

APPELLATE CIVIL.

1902.
December, 10.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.
BACHCHU SINGH AND ANOTHER (PLAINTIFFS) v. THE SECRETARY
OF STATE FOR INDIA IN COUNCIL AND ANOTHER (DEPENDANTS).*

*Civil Procedure Code, section 424—Suit against Secretary of State in Council
—Notice—Death of intending plaintiff before institution of suit—Notice
already served not available to representatives of original intending
plaintiff—Rejection of plaint—Civil Procedure Code, section 54.*

Where a person apparently intending to institute a suit against the Secretary of State in Council served a notice in the manner prescribed by section 424 of the Code of Civil Procedure of his intention to institute such a suit, but died before the suit was instituted, it was held that the notice served under section 424 did not enure for the benefit of the representatives of the person who had served it, and entitle them to institute a suit without giving fresh notice.

Held also that the language of section 424 is imperative, and absolutely debars a Court from entertaining a suit instituted without compliance with the provisions of the section. A Court cannot under such circumstances stay proceedings and allow time to the plaintiff to serve the requisite notice, but its only course is to reject the plaint under section 54(e) of the Code. *Rendall v. Blair* (1) distinguished.

THE facts of this case are as follows :—One Sheo Paras Singh died on the 15th of September, 1859, possessed of considerable immovable property situate in the district of Allahabad. He left no issue, but left a widow, Musammat Gend Kunwar, surviving him. Musammat Gend Kunwar upon his death succeeded to the property as a Hindu widow, but in the year 1874 she was found to be unfit for the management of it, and the property was, under the provisions of Act No. XIX of 1873, placed under the management of the Court of Wards. Musammat Gend Kunwar died on the 10th of January 1887, and upon her death the Collector of Allahabad took possession of the property on behalf of the Secretary of State for India in Council, who claimed it by way of escheat. On the 24th of January 1896, that is, upwards of nine years from the death of Musammat Gend Kunwar, a notice purporting to be under section 424 of the Code of Civil Procedure, was given by one Pirthi Pal Singh and one Sitla Bakhsh Singh to the Chief Secretary

* First Appeal No. 99 of 1900, from a decree of Mr. H. David, Subordinate Judge of Allahabad, dated the 23rd December 1899.

(1) (1890) L. R., 45 Ch. D., 189.

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to the Government of the North-Western Provinces, by which they claimed to be entitled to the property of Sheo Paras Singh as his reversionary heirs. In reply to this notice Pirthi Pal Singh and Sitla Bakhsh Singh were informed that the Government would not grant their request, and that they were at liberty to take such legal proceedings as they might think proper. This was on the 27th of July, 1896. No further steps were taken in the matter by either Pirthi Pal or Sitla Bakhsh. Sitla Bakhsh died on the 9th of December, 1897, and Pirthi Pal died on the 19th of October, 1898. On the 9th of January, 1899, Bachchu Singh, the son of Pirthi Pal Singh, and Jai Narain Singh, one of the sons of Sitla Bakhsh Singh, instituted the present suit for recovery of the property of Sheo Paras Singh and for mesue profits. The Secretary of State for India in Council pleaded, among other defences to the suit, a defence in bar, namely, that previous to the institution of the suit the plaintiffs did not give the notice of their intention to bring the suit prescribed by section 424 of the Code of Civil Procedure. The Court of first instance (Subordinate Judge of Allahabad) held that the notice which was given by Pirthi Pal Singh and Sitla Bakhsh Singh was not a good notice for the plaintiffs' suit within the meaning of the section, and accordingly dismissed the suit. The plaintiffs thereupon appealed to the High Court.

Pandit *Sundar Lal*, Pandit *Madan Mohan Malaviya*, *Munshi Gulzari Lal* and *Babu Devendra Nath Ohdedar*, for the appellants.

Mr. A. E. *Jyves*, for the Secretary of State.

