

APPELLATE CIVIL.

Before Mr. Justice Sundaram Chetti.

1930,
September 1.

SREE RAJAH VENKATA RANGIAH APPA RAO
BAHADUR AND ANOTHER (PLAINTIFFS), APPELLANTS
IN ALL THE SECOND APPEALS

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL
REPRESENTED BY THE COLLECTOR OF KISTNA AND
SIX OTHERS (DEFENDANTS 1 TO 3 AND 5 AND LEGAL
REPRESENTATIVES OF THE FOURTH DEFENDANT), RESPONDENTS
IN SECOND APPEAL No. 317 of 1927*.

Code of Civil Procedure (Act V of 1908), sec. 80—Suit by two plaintiffs, one of whom alone gave notice required by section—Maintainability of, against Secretary of State—Maintainability of, against other defendants—Partial rejection of plaint—Permissibility of, under O. VII, r. 11 of Code of Civil Procedure.

Under section 80 of the Code of Civil Procedure there should be identity of the person who issued the notice with the person who brings the suit.

Two plaintiffs instituted a suit against the Secretary of State and others seeking for reliefs on behalf of both of them, but only one of them had given the notice required by section 80.

Held that the suit was not maintainable against the Secretary of State as regards either plaintiff, that it could not be proceeded with against the other defendants also even though notice to them was not necessary under section 80 of the Code of Civil Procedure, and that either the suit was liable to dismissal or the plaint was liable to rejection.

Bhagchand Dagadasa v. Secretary of State for India, (1927) I.L.R. 51 Bom. 725 (P.C.), followed.

* Second Appeals Nos. 317 to 319 of 1927.

Under Order VII, rule 11 of the Code of Civil Procedure, there cannot be a partial rejection of a plaint in respect of a portion of the claim or as regards some of the parties.

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Quære, whether non-compliance with the requisites of section 80 is a ground covered by clause (d) of rule 11 of Order VII of the Code of Civil Procedure.

SECOND appeals against the decrees of the Court of the Subordinate Judge of Ellore in Appeal Suits Nos. 38, 39 and 40 of 1925 respectively, preferred against the orders of the Court of the Additional District Munsif of Ellore, dated the 22nd December 1924, and made in Original Suit Nos. 124, 125 and 119 of 1924 on its file.

A. Venkatrayaliah (with *M. Appa Rao*) for appellants.

Government Pleader (P. Venkatramana Rao) for first respondent.

K. Kameswara Rao for other respondents.

JUDGMENT.

These three are connected appeals arising out of three suits brought by the plaintiffs (appellants) against the Secretary of State for India in Council as the first defendant and some other defendants in possession of the suit lands, in order to establish the plaintiffs' right to resume the suit inams and for a declaration that the first defendant had no right to enfranchise these inams and also for the recovery of possession of these lands after ejecting the other defendants therefrom. Both the Courts below have rejected the plaints in these cases under Order VII, rule 11 of the Code of Civil Procedure on the ground that notice under section 80 of the Code of Civil Procedure was not given to the first defendant in the manner required by that section. The only question now arising for consideration is whether the view taken by the Courts below is correct.

The village in which the suit inams are situate belonged to the first plaintiff. It is admitted in the plaint

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that the first plaintiff has sold the suit village to the second plaintiff and that under the contract of sale the second plaintiff has been put in possession of the village also. The plaint seeks for a declaration of the right set forth therein in favour of both the plaintiffs, and the suit is clearly framed in such a manner as to make it one in which the reliefs mentioned therein are sought for on behalf of both the plaintiffs. Exhibit I, which is dated the 22nd of July 1921, is the notice sent by the first plaintiff alone to the Government under section 80 of the Code of Civil Procedure. The question is, whether the present suit brought by the two plaintiffs in the manner above set forth, is maintainable when the notice required by section 80 of the Code of Civil Procedure was given by the first plaintiff alone; in other words, whether such a notice can be deemed to be a sufficient compliance with the requisities of section 80. That section lays down that no suit shall be instituted against the Secretary of State for India in Council, unless two months before the institution of that suit a notice in writing is given stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims. There should also be an averment in the plaint that such a notice was delivered or left as stated in the aforesaid section. As regards the provisions in section 80 being strict and mandatory or not, it would appear there was some difference of opinion expressed in some of the rulings relating to this section. In some decisions, a strict view was taken, but, in other cases, a liberal construction was placed upon this section and any defect or irregularity was condoned if it was found to be immaterial or unsubstantial. My attention was drawn to those decisions, but, in view of the latest pronouncement by their Lordships of the Privy Council in

Bhagchand Dagadasa v. Secretary of State for India(1), it seems to me that the dictum so clearly laid down by the Privy Council will have to be followed in deciding a question of this kind. At page 747, their Lordships have observed thus :

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“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 implications or exceptions.”

Later on, their Lordships further state thus :

“To argue, as the appellants did, that the plaintiffs had a right urgently calling for a remedy, while section 80 is mere procedure, is fallacious, for section 80 imposes a statutory and unqualified obligation upon the Court.”

