

has only himself to blame that the house has not been partitioned, since the decree was passed in 1906. Now he can either come to an arrangement with the defendant for partition of the house or he can file another suit.

The appeal must be dismissed with costs.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Crump

THE SARASPUR MANUFACTURING COMPANY, LIMITED (ORIGINAL PLAINTIFF), APPLICANT v. B. B. & C. I. RAILWAY COMPANY, LIMITED (ORIGINAL DEFENDANT), OPONENT^a.

1923.

April 5.

Parties to a suit—Description of defendant—Suit for damages—Railway Company sued in the name of its agent—Misdescription—Amendment of title—Civil Procedure Code (Act V of 1908), Appendix A.

In a suit against a Railway Company to recover damages for loss of goods, the defendant was described in the title as follows: "The Agent... Railway Company". On the defendant company's objection, the suit was dismissed as having been brought against the wrong person. On application to the High Court:—

Held, that there was only a misdescription in the title of the railway company; and that the plaintiff should in the circumstances be given leave to amend the title by omitting the words "the Agent".

Sinehi Ram Biharlal v. The Agent, East Indian Railway Company⁽¹⁾, dissented from.

THIS was an application under the extraordinary jurisdiction to revise an order passed by T. R. Kotwal, Small Cause Court Judge at Ahmedabad.

Suit to recover damages.

^a Civil Extraordinary Application No. 261 of 1922.

(1) (1921) 64 Ind. Cas. 125.

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The plaintiff Company sued the defendant Railway Company to recover the amount of loss suffered by them owing to disappearance of goods. The defendant was described as "The Agent, B. B. & C. I. Ry. Co., Ltd." The trial Court was of opinion that the suit being against a wrong person, the defendant Company was not amenable to the plaintiff's claim and the suit was accordingly dismissed.

The plaintiff applied to the High Court.

H. V. Divatia, for the applicant.

Campbell, with *Crawford, Bayley & Co.*, for the opponent.

MACLEOD, C. J. :—These are four companion applications under section 25 of the Provincial Small Cause Courts Act. In all the four cases the plaintiffs desired to sue the B. B. & C. I. Railway Company to recover damages for the loss of goods. The title of the defendant was entered in each plaint as follows :—"The Agent, B. B. & C. I. Ry. Company, Ltd." but the prayer was that the defendant Company should pay the amount sued for. In two of the suits the defendant Company filed their written statements pleading to the merits without taking any objection to the form of the title. In the other two suits they filed written statements, not only pleading to the merits, but also objecting that the plaintiffs' suits could not lie as they were filed against the defendants' Agent. The Small Cause Court Judge dismissed all the suits on the ground that they were badly framed. He relied upon a decision of Mr. Justice Ross in *Sinchi Ram Biharilal v. The Agent, East Indian Railway Co.*⁽¹⁾

Now it cannot be disputed that in the past there have been a very large number of suits filed by traders in this Presidency against railway companies in many

⁽¹⁾ (1921) 64 Ind. Cas. 125.

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of which the title of the defendant has been entered in the plaint in this form : "The Agent, A. B. Railway Company, Ltd.," and that hitherto no objection whatever has been taken to this description. There can be no question that the railway companies considered that they were the defendants in such suits, although it may be conceded that the title of the defendant was not in accordance with the forms in Appendix A, First Schedule, to the Civil Procedure Code under heading "Title of suits".

If a company is a party to a suit it should be described either as "The A. B. Company, Ltd., having its registered office at" : or as "A. B., a public officer of the C. D. Company".

Now in the case to which I have referred, the East Indian Railway Company appeared and filed a written statement pleading to the merits of the case. It was only when the case came on for hearing, that the pleader of the defendant company took the objection that the suit was not maintainable inasmuch as the Agent of the East Indian Railway Company and not the Company had been sued. The learned Judge said (p. 126): "This is not a case of mere misnomer, which could have been made a basis of defence. The suit was brought against the Agent of the East Indian Railway Company and the Company was not impleaded according to law. In law the Company is not a defendant to the suit and is not before the Court as defendant. The frame of the suit can only be amended by substituting the Company as defendant in place of the Agent, and it is a well recognized principle that, however liberal the Court may be in allowing amendments in the interest of justice, an amendment will not be allowed which would prejudice the rights of the opposite party existing at the date when the proposed amendment is to be made. At this stage the East Indian

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Railway Company has acquired a right by virtue of the Statute of Limitation and this right should not be prejudiced by any amendment at this stage”.

With all due respect I cannot agree with this reasoning. It seems to me in the interests of justice that if it can be said that there has been a misdescription of a party in the title of a plaint the necessary amendment ought to be allowed, if otherwise the rights of the parties would be prejudiced. If the defendant Company could be considered as having had no notice that these suits had been brought against it by the plaintiffs, then undoubtedly limitation would be considered as running up to the date when the defendant Company had notice of the claims by being made a party to the suits. But the defendant Company not only knew perfectly well that the various claims had been made against it, but also considered itself the party being sued. If the Company was not a party, no appearance should have been entered. In my opinion, the fact that the word “Agent” preceded the name of the railway company in the description of the defendant amounted merely to a misdescription, and therefore the learned Small Cause Court Judge should have allowed the title to be amended. The suits must be restored to the board to be tried on their merits. It is desirable, however, to point out that in future parties who wish to sue a Company must follow the directions in Appendix A to the Code.

Rule will be made absolute with costs.

CRUMP, J. :—In my opinion we should in this question look to the substance rather than to the form and if we do that I agree that we must dissent from the decision in *Sinehi Ram Biharilal v. The Agent, East India Railway Company*⁽¹⁾. It seems to me that

⁽¹⁾ (1921) 64 Ind. Cas. 125.

there is no doubt whatever that all the parties were perfectly well aware that the suit was against the railway company and that it was against the railway company that the relief was asked for. Though the description of the Company may not have been that which is in conformity with the Schedule A to the Code of Civil Procedure, nevertheless, the Company was substantially on the record, and it appears to me impossible to argue that if the title in the plaint were amended so as to bring it in conformity with the Schedule, the result would be to prejudice any rights acquired by the Company by virtue of the Statute of Limitation. For, as I have said, the Company was in substance the defendant at the time the plaint was first filed, and it was not a case of adding a new party, in which case, considerations of that kind might be relevant. It seems to me that really this is nothing more than a misdescription, and as has been pointed out by my Lord the Chief Justice the practice certainly has been to describe railway companies in the manner which has been done in the present case. Nobody up to this time has ever been misled or has ever suggested that any formal amendment to the plaint was necessary. All that would be required to bring the title of the plaint in conformity with the Schedule would be to strike out the word "Agent". Therefore it seems to me that this is little more than a clerical error which can be amended at any time without any prejudice to the opposite party.

Rule made absolute.

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