

1930.

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cannot be legally tried together with one of falsification relating to a distinct act of misappropriation committed in a separate breach of trust. In the particular case that we are now dealing with that state of affairs does not in fact exist because each act of misappropriation is connected with a specific act of falsification and the whole of the acts of misappropriation are united together in a single sum contained within a period of one year. For these reasons it seems to me that the point taken on behalf of the petitioner fails. The link between the series of falsification charges is affected by their being each linked to a specific charge of misappropriation and the misappropriation charges are united together by their going to make up a single lump sum. The application is dismissed.

ADAMI, J.—I agree.

*Rule discharged.*

### APPELLATE CIVIL.

1930.

Dec. 12.

*Before Jwala Prasad and James, JJ.*

SHAIKH ELAHI BAKSH

o.

#### E. I. RAILWAY ADMINISTRATION.\*

*Railways Act, 1890 (Act IX of 1890), section 3(6)—suit against "the Railway Administration through Agent resident at Calcutta" instituted after 1st January, 1925, whether a proper suit against Secretary of State for India—Code of Civil Procedure, 1908 (Act V of 1908), section 79—notice served on Agent or Manager of the Railway Administration, whether sufficient compliance with section 80 of the Code.*

A suit against "the Railway Administration through their Agent resident at Calcutta" instituted after the 1st of January, 1925, when the Government took charge of the

\* Appeal from Appellate Decree no. 654 of 1929, from a decision of Babu Akhauri Nityanand Singh, Subordinate Judge of Monghyr, dated the 18th January, 1929, reversing a decision of Babu Braj Bilas Prasad, Munsif of Jamui, dated the 30th November, 1927.

administration of the East Indian Railway, is not a proper suit against the Secretary of State for India as contemplated by section 79, Code of Civil Procedure, 1908.

Even where such a suit be considered to be a suit virtually against the Secretary of State for India, a notice given to the Agent or Manager of the Railway Administration is not a sufficient compliance with the provision of section 80 of the Code, and in the absence of a notice under that section the plaintiff's suit must fail.

### Appeal by the plaintiffs.

The facts of the case material to this report are stated in the judgment of the Court.

*Murari Prasad* (with him *Syed Ali Khan* and *R. Misra*), for the appellants.

*S. M. Mullick* and *N. C. Ghosh*, for the respondents.

JWALA PRASAD and JAMES, JJ.—This is an appeal by the plaintiffs against the decision of the Subordinate Judge of Monghyr, dated the 18th January, 1929, reversing the decision of the Munsif, dated the 30th November, 1927, and dismissing the plaintiffs' suit.

The plaintiff no. 1 is the father and the plaintiff no. 2 is the mother of one Mohammad Yusuf, who was a fireman working in the Loco Shed, Jhajha. Mohammad Yusuf died on the 18th of August, 1925, leaving the plaintiffs, his parents, and defendant no. 2, his widow, as his legal heirs. According to the Muhammadan Law the plaintiffs are entitled to 7/8th and the defendant no. 2 to 1/8th of the properties left by the deceased Mohammad Yusuf. The defendant no. 1, the East Indian Railway Administration, owed to the deceased Mohammad Yusuf Rs. 82-2-0 on account of his salary from January to 18th of August, 1925, and Rs. 289-8-0 on account of Provident Fund. Besides the above, the Railway Administration had sanctioned gratuity of Rs. 215-4-0 for payment to the

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widow of the deceased. Defendant no. 2 by a registered deed, dated the 27th October, 1925, made a gift of her share in the salary and the Provident Fund referred to above and the entire sum of the gratuity sanctioned by the Railway Administration to her parents, plaintiffs 1 and 2. The plaintiffs then applied to the Railway Administration to pay the said sums to them. The Railway Administration refused to pay the same to the plaintiffs upon the ground that the money was payable to the widow and that either the widow herself should receive it, or she should give authority in favour of the plaintiffs, or her father-in-law, plaintiff no. 1, to receive the money from the Railway Administration on her behalf. The plaintiffs then instituted the present suit out of which this appeal has arisen, making the

“ East Indian Railway Administration through their Agent resident in Calcutta ”

defendant in the case. One of the objections of the defendants was that the suit was bad for want of notice under section 80 to the Secretary of State for India in Council, inasmuch as the Government has taken charge of the administration of the East Indian Railway from the 1st of January, 1925. The Munsif overruled this contention of the defendants and decreed the entire claim of the plaintiffs against the Railway Administration.