In view of such a clear pronouncement, it is no longer open to argue that the Courts can make exceptions or qualifications to the explicit terms of section 80 of the Code of Civil Procedure on account of considerations of hardship and absence of prejudice or detriment to the interests of the Government. If the requisites of section 80 should be literally complied with, I must say that the giving of notice about the suit claim by one plaintiff would not be a strict compliance with the mandatory provisions of section 80, when the suit is actually filed by two plaintiffs, though one of them happens to be the person that gave the notice. There should be identity of the person who issued the notice with the person that brings the suit. In this view, it has been held that a suit brought by the legal representatives of a deceased man and a suit brought by a transferee would offend against section 80 of the Code of Civil Procedure, if the notice required by that section was given by the deceased man or by the transferor; *vide Bachchu Singh v. Secretary of State for India in Council*(2) and *Mahadev*

(1) (1927) I.L.R. 51 Bom. 725 (P.C.).

(2) (1902) I.L.R. 25 All. 187.

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v. *Secretary of State*(1). As the dictum of the Privy Council indicates that it is no longer left to the discretion of the Court to hold in favour of the maintainability of a suit in spite of non-compliance with some of the requisites of the section, I have to find against the maintainability of the present suits on the ground that the notice as required by section 80 of the Code of Civil Procedure was not given.

It is argued by the learned Advocate for the appellants that, even if a strict interpretation of section 80 is made, the plaint, as a whole, should not be rejected, but only so far as the second plaintiff is concerned. If it is a case of rejection of the plaint owing to non-compliance with section 80, it is not clear how there can be a partial rejection of the plaint in respect of a portion of the claim or as regards some of the parties. A similar question was considered by the Allahabad High Court in *Raghubans Puri v. Jyotis Swarupa*(2). Referring to section 54 of the old Code of Civil Procedure, the learned Judges state that the section only provides for the rejection of a plaint in the event of any matters specified in that section not being complied with and that it does not justify the rejection of any particular portion of a plaint. Section 54 corresponds to Order VII, rule 11 of the present Code of Civil Procedure. The plain meaning of that rule seems to be that, if any of the defects mentioned therein is found to exist in any case, the plaint shall be rejected as a whole. It does not imply any reservation in the matter of the rejection of the plaint. Non-compliance with the requisites of section 80 of the Code of Civil Procedure was taken to be a ground covered by clause (d) of rule 11 above referred to. Even if it should be taken that that clause does not strictly apply to the present cases, I must hold that the suits are liable to dismissal

(1) (1930) 32 Bom, L.R. 604. (2) (1907) I.L.R. 29 All. 325.

on account of non-compliance with section 80 of the Code of Civil Procedure.

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It is urged on behalf of the appellants that, if it should be taken that the suits have to be dismissed, then, so far as the defendants other than the first defendant are concerned, the suits may be allowed to be proceeded with. There is real difficulty in acceding to this argument advanced on the appellants' side. If these suits should stand dismissed as against the first defendant, it means that the Government's right to resume these inam lands stands unaffected and the plaintiffs have no right as against the Government to resume the same. That being so, their claim to recover possession of these lands from the other defendants should fall to the ground for the simple reason that they have no right to resume these inams. In this connection I may also refer to an observation made by the Privy Council in the said *Bhagchand Dagadasa v. Secretary of State for India*(1). It was contended in that case that, even if the non-compliance with section 80 defeated the action as against the Secretary of State, it could be proceeded with as against the other defendant. To meet this argument, their Lordships have observed thus :—

“Not only has the suit been throughout a joint proceeding against the officials concerned, for the purpose of getting a joint declaration that the Government Notification was bad as the foundation of everything subsequently done, but without the presence of the Secretary of State before the Court, the Notification could not be assailed, and, if it stands as valid, the Collector's own action could not be successfully impugned.”

Similarly, in the present case, if the claim put forward by the plaintiffs against the first defendant fails, it cannot succeed against the other defendants. However, the above observation in that ruling was sought to be distinguished on the ground that, in that case, there was

(1) (1927) I.L.R. 51 Bom. 725, 748 (P.C.).

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a necessity of giving notice under section 80 even in respect of the second defendant, and, in the present case, there was no necessity to issue any such notice to the other defendants. But I do not think the observation of their Lordships as to the non-maintainability of the action against the second defendant depended on this circumstance, namely, the necessity of a notice even to the second defendant.

The defect pointed out above being fatal to the maintainability of the suits, either the suits are liable to dismissal, or the plaints are liable to rejection. In either view, the order of the lower appellate Court seems to be correct. I therefore dismiss these second appeals with costs (two sets).

A.S.V.

APPELLATE CRIMINAL.

Before Mr. Justice Krishnan Pandalai.

In re THOMULUR ANANTAPADMANABHIAH
(ACCUSED), PETITIONER.*

1930,
September 2.

Code of Criminal Procedure (Act V of 1898), ss. 107, 112 and 548—Order on a person under sec. 112 to keep peace under sec. 107—Right of such person to grant of copy of Police information—Whether information part of the record within meaning of sec. 548.

A person against whom a Magistrate has drawn up an order under section 112 of the Code of Criminal Procedure, calling on him to show cause why he should not be bound over to keep the peace under section 107 of the Code, is not entitled to the grant of a copy of the written information given by the Police and on which the order is based, as such information is not part of the record within the meaning of section 548 of the Code.

* Criminal Revision Case No. 518 of 1930.