Gajja Singh and another v. Gurdial Singh and another

Bishan Narain, J.

clear that in this judgment I have not taken into consideration an appeal filed in a pre-emption suit relating to agricultural land in which the only dispute relates to its market value or sale-price, because it does not arise in the present reference. That being so, the present appeal lay to the District Judge, Patiala, and could not be filed direct in this Court.

In the circumstances I would direct that the memo of appeal filed in this Court be returned for presentation to competent Court. Costs of this appeal will be the costs in the cause.

Dulat, J.—I agree.

Dulat, J.

DUA, J.—So do I.

Dua, J.

APPELLATE CIVIL

Before Mehar Singh and K. L. Gosain, JJ.

B. L. CHOPRA,—*Appellant.*

versus

THE PUNJAB STATE AND OTHERS,—*Respondents*

Regular First Appeal No. 165 of 1954:

1960

Jan., 8th

Limitation Act (IX of 1908)—Section 15(2)—Code of Civil Procedure (V of 1908)—Section 80—Interpretation and object of—Suit for malicious prosecution against Government officers—Notice under Section 80 C.P.C., sent on the last day, i.e., September 18, 1953—Suit filed on November 18, 1953—Whether maintainable.

Held, that the suit was premature by a day. The limitation for the suits remains the same and under section 15(2) of the Limitation Act it is only the period of the notice that is excluded and nothing more. The period of the notice under section 80 of the Code of Civil Procedure is two months, that is entire or clear two months excluding the day on which the service or delivery of the

notice is made. The Government or the public officer concerned has been given a statutory right or facility to reconsider his position and the claim against him for a clear and entire period of two months and that statutory facility or right cannot be abridged on any possible consideration, not even on any consideration that brings in the law of limitation. It is true that the period requisite for the notice under section 80 is to be excluded for the purposes of limitation according to section 15(2) of the Limitation Act in reckoning the period of Limitation, but that does not lead to the inference that if the suit would be otherwise time-barred then the period of the notice under section 80 should be reckoned so as to be less than two clear and entire months. The matter of limitation is one aspect to which a litigant must attend to but the provisions of section 80 are independent and their effect has to be seen as such and not in the light of the effect of the law of limitation. The law of limitation operates independently of the requirements of section 80 of the Code of Civil Procedure and the requirements of the latter section must be fulfilled without reference to the question of limitation. A suit may otherwise be within limitation but barred because of non-compliance of section 80 and contrary-wise a suit may comply with section 80 but be barred by limitation.

First Appeal from the decree of the Court of Shri Sewa Singh, Senior Sub-Judge, Karnal, dated the 29th day of June, 1954, dismissing the plaintiff's suit and leaving the parties to bear their own costs.

S. N. BALI AND S. S. SODHI, for Appellants.

S. M.. SIKRI, ADVOCATE-GENERAL, AND K. S. THAPAR, for Respondents.

JUDGMENT

Mehar Singh, J.

MEHAR SINGH J.—This judgment will dispose of two First Appeals Nos. 165 and 166 of 1954 from two decrees, dated June 29, 1954, of the Subordinate Judge of Karnal, in two suits by two different plaintiffs, namely, B. L. Chopra and S. P. Jaiswal. The suits arose out of the same facts and, during their trial, on May 11, 1954, they were consolidated and tried together. The

learned trial Judge disposed of both the suits by one judgment.

The plaintiffs brought the suits for damages for malicious prosecution. The defendants to the two suits are the State of Punjab, Shri R. I. N. Ahuja, Secretary to the Punjab Government, and Malik Arjan Das, Sub-Inspector Police, respectively, Nos. 1 to 3. The plaintiffs' case has been that defendant No. 2 was the Deputy Commissioner of Karnal District on material dates. Of the plaintiffs S. P. Jaiswal and defendant No. 2 had some differences in connection with the Karnal Club, of which both were members. It is said that defendant No. 2 thus on account of illwill and malice had the plaintiffs prosecuted in a criminal case and defendant No. 3 helped him in that. In the plaint by S. P. Jaiswal, plaintiff, the nature of the offence is not stated but in the plaint by B. L. Chopra, plaintiff, it is stated that the prosecution was under section 452 of the Penal Code. The last named plaintiff was actually arrested in the case and later allowed bail. The other plaintiff was away from Karnal and warrant of arrest was issued against him. He approached the High Court under section 561-A of the Code of Criminal Procedure and a learned Single Judge of this Court quashed the proceedings against him as also against the other accused persons including B. L. Chopra, plaintiff.

