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weight of a family settlement in the judgment in *Keramatullah Meah* v. *Keramatullah Meah*(1). In that judgment it is suggested that the doctrine of legal benefit is applicable, though it is at the same time stated that the court should not be disposed to scan with too much nicety the quantum of consideration. What appears to me, however, to be quite clear is the point with which I began, namely, that what my Lord has called the legal justification of the transaction should be tested on much wider grounds in the cases where there is a family arrangement in existence. If the learned Subordinate Judge had taken into his view the fact that there was a partition and a family arrangement, there can be little doubt that his judgment would have been more complete and more correct.

There is only one point to add. It appears to me that as this family arrangement has been acted upon by the defendant Haricharan's act in improving the house, and by the sale to the present appellant Dangal Ram, the court should be inclined not to upset the existing arrangement, especially as there is really no case made out sufficient to raise the apprehension that the respondents have been unfairly treated.

Appeal decreed.

APPELLATE CIVIL.

Before Ross and Kulwant Sahay, J.J.

EAST INDIAN RAILWAY CO.

v.

BHIMRAJ SRILAL.*

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April, 23.

Railways Act, 1890 (*Act IX of* 1890), *sections* 77 *and* 140—*notice to the Traffic Manager, whether sufficient*—

*Appeal from Appellate Decree no. 756 of 1923, from a decision of P. T. Mansfield, Esq., I.C.S., District Judge of Gaya, dated the 2nd May, 1925, confirming a decision of M. Shah Mahammad Khalilur Rahman, Subordinate Judge of Gaya, dated the 11th February, 1923.

(1) (1918-19) 23 Cal. W. N. 118.

Agent, actual receipt of notice by, effect of—appointment of officer to settle claims, whether amounts to delegation of power—Railway receipt, condition on the back of, that notice must be given to Traffic Manager, effect of—limitation—terminus a quo.

Section 77 of the Railways Act, 1890, provides that a person shall not be entitled to compensation for the loss, etc., of goods delivered to a railway for carriage unless a claim has been preferred in writing by him or on his behalf to the railway administration within six months from the date of the delivery of the goods for carriage by railway. Under section 140 a notice of claim for loss of goods despatched by rail must be given to the "Agent" of the company before a suit for compensation for loss can be entertained.

Held, therefore, that the service of notice of the claim on the Traffic Manager is not a sufficient compliance with the requirements of section 140.

Agent, East Indian Railway Co. v. *Ajodhya Prasad* (1), *Janki Das* v. *The Bengal-Nagpur Railway Co.* (2), *Assam Bengal Railway Co., Ltd.*, v. *Radhica Mohan Nath* (3), *Great Indian Peninsula Railway Co., Ltd.*, v. *Chandu Lal Sheopratap* (4), *Cawnpore Cotton Mills Co., Ltd.*, v. *Great Indian Peninsula Railway Co.* (5), *Paras Das* v. *East Indian Railway Co.* (6) and *Bombay, Baroda and Central India Railway Co.* v. *Manohar Lal Parwin Chand* (7), followed.

Held, further, that if it can be shown by the plaintiff that the notice, although addressed to a subordinate officer of the railway administration, did actually reach the Agent within the prescribed time, it would be a sufficient compliance with the requirements of the law.

Mahadeva Aiyar v. *The South Indian Railway Co.* (8), *The South Indian Railway Co.* v. *Narayan Aiyar* (9) and *Durga Prasad* v. *Great Indian Peninsula Railway* (10), followed.

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(1) (1919) Pat. 150.
(2) (1911-12) 16 Cal. W. N. 356.
(3) (1923) 72 Ind. Cas. 714.
(4) (1926) I. L. R. 50 Bom. 84.
(5) (1923) I. L. R. 45 All. 353.
(6) (1924) All. I. R. Lah. 504.
(7) (1923) I. L. R. 4 Lah. 46.
(8) (1922) 69 Ind. Cas. 59, F. B
(9) (1923) 77 Ind. Cas. 511.
(10) (1923) Pat. 284.

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A condition on the back of a railway receipt that notice of loss, etc., must be given to the Divisional Traffic Manager does not amount to a delegation of the power of the Agent to receive the notice prescribed by section 77 to the Traffic Manager. Likewise, the fact that a particular officer is appointed by the Agent to investigate and settle claims for loss of goods does not imply that the Agent has delegated his power to receive notice to that officer.

The notice required by section 77 of the Act must be given within six months from the date of delivery of the goods for carriage by railway and not from the date on which the goods ought, in ordinary course, to be delivered to the consignee.

Appeal by the defendant.

This appeal arose out of a suit for compensation for non-delivery of a bale of cotton goods consigned to the defendant, East Indian Railway Company, at Howrah for carriage to Rafigunj, a station on the line of the said company. Both the courts below decreed the suit and the railway company appealled to the High Court.

The only point for consideration was whether the suit was incompetent for want of notice as prescribed by section 77 of the Indian Railways Act.

