

Lal Singh v. Union of India and another (J. V. Gupta, J.)

Mustard Oil (Price Control) Order. The upholding of laws by the application of the theory of derivative immunity is foreign to the scheme of our Constitution and accordingly Orders and Notifications issued under Acts and Regulations which are specified in the Ninth Schedule must meet the challenge that they offend against the provisions of Part III of the Constitution."

(7) In the light of the discussion above, I find no merit in these petitions and, thus, dismiss the same with costs which I determine at Rs. 300 in each case.

R. N. R.

Before J. V. Gupta, J.

LAL SINGH,—Appellant.

versus

UNION OF INDIA AND ANOTHER,—Respondents.

Regular Second Appeal No. 1798 of 1977

May 9, 1986.

Code of Civil Procedure (V of 1908)—Section 79 and Order 1 Rule 10—Limitation Act (XXXVI of 1963)—Section 21—Suit for recovery on account of damages sustained filed against Railways within period of limitation—Written statement filed raising plea of non-joinder as Union of India not made a party as required by Section 79 of the Code—Application under Order I Rule 10 made by plaintiff for impleading Union of India as a party—Said application allowed by trial court after expiry of period of limitation for filing of suit—Court recording finding that the omission to implead Union of India was a bona fide mistake committed in good faith—Benefit of provision to Section 21 of Limitation Act—Whether available in such a case—Suit whether can be said to be within time against the Union of India.

Held, that the proviso to Section 21 of Limitation Act, 1963 provides that where the court is satisfied that the omission to include or substitute a new plaintiff or a defendant was due to a mistake made in good faith, it may direct that the suit as regards

such plaintiff or defendant shall be deemed to have been instituted on any earlier date. The trial court having allowed the application under Order 1 Rule 10 of Code of Civil Procedure, 1908, the said Court exercised its discretion under the proviso to Section 21 of the Limitation Act, the more so as it was a case of substitution and not adding the party for first time. It is the requirement of Section 79 of the Code that in a suit by or against the Central Government, the defendant shall be the Union of India, and it was on this account that necessary amendment was allowed by the trial court. As such the mistake on the part of the plaintiff having been made in good faith was within time even against Union of India.

(Para 5)

Regular Second Appeal from the decree of the Court of the Additional District Judge, Ludhiana, dated the 6th day of August, 1977, reversing that of the Sub Judge 1st Class, Ludhiana, dated the 4th November, 1975 and dismissing the suit of the plaintiff without any order as to costs throughout.

Surjit Kaur, Advocate, for the Appellant.

Lakhinder Singh, Advocate, for the Respondent.

JUDGMENT

J. V. Gupta, J.

(1) This is plaintiff's Second Appeal whose suit was decreed to the extent of Rs. 2,500 against the Union of India and others, defendants-respondents, but was dismissed in appeal.

(2) The plaintiff-appellant Lal Singh filed the suit for the recovery of Rs. 8,500 as compensation on account of damages caused to him, on the allegations that he being a tenant on the land measuring 33 Bighas Kham along the Railway Line, Ludhiana-Sangrur, his crop was ripe for harvesting; that on 6th May, 1970, the railway engine rashly and negligently ejected and emitted burning pieces of coal resulting in the burning of crops in the fields in possession of the plaintiff which caused damage to him to the extent of Rs. 8,500. The suit was filed on 24th February, 1973, against the General Manager, Northern Railways, New Delhi and the Claims Superintendent, Northern Railways, Kashmiri Gate, Delhi. In the Written Statement filed on behalf of the defendants, an objection was taken that the suit should have been filed against the Union

Lal Singh v. Union of India and another (J. V. Gupta, J.)

of India as provided under section 79 of the Code of Civil Procedure, and, therefore, the suit as such was not maintainable against the defendants. On this objection, the plaintiff moved an application, dated 6th September, 1973, purporting to be under O. 1, R. 10, C.P.C. for impleading the Union of India as a party. It was stated in the application that permission be granted to redescribe defendant No. 1 as "Union of India through the General Manager, Northern Railways, New Delhi." This application was allowed by the trial court,—*vide* its order, dated 2nd November, 1973. Consequently, an amended plaint was filed in which the Union of India was described to be the defendant through the General Manager, Northern Railways. On the pleadings of the parties, the trial court framed the following issues :—

1. Whether any wheat crop of the plaintiff has been burnt due to the rash and negligent act of the driver of the defendants, as alleged ?
2. To what amount on account of damages is the plaintiff entitled ?
3. Whether the suit is within time ?
4. Whether the suit is bad for non-joinder of necessary parties ?
4. (a) Whether a valid notice under section 80 C.P.C. has been served upon the defendants ? If not, its effect ?
5. Relief."

(3) The learned trial court found under Issue No. 1 that the plaintiff had proved this issue. His crop had been burnt by the fire of the railway engine. Under Issue No. 2, the trial court found that the plaintiff was entitled to a sum of Rs. 2,500 by way of compensation, and not Rs. 8,500 as originally claimed in the plaint. The suit was held to be within time under Issue No. 3. Issue No. 4(a) was also decided in favour of the plaintiff and against the defendants as it was found that a valid notice had been served under section 80, C.P.C., on the defendants. *Vide* judgment, dated 4th November, 1975, the suit was decreed for the recovery of Rs. 2,500

with proportionate costs. Dissatisfied with the same, the defendants filed an appeal whereas cross-objections were filed on behalf of the plaintiff. In the appeal before the learned Additional District Judge, the defendants only contested the finding of the trial court under Issue No. 3 as it was argued that the suit was barred by limitation on the date when the Union of India was added as a party to the suit by way of amending the plaint, dated 22nd November, 1973. This objection prevailed with the learned Additional District Judge, and he came to the conclusion that the Union of India was not impleaded as a party at the time of the filing of the suit originally whereas orders by the plaintiff were obtained from the trial court on an application, dated 6th September, 1973, under O. 1, R. 10, C.P.C. on 2nd November, 1973. By that time, the suit had become barred by time. It was also held by the lower appellate court that no notice under section 80, C.P.C., had been served on the Union of India, and, therefore, the finding of the trial court in this behalf was set aside. As a result of this finding, the suit was dismissed. Dissatisfied with the same, the plaintiff has filed this Second Appeal.