There is Karnal Distillery Company, Limited at Karnal and S. P. Jaiswal, plaintiff, is its director and B. L. Chopra, plaintiff, was his Personal Assistant. The plaintiffs have claimed that they are men of status and position and defendants Nos. 2 and 3 have without sufficient cause involved them in a criminal case merely because of the ill will and malice of defendant No. 2 thus causing loss to them. Defendant No. 1 has been made

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a party to the suits because the other two defendants acted in the discharge of their official duties while trying to bring about prosecution of the two plaintiffs on a criminal charge.

A number of defences have been taken by the defendants but the one defence that is material, and on the basis of which the suits of the plaintiffs have been dismissed by the learned trial Judge, is that the suits are premature having been instituted a day before the expiry of the period of notice of two months as referred to in section 80 of the Code of Civil Procedure. That is the only matter that arises for consideration in both the appeals.

The prosecution of the plaintiffs began on September 18, 1952. The notices under section 80 the Code of Civil Procedure were served on the defendants on September 18, 1953. The suits were instituted on November 18, 1953. The last day of limitation for the institution of the suits was September 18, 1953, and allowing a period of two months under section 80 of the Code of Civil Procedure November 18, 1953, but excluding the day on which the notices were served on the defendants a period of clear two months to the defendants could only be available if the suits were instituted on November 19, 1953. The suits were thus within time under the law of Limitation but a day premature according to the period made available to the defendants under section 80 of the Code of Civil Procedure. The learned trial Judge has dismised both the suits as premature under the last mentioned provision.

It is no longer a matter of argument that the provisions of section 80 of the Code of Civil Procedure are mandatory. It provides that "No suit shall be instituted against the Government or

against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of "the Government or the public officer". The plain and literal meaning of this provision is to my mind obvious that the entire period of two months is allowed to the Government or the officer concerned to reconsider the position in regard to the claim of the plaintiff and to make amends or settle the claim as it should be considered appropriate. If clear two months' period was not intended by the language of the section, the words "next after" would not have been used after the words "notice in writing has been delivered to or left at the office of—", and those words make it obvious that two entire and clear months have been given by the statute to the Govrnment or the officer concerned to make up its or his mind whether to accept the claim or to contest it. The purpose of the Legislature in enacting the provision is equally clear and that was to give sufficient and defined time to the Government or the officer concerned to enter into litigation of a doubtful claim or to put a stop to the litigation by accepting a good and genuine claim. In this view, it is evident that the conclusion of the learned trial Judge is correct that the present suits have been instituted a day premature. In *Marina Ammayi* v. *Secretary of State* (1), the learned Judge after taking into consideration the language of section 80 and a review of some of the English authorities bearing on the same question came to the conclusion that if the suit is filed before the expiration of two months after notice had been delivered or left at the office of the Collector, it is not maintainable and the Court is bound to dismiss it. The learned Judge

(1) A.I.R. 1941 Mad. 446

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held that whenever a period of time is to be computed from or after an act done or event happened, the day on which the act was done or the event happened should be excluded. He thus excluded the day on which the notice under section 80 was actually delivered and served in computing the period of two months under that section. This case was followed in *Province of Madras* v. *Sri Vikrama Deo Varma Maharajulungaru, Maharaja of Jeypore and Zamindar of Madgole* (1). The very question was considered at considerable length by B. K. Mekherjea, J., *Province of Bengal* v. *Modnapore Zamindari Company, Limited* (2). The learned Judge had considered all the authorities in English law bearing on the question and though he found some support in them for the view of the question already referred to, yet he was of the opinion that the English cases could not be regarded as direct authority in the matter of interpreting the provisions of section 80. All the relevant English cases are referred to in the judgment by the learned Judge and it will be an idle repetition to make reference to them here. They are of no direct assistance in arriving at a correct interpretation of section 80. The learned Judge then held that the period of two months in section 80 should be taken as exclusive of the day on which the notice is served. There is no reported case taking the contrary view.

