

anything, to cut down the Company's ordinary liability as a bailee after taking delivery.

GOKUL PRASAD, J. :—I agree with the order of the Court and the reasons given by my brother PIGGOTT, to which I think it unnecessary to add anything.

BY THE COURT.—The application in revision is accepted, the order of the court below is set aside and the plaintiff's claim is decreed with costs throughout, the said costs to include the fee certified by the applicant's counsel.

Application allowed.

REVISIONAL CIVIL.

Before Justice Sir Pramada Charan Banerji.

MUHAMMAD HASHIM (DEFENDANT) v. MISRI (PLAINTIFF).*

Act No. IX of 1872 (Indian Contract Act), sections 56 and 65—Lease—Property leased compulsorily acquired by Government—Right of lessee to obtain compensation from lessor.

If during the continuance of a lease of immovable property the subject of the lease is compulsorily acquired by Government under the provisions of the Land Acquisition Act, 1894, performance of the contract having thereby become impossible, the lessee is entitled to obtain from the lessor compensation for the loss which he has sustained in consequence of being deprived of the possession of the demised premises. *Dhuransay Soonderdas v. Ahmudbhai Hubibbhoy* (1) referred to.

THIS was an application for revision of the decree of the Court of Small Causes at Cawnpore. The facts of the case sufficiently appear from the judgment of the High Court.

Babu *Sital Prasad Ghosh*, for the applicant.

Babu *Saila Nath Mukerji*, for the opposite party.

BANERJI, J. :—The applicant Muhammad Hashim owned a flower garden in the city of Cawnpore which he let to the plaintiff for one year from March, 1920, to the following March, on a rent of Rs. 230. On the 15th day of November, 1920, the garden was acquired under the Land Acquisition Act for improvements in Cawnpore, and the plaintiff was deprived of possession. He brought the present suit in the Court of Small Causes to recover Rs. 65 which he said was the loss incurred by him by reason of being deprived of possession of the garden in November, 1920.

* Civil Revision No. 79 of 1921.

(1) (1898) I. L. R., 28 Bom., 15.

1921

SOHAN PAL,
MUNNA LAL
v.
THE EAST
INDIAN
RAILWAY
COMPANY.

1921

December, 2.

1921

MUHAMMAD
HASHIM
v.
MISRI.

He also claimed Rs. 26 as costs of repairs made by him. The claim has been decreed. This application for revision has been filed by the defendant in respect of both the items mentioned above.

As regards the sum of Rs. 65 claimed by the plaintiff, it is not alleged that, if the plaintiff is entitled to recover it, the amount would be unreasonable or excessive. But what is urged is that under section 65 of the Contract Act, which the court below has applied, the plaintiff is not entitled to recover compensation. I do not agree with this contention. Under section 65 if a contract has become void, any person who has derived benefit under the contract is liable to compensate the other party to the extent of the benefit so received. In view of the provisions of section 56, the contract having become impossible of performance must be held to have become void. Therefore according to the provisions of section 65 the plaintiff would be entitled to compensation. The principle of the ruling of the Bombay High Court in *Dhuramsey Soonderdas v. Ahmedbhai Hubibbhoy* (1) applies to the present case. As by reason of the acquisition of the garden by Government under the Land Acquisition Act the plaintiff was deprived of the garden and the performance of the contract entered into with him by the defendant became impossible, he is entitled to be recompensed for the loss he has sustained.

As to the sum of Rs. 26 the court below has believed the evidence of the plaintiff that he spent Rs. 26 in repairs to the garden under the authority of the defendant. The fact that the garden had been let to the plaintiff for Rs. 230 and Rs. 200 only was realized from him, raises an inference in favour of the truth of the plaintiff's allegation that he had to incur some expenses for the repairs of the garden. Apparently Rs. 30 was withheld because the repairs had to be done. Reliance is placed upon the fact that before the Land Acquisition Officer mention of the repairs had not been made in the deposition recorded. In that deposition the total amount of the rent was put down as Rs. 250 whereas as a matter of fact the garden had been let for Rs. 230 only. There was no question as to what repairs the plaintiff had made and, therefore, the omission of the repairs in that deposition did not detract

from the credibility of the plaintiff whose deposition was accepted by the court below. This application is without force. I accordingly dismiss it with costs.

1921

MUHAMMAD
HASHIM
v.
MISRI.

Application dismissed.

FULL BENCH.

*Before Justice Sir Pramada Charan Banerji, Mr. Justice Piggott
and Mr. Justice Walsh.*

SHIAM LAL (DEFENDANT) v. MUSAMMAT LALLI AND OTHERS
(PLAINTIFFS).*

1921
December, 8.

*Civil Procedure Code (1908), order I, rule 8—Suit in representative capacity—
Suit not invalidated by omission to publish notice.*

Order I, rule 8, of the Code of Civil Procedure (1908) requires that when a plaintiff brings a suit in a representative capacity he must first obtain the leave of the court to bring such a suit, and when the leave is granted, the court shall issue notice that the suit has been instituted. The provisions of the section as to the issue of notice are peremptory and the court is bound to issue notice as required by the rule. If, however, the court omits to issue notice, the result is not necessarily that the entire suit is vitiated and must be dismissed. The irregularity may be cured in appeal by the appellate court remanding the case to the court of first instance in order that the omission may be repaired. *Mulh Lal Singh v. Jagdeo Tewari* (1) referred to. *Dhunput Singh v. Parosh Nath Singh* (2) referred to by Piggott, J.

THE facts of this case are as follows:—

The suit was brought by the respondents, who were residents of a certain mohalla in the city of Agra and sought to prevent the defendant from interfering with a *chabutra* which they alleged had been dedicated as a shrine and set apart for the use of the residents of the mohalla. The suit was instituted in a representative capacity under order I, rule 8, of the Code of Civil Procedure and the plaintiffs obtained what is called 'a representation order' from the court of first instance. Notice of the institution of the suit was, however, not given to the numerous persons interested—in this case the other residents of the mohalla—as required by the aforesaid rule, and this apparently was due to an oversight on the part of the officer of the court.

* Second Appeal No. 408 of 1920 from a decree of T. K. Johnston, District Judge of Agra, dated the 26th of February, 1920, confirming a decree of Tufail Ahmad, Munsif of Agra, dated the 11th of June, 1919.

(1) (1908) I. L. R., 35 Calc., 1021. (2) (1898) I. L. R., 21 Calc., 180.