STANLEY, C.J. and BANERJI, J. — The question for determination in this appeal is in regard to the sufficiency of a notice given under section 424 of the Civil Procedure Code. The facts are shortly as follows:—One Sheo Paras Singh was possessed of considerable immovable property situate in the district of Allahabad. He died on the 15th of September, 1859, without leaving any issue, but leaving his widow, Musammat Gend Kunwar, surviving him. Upon his death Musammat Gend Kunwar succeeded to the property as a Hindu widow, but being found in the year 1874 to be unfit for the management of it, the property was, under Act No. XIX of 1873, placed under the

management of the Court of Wards. Musammât Gend Kunwar died on the 10th of January, 1887, and upon her death the Collector of Allahabad took possession of the property on behalf of the Secretary of State for India in Council, who claimed it by way of escheat. On the 24th of January, 1896, that is, upwards of nine years from the death of Musammât Gend Kunwar, a notice, purporting to be under the provisions of section 424 of the Code of Civil Procedure, was given by one Pirthi Pal Singh and one Sitla Bakhsh Singh to the Chief Secretary of the Hon'ble the Lieutenant-Governor of the North-Western Provinces, claiming to be entitled to the property of Sheo Paras Singh as his reversionary heirs. In reply to this notice Pirthi Pal and Sitla Bakhsh were informed that the Government could not grant their request, and that they were at liberty to take such legal proceedings as they might think proper. This was on 27th July, 1896. No further step was taken in the matter by either Pirthi Pal or Sitla Bakhsh. Sitla Bakhsh died on the 9th of December, 1897, and Pirthi Pal died on the 19th of October, 1898. On the 9th of January, 1899, that is twelve years all but one day from the death of Musammât Gend Kunwar, the present suit was instituted by Bachchu Singh, the son of Pirthi Pal Singh, and by Jai Narain Singh, a son of Sitla Bakhsh Singh, for recovery of the property of Sheo Paras Singh and for mesne profits. The second defendant Bindesri Singh is a son of Sitla Bakhsh Singh. The Secretary of State for India in Council pleaded, among other defences to the suit, a defence in bar, namely, that previous to the institution of the suit the plaintiffs did not give the notice of their intention to bring the suit prescribed by section 424 of the Code of Civil Procedure. The learned Subordinate Judge held that the notice which was given by Pirthi Pal Singh and Sitla Bakhsh Singh was not a good notice for the plaintiffs' suit within the meaning of the section, and dismissed the suit. From this decree the present appeal has been preferred.

The main question for our determination then shortly is, whether or not a notice given under section 424 of the Code of Civil Procedure by parties who subsequently die without instituting a suit, can be availed of by their heirs and representatives

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as a valid notice preliminary to a suit instituted by such heirs and representatives. In other words, whether or not a notice given under the provisions of section 424 by a party who dies before any suit has been instituted by such party will enure for the benefit of his representatives, and entitle the representatives to maintain a suit without giving a fresh notice. A subsidiary point has been raised by the learned Advocate for the appellants, which is, that if it be held that the notice so given cannot be availed of by the representatives, the suit ought not to have been dismissed, but an opportunity should have been given to the appellants to serve a fresh notice.

Section 424 of the Code runs as follows:—“No suit shall be instituted against the Secretary of State in Council . . . until the expiration of two months next after notice in writing has been . . . delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District . . . stating the cause of action, and the name and place of abode of the intending plaintiff, and the relief which he claims; and the plaint must contain a statement that such notice has been so delivered or left.” What the precise object of this section was we cannot say with certainty; but we may reasonably presume that the intention of the Legislature in passing the section was, that the Secretary of State should have an opportunity of investigating an alleged cause of complaint, and ascertaining whether there was any ground of complaint, and, if he thought fit, of making amends before he was impleaded in a suit. Whatever was the object of the section, we have to determine whether the direction contained in it is mandatory, rendering the giving of notice a condition precedent to the institution of a suit, and if so, whether the provisions of the section have been complied with. We must interpret the section according to the recognised rules for the interpretation of Acts of the Legislature. The section prescribes that “no suit shall be instituted” unless the provisions of the section have been complied with. No stronger words of prohibition than these could well have been used. They are not that no suit shall be proceeded with or maintained until the provisions of the section have been complied with, but “no suit shall be *instituted*.”

