration. This finding however is not relevant for the instant appeal in view of the fact that the learned trial Judge relied on The Morvi Mercantile Bank Ltd. and Another Vs. Union of India (UOI), in coming to the conclusion that the plaintiff No. 1 (i. e.

respondent No. 1 herein) had a valid cause of action against the defendant (i. e. appellant in this appeal) as stated hereinbefore. The Division Bench has observed that if any of the provisions of Section 20 of C. P. C. does limit or otherwise affect the special jurisdiction conferred by Section 80 of the Railways Act such provision of Section 20 of C. P. C shall have no application for the determination of the forum for a suit for loss or non-delivery of goods. It was held that even though Section 89 of the Railways Act did not expressly or by implication repeal Section 20 of C. P. C. the relevant provision of Section 20 of C. P. C. could not be invoked for determining the forum. The Division Bench referred to the cases of Oghadmal Choudhury v. Union of India 1974 Cal LJ 420 (supra) and a decision of Karnataka High Court in the case of The Union of India Vs. C.R. Prabhanna and Sons, .

26. In the case of Union of India v. C. R. Prabhanna & Sons (supra) it was observed as follows:--

"There was no reference to the territorial jurisdiction of the Courts in which such suits for compensation u/s 80 could be instituted. By Act 39 of 1961, Section 80 was substituted by the new section extracted above. While doing so, the Parliament specifically mentioned in that section the Courts before whom such suits could be filed. I am of the view that the Parliament when it enacted the new Section 80 intended to specify the Courts before whom alone suits u/s 80 of the Railways Act could be filed. It should be remembered that Section 20 of the Civil P. C. was in existence even at the time when Section 80 was substituted in the year 1961. If the Parliament intended that Section 20 of the Civil P. C. should continue to be applicable, then there was no need for specifying in Section 80 the Courts which could entertain the suits referred to therein as they would also fall within the category of Courts specified in Section 20 of the Civil P. C. While interpreting statutory provisions we should bear in mind that no legislature would ordinarily indulge in superfluity.

X X X X X Section 80 of the Railways Act enacts a complete Code regarding the Courts before whom suits referred to therein can be filed. Special provisions enacted in Section 80 exclude the operation of the general provisions of Section 20 of the Civil P. C. It is well known that special provisions exclude the operation of general provisions, (See The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another, and Delhi Administration Vs. Ram Singh,)."

27. In Appeal No. 191 of 1966 the Division Bench of this Court held that "In the facts and circumstances of the case and in view of the law discussed it cannot be said that any part of cause of action for the pre-sent suit did arise within the original civil jurisdiction of this Court. Accordingly resort cannot be had to Clause 12 of the Letters Patent. Further Clause 44 of the Letters Patent makes the provisions of Letters Patent subject to the legislative powers of the Indian Legislature".

28. Excepting the observation to the effect that Clause 44 of the Letters Patent

makes the provisions of Letters Patent subject to the legislative powers of the Indian Legislature there is no finding of the Division Bench in Appeal No. 191 of 1966 on the question with which we are concerned in this appeal viz., whether Section 80 affects the jurisdiction of this Court as conferred by Clause 12 of the Letters Patent. The Division Bench dismissed the appeal on the ground that no part of the cause of action in that case arose within the original civil jurisdiction of this Court.

29. The question therefore is if the jurisdiction as conferred by Clause 12 of the Letters patent has in any way been affected by Section 80 of the Railways Act.

30. Clause 12 of the Letters Patent (1865) provides that the High Court in the exercise of its ordinary original civil jurisdiction shall be empowered to receive, try and determine suits of every description, if, in the case of suits for land or other immovable property, such land, or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell, or carry on business, or personally work for gain within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Calcutta, in which the debt or damage, or value of the property sued for, does not exceed one hundred rupees.

31. Clause 44 of the Letters Patent provides as follows:

"And we do further ordain and declare, that all the provisions of these our Letters Patent are subject to the legislative powers of the Governor-General in Legislative Council and also of the Governor-General in Council u/s 71 of the Government of India Act, 1915, and also of the Governor-General in cases of emergency u/s 72 of that Act, and may be in all respects amended and altered thereby."

32. After giving anxious consideration we are of the view that the jurisdiction as conferred by Clause 12 of the Letters Patent has not been affected by Section 80 of the Railways Act for the following reasons:--

(a) It is to be noted that Section 80 of the Railways Act says that suits of the nature mentioned in the said section may be instituted in the Courts as mentioned in last limb of the section, The word "may" in the context should not be read as "shall". Therefore, the section is an enabling section. If the intention of the legislature was that suits of the nature as mentioned in Section 80 should be filed only in the forum as mentioned in the section and in no other forum then the legislature would have used appropriate words or expression conveying such intention. Therefore, Section 80 of the Railways Act creates additional forums for filing of suits of the nature mentioned in the section.