(4) Learned counsel for the appellant pointed out that the appeal before the learned Additional District Judge filed on behalf of the General Manager, Northern Railways itself was not competent because the Union of India against whom the decree was passed by the trial court never filed the appeal. Thus, argued the learned counsel, the appeal should have been dismissed on that ground alone, and the cross-objections filed on behalf of the plaintiff should have been allowed. It was next contended that when the amendment of the plaint was allowed by the trial court and the Union of India was added as a party to the suit then in view of proviso to section 21 of the Limitation Act the suit shall be deemed to have been instituted against the Union of India when it was originally filed on 24th February, 1973, and, therefore, the view taken by the lower appellate court in this behalf was wholly wrong and misconceived. In support of his contention he referred to *Nanak Chand-Mukandi Lal vs. East India Railway* (1), wherein it was held that "where the title of defendant in a suit against a railway company was sought to be altered from the agent, East Indian Railway, Calcutta, into "East Indian Railway Administration", through the Agent, Calcutta, after the expiration of the period of limitation for bringing a suit against the Railway, and the reading of the

(1) 1925 Lahore 441.

Lal Singh v. Union of India and another (J. V. Gupta, J.)

plaint as a whole clearly showed that the plaintiff's claim was against the Railway Administration as a Company and not against the Agent personally, the amendment should be allowed as the case was only one of misdescription of party."

(5) After hearing the learned counsel for the parties and on going through the relevant evidence on record. I find force in the contentions raised on behalf of the appellant. Of course, the suit was originally filed against the General Manager, Northern Railways, New Delhi, and on the objection of the defendant, the same was substituted for the Union of India through the General Manager. Once that was allowed, proviso to section 21 of the Limitation Act which provides that where the Court is satisfied that the omission to include or substitute a new plaintiff or a defendant was due to a mistake made in good faith, it may direct that the suit as regards such a plaintiff or a defendant shall be deemed to have been instituted on any earlier date comes into play. The trial court which allowed the said amendment came to the conclusion while discussing Issue No. 3 that "under the established law when the amendment is allowed in a plaint that takes effect from the date of the original plaint and not from the date the amendment is allowed". Thus, from the facts and circumstances of the case it appears that the trial court exercised its discretion under proviso to section 21 of the Limitation Act and held the suit to be within time as it would be deemed to have been instituted against the Union of India when it was originally filed on 24th February, 1973. Moreover, it was a case of substitution and not of adding a new party for the first time. As a matter of fact, virtually it was the General Manager, Northern Railways, who contested the suit. Not only that, he also filed the appeal in spite of the fact that the decree was passed against the Union of India. It is the requirement of section 79, C.P.C., that in a suit by or against the Central Government, the defendant shall be the Union of India. It was on that account that the necessary amendment was allowed by the trial court. The mistake, if any, was *bona fide* and occurred only in good faith as the plaintiff had been representing for his claim to the General Manager, Northern Railways, New Delhi. There is absolutely no explanation on behalf of the defendants how the appeal was filed in the name of the General Manager, and not by the Union of India. Even in the decree-sheet of the trial court against which the appeal was filed, the Union of India was shown to be the defendant. In spite of that, the appeal was filed by the

General Manager, Northern Railways, and not the Union of India. In any case, this conduct on the part of the defendant goes to prove that the mistake on the part of the plaintiff, if any, had been made in good faith, and, thus, he was entitled to the benefit of proviso to section 21 of the Limitation Act. That being so, the suit filed originally on 24th February, 1973, was within time even against the Union of India.

(6) As regards the notice under section 80, C.P.C., the trial court rightly came to the conclusion that there was substantial compliance with the provisions of section 80, C.P.C., and hence, the notice served on the General Manager was valid. Even in the Code of Civil Procedure, under section 80 the notice in the case of a suit against the Central Government, where it relates to a Railway, has to be served on the General Manager of that Railway.

(7) As regards the amount of compensation, the lower appellate court has not gone into that matter. The learned counsel for the defendants did not contest the finding of the trial court under Issue No. 2, and since the suit was dismissed on the question of limitation, the cross-objections filed by the plaintiff were not considered. However, from the reasoning given by the trial court it is quite evident that the plaintiff is entitled to a compensation of Rs. 2,500 only. Consequently, this appeal succeeds, the judgment and decree of the lower appellate court is set aside and that of the trial court restored with costs throughout. The plaintiff shall also be entitled to interest at the rate of 6 per cent p.a. on the decretal amount from the date of the decree of the trial court, i.e., from 4th November, 1975 till realisation.

R. N. R.

Before S. S. Sodhi, J.

MUNICIPAL COMMITTEE,—*Petitioner.*

versus

KRISHAN LAL AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 501 of 1985.

May 9, 1986.

Punjab Municipal Act (III of 1911)—Sections 84 & 86—Punjab Municipal (Executive Officers) Act (II of 1931)—Section 4(b)(ii)—Section 4(b)(ii) of the Executive Officers Act giving authority to