The facts found were that the bale was consigned on the 9th of July, 1920; that several letters were sent by the plaintiff, who was the consignee, to the Divisional Traffic Manager, making a claim for compensation for non-delivery of the goods; all these letters were within six months from the date of consignment, and they were replied to by the Traffic Manager. On the 20th of January, 1921, the plaintiff sent a registered notice to the Agent through his pleader claiming compensation for the loss of the goods. The suit was brought on the 21st of May, 1921, and in the plaint the cause of action was alleged to have accrued on the 24th of July, 1920, when the bale ought to have been delivered at Rafiganj.

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The Munsif found that the notice to the Agent was within six months from the date when the cause of action accrued to the plaintiff, and that the cause of action arose when the goods were not delivered to the plaintiff. He further found that letters claiming compensation had been sent to the Divisional Traffic Manager and he, apparently, was of opinion that such letters amounted to a notice as prescribed by law. The District Judge on appeal did not base his decision upon the first ground taken by the Munsif. He held, however, that the notice to the Traffic Manager was a good notice to the Agent within the meaning of sections 77 and 140 of the Indian Railways Act. He relied for this purpose upon *East Indian Railway Company* v. *Kalicharan Ram Prasad*(1). He further referred to the fact that in the railway receipt (Exhibit 7) granted by the railway company on receipt of the goods, there were certain conditions printed on the back, one of which was that notice was to be given to the Divisional Traffic Manager in case of loss, otherwise the railway would not hold itself responsible, and the learned District Judge concluded from this that the railway would be responsible if notice was given to the Divisional Traffic Manager. He further referred to the fact that the replies sent by the Traffic Manager showed that he had power to settle claims and he, therefore, considered that powers had been delegated to him by the Traffic Manager and held that the notice given to the Traffic Manager was a sufficient notice according to law.

N. C. Sinha, *N. C. Ghosh* and *B. B. Ghosh*, for the appellant.

S. M. Mullick and *B. C. Sinha* for the respondents.

KULWANT SAHAY, J. (after stating the facts set out above, proceeded as follows): It is clear on reference to sections 77 and 140 of the Indian Railways Act that a notice must be given to the Agent of the

(1) (1922) 3 Pat. L. T. 215.

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company before a suit for compensation for loss can be entertained. It is settled law that notice to a subordinate officer of the railway company is not a sufficient compliance with the provisions of the law, and the learned District Judge does not base his decision on such ground, nor has it been argued before us on behalf of the plaintiff-respondent that a notice to the Traffic Manager was a sufficient notice as required by law.

The question, however, is whether a notice to the Traffic Manager can be considered to be a notice to the Agent. The decisions of the various High Courts on this point are almost uniform. In *The Agent, East Indian Railway Company* v. *Ajodhya Prasad*(1) a Division Bench of this court held that a notice under section 77 of the Indian Railways Act, to be a valid notice, must be served upon the Agent or Manager of the company and not upon a subordinate official of the railway company, and that any communication addressed to the District Traffic Manager is not a notice in accordance with the requirements of section 77 read with section 140 of the Indian Railways Act. In *Janki Das* v. *The Bengal-Nagpur Railway Company* (2) Sir Lawrence Jenkins held that a notice of claim for loss of goods despatched by rail given to the Goods Superintendent did not comply with the requirements of sections 77 and 140 of the Railways Act. In *The Assam Bengal Railway Company, Limited*, v. *Radhika Mohan Nath* (3) a Division Bench of the Calcutta High Court held that a service of notice on the Traffic Manager was not a sufficient compliance with the Act and the notice must be given to the Agent of the company. The Bombay High Court has taken the same view in *The Great Indian Peninsula Railway Company, Limited*, v. *Chandulal Sheopratap*(4). The same view was taken by the Allahabad High Court—[see *Cawnpore*

(1) (1919) C. W. N. (Pat.) 150.
(2) (1911-12) 16 Cal. W. N. 356.
(3) (1923) 72 Ind. Cas. 714.
(4) (1926) I. L. R. 50 Bom. 84.

Cotton Mills Company, Limited, v. *The Great Indian Peninsula Railway Company*(1) and the cases cited therein], and by the Lahore High Court [see *Paras Das* v. *The East Indian Railway*(2) and *Bombay, Baroda and Central India Railway Company* v. *Manohar Lal Parwin Chand* (3)]. In *Mahadeva Aiyar* v. *The South Indian Railway Company*(4) a Full Bench of the Madras High Court considered the question of notice, and two of the learned Judges composing the Full Bench held that where the notice under section 77 read with section 140 of the Railways Act is sent to the District Traffic Superintendent and there is nothing to show that the power of the Agent to receive such notices had been delegated to that official, or that the railway company by its rules or course of conduct had held out to the public that the notices might be sent to that officer instead of the Agent, and it is not proved that the Agent became aware of the notice within the prescribed time, a suit for damages for short delivery of goods against the railway company would not be maintainable. Kumaraswami Sastri, J., however, held that section 140 was only an enabling provision and that its object was to see that the notice provided for by it somehow reaches the Agent, and that in cases where a subordinate railway official sends on the notice to the Agent or informs him of its contents within six months, there is a substantial compliance with the requirements of the Act, and that an Agent can depute a subordinate officer of the company to receive the notice. In *The South Indian Railway Company* v. *Narayana Aiyar*(5) a similar view was expressed by the Madras High Court where it was held that if it is found that the notice required by section 77 of the Act has not been given to the Agent of the railway, but was sent to some subordinate officer of the railway, the plaintiff in order to

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(1) (1923) I. L. R. 45 All. 353.
(2) (1924) A. I. R. (Lah.) 504.
(3) (1923) I. L. R. 4 Lah. 46
(4) (1922) 69 Ind. Cas. 59, F. B.
(5) (1923) 77 Ind. Cas. 511.