(b) In the absence of any provision in the Letters Patent like Section 4 of the

Civil P. C. the jurisdiction conferred by Clause 12 of the Letters Patent cannot be said to have been taken away or curtailed by Section 80 of the Railways Act on the basis of the principle laid down in the cases mentioned above.

(c) The provisions of the Letters Patent are subject to the legislative powers of the Legislature. Therefore it is to be seen if the general provisions of Clause 12 of the Letters Patent has been affected by the Special Law viz., Section 80 of the Railways Act. In our view, if there is any conflict between the general law and the special law then the provisions of special law would prevail. If the two laws can be harmoniously construed so as to preserve the right conferred by the two then such construction is to be adopted. However, in case of conflict the special statute should be given preference. See Maxwell on Interpretation of Statute (12th Edn.), pp. 191 and 193 and *Tabernacle Permanent Building Society v. John Knight*. 1892 AC 298. In our view, there is no conflict or inconsistency between Clause 12 and Section 80. Clause 12 confers general jurisdiction upon the High Court to entertain suits. Jurisdiction conferred by Section 80 may be invoked only in cases of suits of the nature mentioned therein. Further, use of the word "may" makes the section permissive. It only confers additional right or additional forum to which recourse may be taken only in cases of the suits of the nature mentioned in the section. Therefore, in respect of suits of the nature mentioned in Section 80 of the Railways Act a claimant is given the option of taking advantage of an additional forum.

(d) Exclusion of the jurisdiction is not to be readily inferred and there is a presumption against exclusion of jurisdiction of Civil Court by a statute. The exclusion of the jurisdiction of Civil Courts to entertain Civil Cases will not be assumed unless the relevant statute contains an express provision to that effect or leads to a necessary and inevitable implication of that nature. The mere fact that a special statute provides for certain remedies may not by itself necessarily exclude the jurisdiction of the Civil Courts to deal with a case brought before it in respect of the matters covered by the said statute. See *D. D. Bhalla v. District Co-operative Bank Limited*; *Abdul Waheed Khan Vs. Bhawani and Others*, ; *Raichand Amulakh Shah Vs. Union of India (UOI)*, ; *Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh*, and *Sri Vedagiri Lakshmi Narasimha Swami Temple Vs. Induru Pattabhirami Reddy*, .

(e) As to the ousting of jurisdiction of a superior Court the general rule undoubtedly is that a jurisdiction of superior Court is not taken away except by express words or by necessary implication. Unless there is clear language in the statute which is alleged to have that effect the jurisdiction of the Court must not be taken to be excluded. A general rule applicable to the construction of statute is that there is not to be presumed without express words any authority to deprive the Court of a jurisdiction it had previously exercised. Very clear words will be required to oust altogether the jurisdiction of the Courts in the matter of private rights. See *Craies on Statute Law* (17th Edition), page 123.

(f) It is undoubtedly true that the legislature can exercise the power of repeal by

implication. But it is equally well settled that there is a presumption against an implied repeal. Upon the assumption that the legislature enacts law with a complete knowledge of all existing laws pertaining to the same subject the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. This presumption will be rebutted if the provisions of the new Act are so inconsistent with the old one that the two cannot stand together.

(g) There is no rule of law to prevent repeal of a special statute by a later general statute and, therefore, where the provisions of the special statute are wholly repugnant to the general statute, it would be possible to infer that the special statute was repealed by the general enactment. A general statute applies to all persons and localities within its jurisdiction and scope as distinguished from a special one which in its operation is confined to a particular locality. Therefore, where it is doubtful whether the special statute was intended to be repealed by the general statute the Court should try to give effect to both the enactments as far as possible. See *Municipal Council Palai Vs. T.J. Joseph and Others*, . In the above view of the matter it cannot be said that Clause 12 has been impliedly repealed by Section 80

33. We are, therefore, of the view that the jurisdiction conferred by Clause 12 of the Letters Patent has not been affected by Section 80 of the Railways Act but Section 80 only provides for additional forum for filing of the suits of the nature mentioned therein.

34. For all the reasons stated hereinbefore, in our view, the appeal should fail. This appeal is, therefore, dismissed with cost.

S.C. Ghose, C.J.

35. I agree.