An Act which deals with the procedure of Courts of Justice is, as a rule, construed strictly. If it be that the words "cause of action" as used in the section mean everything which a party must allege and prove in order that he may succeed in a suit, it is obvious that the notice which was given by Pirthi Pal Singh and Sitla Bakhsh Singh was a defective notice for a suit instituted by the appellants, inasmuch as it did not even mention the names of the appellants, much less state or show their title to the property in dispute. We are not, however, disposed to place too strict a construction on the words "cause of action," and on this ground would not be disposed to hold that the notice was a bad notice. The section, however, further requires that in the notice "*the name and place of abode of the intending plaintiff*" shall be stated. Neither the names nor places of abode of the appellants were mentioned in the notice of the 24th of January, 1896, nor was there any suggestion in that notice of any intention on the part of these appellants to institute any action, nor could there well be. The intending plaintiffs were Pirthi Pal Singh and Sitla Bakhsh Singh. Can it be said, then, that the requirements of the section have been complied with? Pandit *Sundar Lal* on behalf of the appellants strenuously contended that the suit should be regarded as a suit brought by the plaintiffs as representatives of Pirthi Pal Singh and Sitla Bakhsh Singh, and that the notice given by the latter is a valid notice in the case of a suit so instituted by the representatives. He has not referred us to any authority for this proposition. If we acceded to this contention, it appears to us that we should be adding words to section 424 which find no place in it. It would be necessary to add after the words "name and place of abode of the intending plaintiff" some such words as "or of the party through whom such intending plaintiff claims." This we are not at liberty to do. We may observe, moreover, that there is nothing to show that Pirthi Pal Singh and Sitla Bakhsh Singh ever intended to institute a suit. It is one thing to serve a notice under section 424, and another thing to institute a suit. From the fact that no suit was instituted by them in their life time, the reasonable inference is, that if they ever really intended to do

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so, they abandoned the idea. The notice is dated so far back as the 24th of January, 1896, and Sitla Bakhsh Singh did not die until the 9th of December, 1897, that is nearly two years after the date of the notice; while Pirthi Pal Singh did not die until the 18th of October, 1898, nearly a year later. We do not think it necessary to discuss the case of the *Secretary of State v. Piru Mall Pillai* (1), which was relied upon by the appellants, as the facts in it are unlike those in the present case. For the foregoing reasons we have no hesitation in holding that no notice of the plaintiff's suit within the meaning of section 424 has been served.

It was, however, further contended on behalf of the appellants that if the notice in question was not a good notice, it was not right to dismiss the plaintiffs' suit without giving them an opportunity of serving a fresh notice. Reliance was placed in support of this contention on the decision in the case of *Rendall v. Blair* (2). In that case the master of a charity school founded under the statute 4 and 5 Vic., Cap. XXXVIII, brought a suit in the Chancery Division against the managers of the school for an injunction to restrain them from dismissing him from his office. The plaintiff had not obtained under section 17 of the Charitable Trusts Acts, 1853, the leave of the Charity Commissioners to bring the suit. This section provides that "before any suit, petition or other proceeding (not being an application in any suit or matter actually pending) for obtaining any relief, order or direction concerning or relating to any charity, or the estate, funds, property or income thereof shall be commenced, presented or taken by any person whomsoever, there shall be transmitted by such person to the said Board (*i. e.* the Charity Commissioners) notice in writing of such proposed suit"

The section goes on to provide that the Board may by order or certificate authorize a suit to be commenced, &c. Then follows this provision:—"and (save as herein otherwise provided), no suit, petition or other proceeding for obtaining any such relief . . . shall be entertained or proceeded with by the Court of Chancery, or by any Court or Judge, except upon and

(1) (1900) I. L. R., 24 Mad., 279.

(2) (1890) 45 Ch. D., 139.

in conformity with an order or certificate of the said Board." It was held by Cotton, Bowen and Fry, L. JJ., overruling Kay, J., that if the consent of the Charity Commissioners was required, it was not necessary to obtain it before the commencement of the action, and that it would not be right to dismiss the action without giving the plaintiff the opportunity of ascertaining whether the Commissioners would give their consent. Section 17 of the Charitable Trust Act, we may observe, is differently drafted from section 424 of the Civil Procedure Code. The section begins with the words:—"Before any suit shall be commenced there shall be transmitted notice in writing to the Board." It abstains from saying that the action is to be dismissed if no such notice is transmitted. On the contrary, as pointed out by Bowen, L. J., "it only indicates that, 'save as herein-before provided, no suit, petition or other proceeding shall be entertained or proceeded with by the Court,' that is to say, the enactment is directory. It directs what ought to be done. Unless the duty is complied with by the litigant, the Court must hold its hand." How different is the language of section 424 of the Code, *viz.* "no suit *shall* be instituted," and "the plaint *must* contain a statement that such notice has been so delivered or left"? In the latter case words could not be found to express more clearly the duty of a plaintiff to give the notice prescribed by the section as a condition precedent to his instituting a suit. We are, for the foregoing reasons, of opinion that the provisions of section 424 of the Code have not been complied with by the plaintiffs, and that the plaint ought to have been rejected under the provisions of section 54(c) of the Code. The appeal, therefore, fails, and is dismissed with costs.

Appeal dismissed.

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