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succeed must prove either that the power of the Agent to receive notice under section 140 of the Act had been delegated to the subordinate officer who had actually received the notice or that the company by its rules or course of business had held out to the public that notices ought to be given to such officer instead of to the Agent.

These Madras decisions, therefore, proceed on the principle that the notice has to be given to the Agent, and although the notice might be addressed to a subordinate officer of the railway company, yet if that notice actually reaches the Agent within the prescribed time, it would amount to a sufficient compliance with the requirements of the law. A similar view appears to have been expressed by this court in *Durga Prasad* v. *Great Indian Peninsula Railway* (1) where a claimant who had failed to comply with clause (*c*) to section 140 of the Railways Act was held entitled to prove that the notice was in fact delivered to the Agent under clause (*a*) to the section. In that case the notice was addressed to the Agent, East Indian Railway, at Howrah, but the office of the Agent was not at Howrah but at Fairlie Place, Calcutta. The notice was received by the General Traffic Manager of the East Indian Railway at Howrah who then sent the letter to the Divisional Traffic Manager who, after carrying on a correspondence with the plaintiff for sometime, finally wrote to him denying liability of the railway company. It was held that although the notice was not served in accordance with clause (*c*) of section 140, yet, if, in fact the notice reached the Agent as contended for by the plaintiff in that suit, it was a good service under clause (*a*) of section 140. In my opinion this is a sound view of the law, and if it can be shown by the plaintiff that a notice of claim for loss of goods, although addressed to a subordinate officer of the railway administration, did actually reach the Agent within the time prescribed by law it would be a

(1) (1923) Cal. W. N. (Pat.) 284.

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sufficient compliance with the requirements of the law. All the High Courts, however, agree in holding that a notice must be actually given to the Agent. In the present case it has not been shown that the notice sent to the Divisional Traffic Manager reached the Agent. In fact the plaintiff himself did not consider the notice to the Divisional Traffic Manager to be a sufficient compliance with the law inasmuch as he himself sent a duly registered notice to the Agent on the 20th of January, 1921. This was, however, beyond six months from the date of delivery of the goods to the railway company, and was not a compliance with the requirements of section 77 of the Act.

As regards the observation of the learned District Judge that there was a delegation of power to the Traffic Manager and that therefore the notice to the Traffic Manager was a valid notice, I am of opinion that this contention is not sound. In the first place no such plea was taken by the plaintiff. No issue was raised on the question of fact as to whether there was a delegation of the powers of the Agent to the Traffic Manager. There is absolutely no evidence on the point except the printed conditions on the back of the receipt given by the railway company to the consignor when the goods were delivered to the company. One of the conditions on the back of the receipt was that notice must be given to the Divisional Traffic Manager before a claim can be entertained. That did not in any way amount to a delegation of the power of the Agent to receive notices prescribed by section 77 of the Act to the Traffic Manager. It was simply a condition prescribed for speedy investigation into claims. No doubt, it had been held in the Madras High Court and also in some of the other High Courts that a delegation of authority will be presumed from rules framed by the railway company or from the course of conduct of the railway company which might lead the public to believe that notice given to a particular officer of the company

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would be a valid notice under section 77 of the Act. But in the present case there is no such allegation and no such proof. The fact that a particular officer is appointed by the Agent to investigate into and settle claims for loss of goods does not show that the Agent delegated his powers to receive notice to such officer. I am clearly of opinion that in the present case it has not been shown that the Divisional Traffic Manager had any delegated powers to receive the notice, and that the notice given to the Traffic Manager was not a sufficient compliance with the requirements of law.

Under the circumstances it is clear that the present suit cannot be maintained for want of notice to the Agent within six months of the date of delivery of the goods and the claim of the plaintiff must therefore be dismissed. This appeal is decreed and the plaintiff's suit dismissed. The ground of dismissal, however, is a technical ground and the plaintiff has actually suffered loss on account of the non-delivery of the goods to him: I am, therefore, of opinion that although the suit is dismissed he is not liable to pay costs, therefore, although the appeal is decreed, no costs are allowed to the appellant in any court.

Ross, J.—I agree.

Appeal decreed.

APPELLATE CIVIL.

Before Jwala Prasad and Bucknill, J.J.

KHIRI CHAND MAHTON

v.

MUSSAMMAT MEGHNI.*

1926.

March, 24

Court-fees Act, 1870 (Act VII of 1870), section 7(iv) (c)—suit for separate and essential declarations—ad valorem court-fee payable—test to be applied.

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*In the matter of court-fee in Second Appeal no. 1388 of 1925.