On appeal the Subordinate Judge held that the suit was bad without notice under section 80, and dismissed the suit. He did not, therefore, enter into the merits of the case.

In this second appeal the plaintiffs dispute the correctness of the view taken by the lower appellate Court and contend that no notice was necessary to be served upon the Secretary of State for India in Council. Now, the suit should have been brought against the Secretary of State for India in Council, inasmuch as the Railway Administration has vested in the Government and the decree, if any, passed in favour of the plaintiffs would have to be satisfied out of the revenue of the country.

“ Railway Administration ” in the case of a railway administered by the Government has been defined in section 3, clause (6), of the Indian Railways Act (Act IX of 1890), and means the manager of the railway and includes the Government. The Government owning the railway is, therefore, a necessary party in a suit of this nature, and under section 79 of the Code of Civil Procedure a suit against the Government has to be instituted against “ The Secretary of State for India in Council ”. The present suit, which purports to be against the

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is not a proper suit against the Secretary of State for India in Council. Therefore, the suit was instituted against a wrong person. Even if it be conceded that the description of the defendant in the present case read with the definition of “ Railway Administration ” would show that the suit was virtually against the Secretary of State for India in Council, then in that case the suit is bad for want of notice to the Secretary of State for India in Council under section 80. The suit does not purport to be against the Agent of the East Indian Railway Administration in his personal capacity, or in his public capacity as an officer of the Railway Administration. Therefore, the notice given in this case to the Agent or Manager of the Railway Administration is not a sufficient notice and does not relieve the plaintiffs from the statutory obligation to serve a notice upon the Secretary of State for India in Council and to bring a suit with proper description of the defendant as is required by section 79 of the Civil Procedure Code.

Now from the written statement filed in this case by defendant no. 1 on behalf of the Railway Administration it is clear that they have no objection to payment of the sums standing to the credit of the deceased railway employee, Mohammad Yusuf, to a person who could give a valid discharge for the payment made. In fact, they have deposited in the Court below the

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sum of Rs. 371-10-0, the amount constituting the salary and the Provident Fund which are payable to the heirs of the deceased and they have no objection to the same being paid upon a proper receipt having been obtained.

As regards the gratuity of Rs. 215-4-0, their objection is that the heir of the deceased has no vested interest therein and in fact it does not belong to anybody so long as the money is in the hand of the Railway Administration and, therefore, the widow of the deceased had no right to make a gift of it in favour of her parents, the plaintiffs. The Railway Administration have no objection to pay the said sum to the widow or to any person authorised by her, including the plaintiffs, to give a valid receipt on her behalf. The plaintiffs have obtained a succession certificate (Exhibit A-2) from the District Judge of Monghyr in respect of all the three aforesaid items, namely, the salary, the Provident Fund and the gratuity. The Succession Certificate might be sufficient for payment of the salary and the Provident Fund, but can be of no avail so far as the gratuity is concerned. The deed of gift executed by the defendant no. 2, widow of the deceased, authorising the plaintiffs to receive the money from the Railway Administration is not valid so far as the gratuity is concerned, inasmuch as the plaintiffs have not been authorised by this deed to receive the money on her behalf but to receive it as their own under the gift made by the widow in their favour. There will be no difficulty, as we understand, from the learned Advocate appearing on behalf of the Railway Administration, in paying the amount of the gratuity to the person properly authorised by the lady to receive the same. As regards the salary and the Provident Fund they have no objection to the plaintiffs withdrawing the same from the Court.

The appeal is accordingly dismissed with costs.

*Appeal dismissed.*