

(1969) 12 CAL CK 0016

In the Calcutta High Court

Case No : Appeal from Original Decree No. 187 of 1958

Union of India (UOI)

APPELLANT

Vs

Sri Satya Narainji and Others

RESPONDENT

Date of Decision : 04-12-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1970) 76 ITR 398

Hon'ble Judges : Durga Das Basu, J; Ajak Kumar Basu, J

Bench : Division Bench

Advocate : Balai Lal Pal and N.L. Pal, for the Appellant; H.C. Ghosh, Surathi Mohan Sanyal and Ashutosh Ganguli, for the Respondent

Judgement

D. Basu, J.—This is an appeal against the judgment and decree of the learned Additional Court of Subordinate Judge, 24 Parganas, by which the suit of the respondents, under Schedule 2, Rule 43, of the Bengal Public Demands Recovery Act, 1913, was decreed. There were two preliminary issues in the suit. One was whether the suit was liable to be dismissed in view of the admitted non-compliance with the provision of Section 80 of the CPC so far as the suit in question was concerned and the second one, was the issue on the merits, namely, whether the trust to the suit property put up by the respondents was bona fide and valid. If that issue was decided in the affirmative the income tax department's proceeding and the certificate were patently binding upon the trustees of the suit, because they were not parties to these proceedings. The court below rejected the statutory plea u/s 80 of the CPC and on the merits it upheld the case of the plaintiffs and, therefore, the suit was decreed.

2. In this appeal, since we are satisfied that the plea u/s 80 should stand and that the judgment of the court below on this issue is wrong, in view of the Supreme Court decision in the case, Sawai Singhai Nirmal Chand Vs. Union of India, , it would not only be unnecessary but improper on our part to make any pronouncements on the questions on merits. Coming now to the provisions in

Section 80 of the CPC it is quite clear and explicit, namely, that:

"No suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to or left at the office of....."

3. There is no doubt that the other ingredients of Section 80 of the CPC are satisfied in this case. But there was a controversy in the court below whether this suit under Schedule 3, Rule 43, was a suit of the description referred to in Section 80. It was contended not only at the hearing but in the plaint itself that a suit under Schedule 2, Rule 43, of the Public Demands Recovery Act, was a continuation of the proceedings before the certificate officer where an objection to the attachment or sale is laid under Rule 39 of the same Schedule. There is no doubt that there was a High Court decision which had taken this view in 1939, but it is unfortunate that the court overlooked the implications of the decision of the Privy Council in AIR 1927 176 (Privy Council) . In the later case the suit was one for injunction and the Bombay High Court, from which the appeal was taken to the Privy Council, took the view that Section 80 applied to regular suits and not to a suit for relief in the nature of an injunction. There was also an argument before the Judicial Committee that Section 80 should not be applied in cases of hardship. It would be profitable to reproduce the observations of the Judicial Committee on this argument. "The argument that a statutory provision as to procedure is subject to some exception of cases where hardship or even irremediable harm might be caused if it were strictly applied might be used with equal cogency in connection with a code fixing the admissibility of evidence or with a limitation section, recognizing rights but barring remedies. For this, however, there is no authority. The Act, albeit a procedure code, must be read in accordance with the natural meaning of its words. Section 80 is express, explicit and mandatory, and it admits of no applications or exceptions. A suit in which, inter alia, an injunction is prayed for is still "a suit" within the words of the section, and to read any qualification into it is an encroachment on the functions of legislation. "The court eventually held that the language of Section 80 being explicit enough applies to all forms of suits, whatever relief is sought including a suit for injunction.

4. After this pronouncement of the Judicial Committee, one might normally hope that the controversy as to the applicability of Section 80 to suits under Order 21, Rule 63, of the Civil Procedure Code, or under Schedule 2, Rule 43, of the Bengal Public Demands Recovery Act, which are analogous using almost the same language in nature, should end. But, as stated earlier, some of the High Courts/ including the Calcutta High Court, continued to adhere to their previous views and that is why the matter was taken to the Supreme Court in a suit under Order 21, Rule 63, of the CPC (Sawai Singhai Nirmal Chand Vs. Union of India,). Though the questions involved before the Supreme Court included other matters the observations of- the Supreme Court on the point with which we are

concerned are conclusive and unambiguous. The court rejected the view taken in the High Court to the effect that Section 80 was outside the purview of a suit under Order 21, Rule 6.3.

3. It has been observed by the Supreme Court that it appears that, on this question, there has been a divergence of judicial opinion in India. But, in our opinion, the view that suits under Order 21, Rule 63, did not attract the provisions of Section 80 is inconsistent with the plain, categorical and unambiguous words used by it. The Supreme Court relied upon the observations of the Privy Council which we have reproduced earlier in the judgment. Therefore, if Section 80 applies to all forms of suits, there is no reason why a suit under Schedule 2, Rule 43, of the CPC (Bengal Public Demands Recovery Act, 1913), should be excluded from its scope. The word "suit" occurs not only in Section 80 but also in Schedule 2, Rule 43, of the CPC (Bengal Public Demands Recovery Act, 1913?). It was contended on behalf of the respondents that, nevertheless, a suit under the latter provision was not a suit but a continuation of the proceedings before the revenue officer. To repeat the words of the Privy Council, it would be improper to make a construction contrary to the legislation.

4. We, therefore, hold that Section 80 was attracted to this case and that the institution of the suit was invalid ab initio, because of non-service of notice u/s 80.

5. The appeal is, therefore, allowed and the suit is dismissed on issue No, 1. We say nothing on the merits particularly in view of the fact that the plaintiffs are the she baits of a deity.

6. Having regard to this consideration we direct that each party will bear its own costs. The appeal is accordingly allowed, and the judgment and decree of the court below are set aside.

7. As prayed for, the operation of this order will remain stayed for a period of two months from the date. We also direct that it will be without prejudice to the right of the plaintiffs-respondents to issue fresh notice u/s 80 of the Civil Procedure Code, if it is otherwise untenable.

Ajay K. Basu, J.

8. I agree.