

*Emperor v. Mahant Ramdas*<sup>(1)</sup> determining the question of whether a magistrate can take action under section 58 of the Bengal Tenancy Act, is no longer law, because its basis was destroyed by the legislation of 1907. The learned District Magistrate acted rightly in declining to make any reference to the High Court. We have no jurisdiction to revise the order of the Subdivisional Officer. He pointed out rightly that the proper remedy of the petitioners lay in the appeal provided by sub-section (8) of section 67 of the Orissa Tenancy Act.

We cannot interfere in these cases and the petitions must be dismissed.

SAUNDERS, J.—I agree.

*Rule discharged.*

## APPELLATE CIVIL.

*Before Agarwala and Varma, JJ.*

SECRETARY OF STATE FOR INDIA IN COUNCIL

v.

AMARNATH.\*

*Code of Civil Procedure, 1908 (Act V of 1908), section 80*  
—notice—suit against Secretary of State impleaded as pro  
forma defendant, without notice, if maintainable.

Section 80 of the Code is express, explicit and mandatory. It admits of no implications or exceptions. Notice must be served on the Secretary of State. It is immaterial that he was impleaded as a pro forma defendant and that no relief was claimed against him.

\*Appeal from Appellate Order no. 169 of 1935, from an order of J. G. Shearer, Esq., I.C.S., District Judge of Patna, dated the 12th March, 1935, reversing an order of Babu Satnarain Chaudhuri, Munsif of Barh, dated the 20th July, 1934.

(1) (1904) 9 Cal. W. N. 816,

1935.

SARAT  
CHANDRA  
DAS  
MAHAPATRA.  
v.  
KING-  
EMPEROR.  
JAMES, J.

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29.  
December,  
2.

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SECRETARY  
OF STATE  
FOR INDIA  
IN COUNCIL  
\*  
AMARNATH.

*Rebatimohan Das v. Jatendramohan Ghosh*(1), and  
*Bhugchand Dayadusa v. Secretary of State for India in  
Council*(2), followed.

*Prasaddas Sen v. K. S. Banerjee*(3), doubted.

Appeal by the defendant.

The facts of the case material to this report are set out in the judgment of Agarwala, J.

*B. P. Sinha*, *Government Pleader*, for the appellants.

*A. K. Ray* and *S. K. Ray*, for the respondents.

AGARWALA, J.—The plaintiff-respondent instituted a suit in the court of the Munsif of Barh to recover the rent of a holding. The rent of the holding in suit is payable in equal shares to the proprietors of two estates one of which is a khas mahal. The Secretary of State was impleaded as a pro forma defendant but no notice under section 80 of the Code of Civil Procedure was served on him. On objection taken in the trial court the learned Munsif held that non-compliance with section 80 barred the maintenance of the suit. The plaint was, therefore, rejected. On appeal by the plaintiff to the District Judge of Patna, the learned Judge has held that as no relief was claimed against the Secretary of State notice under section 80 was not necessary. In coming to this conclusion the learned Judge has taken into consideration the fact that the notice required by section 80 must state, among other things, the cause of action and the relief which the plaintiff claims. In the view of the learned Judge these requirements of the section indicate that where no cause of action against the Secretary of State is alleged and no relief is sought as against him, no notice is required. I am unable to accept this interpretation of this

(1) (1934) I. L. R. 61 Cal. 470, P. C.

(2) (1927) I. L. R. 51 Bom. 725, 747; L. R. 54 I. A. 338.

(3) (1929) I. L. R. 57 Cal. 1127, 1134.

section. Section 80 deals with two classes of suits, (a) suits against the Secretary of State for India in Council and (b) suits against a public officer in respect of any act purporting to be done by such public officer in his official capacity. With regard to both these classes of suits the section is clear and peremptory that notice must be served on the Secretary of State or on the public officer, as the case may be, as a condition precedent to the institution of the suit. The learned District Judge referred to an observation in the case of *Prasaddas Sen v. K. S. Banerjee*(<sup>1</sup>) where the learned Chief Justice of the Calcutta High Court, in a suit against an official receiver, indicated that there may be cases against public officers, which do not require notice and that suits *ex contractu* against public officers would fall within that class of cases. It is doubtful whether that proposition can be maintained in view of the decision of the Privy Council in *Rebatimohan Das v. Jateendramohan Ghosh*(<sup>2</sup>) where Sir George Lowndes said,

“ The learned Subordinate Judge held that the section had no application to suits in contract, and this dictum was rightly repelled by Mukerji, J. who delivered the judgment of the High Court. Having regard to the decision of this Board in *Bhagchand Dagadusa v. Secretary of State for India in Council*(<sup>3</sup>) their Lordships think that no such distinction is possible.”

In the Bombay case referred to, at page 747 of the report, Viscount Sumner said,

“ Section 80 is express, explicit and mandatory, and it admits of no implications or exceptions. A suit in which inter alia an injunction is prayed is still ‘ a suit ’ within the words of the section, and to read any qualification into it is an encroachment on the function of legislation.”

(1) (1929) I. L. R. 57 Cal. 1127, 1134.

(2) (1934) I. L. R. 61 Cal. 470, 475, P.C.

(3) (1927) I. L. R. 51 Bom. 725; L. R. 54 I. A. 338.

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To accept the interpretation of the learned District Judge in the present case would entail reading into the section a qualification that in a suit against the Secretary of State notice is not required where no relief is sought as against him. It is impossible to insert these words in the section or to read the section as if these words found a place in it. The words of the section are perfectly unambiguous that no suit shall be instituted against the Secretary of State until two months after notice of the suit has been served upon him. There is no qualification of this requirement and no qualification can be read into the section.

The order of the learned District Judge remanding the case to be disposed of on the merits will, therefore, be varied to this extent, that the name of the Secretary of State will be expunged from the action.

The appellant is entitled to his costs in this Court and in the court below.

VARMA, J.—I agree.

*Appeal allowed.*

### APPELLATE CIVIL.

*Before Khaja Mohamad Noor and Saunders, JJ.*

JOKHIRAM SAGARMAL

v.

CHAMAN CHLOUDHRY.\*

1935.

September,  
17.  
December,  
3.

*Santal Parganas Act, 1855 (Act XXXVII of 1855), section 1, clause (2)—Santal Parganas Settlement Regulation, 1872 (Reg. III of 1872)—Santal Parganas Justice Regulation, 1893 (Reg. V of 1893), section 27—Santal Parganas Judicial Rules—Rules 35 and 36, if ultra vires—rule that*

\*Appeal from Appellate Orders nos. 323 and 324 of 1934, from an order of Muhammad Ibrahim, Esq., Subordinate Judge, Bhagalpur, dated the 4th July, 1934, affirming the order of Babu A. C. Banerji, Munsif of Banka, dated the 16th March, 1934.