The learned counsel for the plaintiffs, however, contends that the last day for filing the suits for the plaintiffs was September 18, 1953, the period of notice is to be excluded according to sub-section (2) of section 15 of the Limitation Act, and so the plaintiffs could institute the suits on November 18, 1953, that being the last day of limitation. He then refers to section 12(1) of the

(1) A.I.R. 1943 Mad. 284
(2) A.I.R. 1945 Cal. 341

same Act and points out that the day from which limitation is to be reckoned has to be excluded and continues that one day having been thus excluded there cannot be an exclusion of another day under section 80 of the Code of Civil Procedure. He says there cannot be exclusion of two days and if he is correct, the suits could have been instituted on November 18, 1953. The argument proceeds on the fallacy that the period of two months allowed to the Government or the officer concerned next after the delivery of the notice under section 80 is a period to be considered only from the angle of the law of limitation applicable to the suits of the plaintiffs. That, however, is not the case. The limitation for the suits remains the same and under section 15(2) of the Limitation Act it is only the period of the notice that is excluded and nothing more. The period of the notice under section 80 is two months and as has been explained it is entire or clear two months. If the day of the service or delivery of notice is to be included in the period of two months, then the service or delivery having been made some time during the day the whole of that day is not available under the section and thus the period falls short of two months. It is an impracticable proposition that clear two months should be reckoned from the hour and minute of the service or delivery of the notice. This is not possible and the only proper way to look at the matter is to take complete two months next after delivery or service of the notice which can only be excluding the day on which such service or delivery is made. The Government or the public officer concerned has been given a statutory right or facility to reconsider his position and the claim against him for a clear and entire period of two months and that statutory facility or right cannot be abridged on any possible consideration,

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not even on any consideration that brings in the law of limitation. It is true that the period requisite for the notice under section 80 is to be excluded of the purpose of limitation according to section 15(2) of the Limitation Act in reckoning the period of limitation, but that does not lead to the inference that if the suit would be otherwise time-barred then the period of the notice under section 80 should be reckoned so as to be less than two clear and entire months. The matter of limitation is one aspect to which a litigant must attend to but the provisions of section 80 are independent and their effect has to be seen as such and not in the light of the effect of the law of limitation. The learned counsel presses that when time is fixed for doing an act and limitation is allowed for a suit, then both must terminate on the same day otherwise there is likely to be a conflict between the two. There is no substance in this contention for the law of limitation operates independently of the requirements of section 80 and the requirements of the latter section must be fulfilled without reference to the question of limitation. A suit may otherwise be within limitation but barred because of non-compliance of section 80 and contrary-wise a suit may comply with section 80 and be barred by limitation. In the present suits the plaintiffs took the risk of waiting till the last day of limitation, that is to say, till September 18, 1953, to give notices to the defendants and their own acts have resulted in the anomaly in which they find themselves. There was nothing to stop them from giving notices earlier to September 18, 1953, in which case no anomaly would have arisen as arises now. There is thus no substance in this approach to the question on behalf of the plaintiffs.

In consequence both the appeals fail and are dismissed with costs.

GOSAIN, J.—I agree.

B. R. T.

APPELLATE CIVIL

Before Tek Chand, J.

PARMESHWARI DASS AND OTHERS,—*Appellants*

versus

SOMAN DEVI AND ANOTHER,—*Respondents.*

Second Appeal from Order No. 43 of 1957:

1960

Jan., 11th

Torts—Motor vehicles—Owner of—Duty to keep the vehicle roadworthy and free of defect—Extent of—Accident caused by vehicle getting out of control—Passenger in the vehicle—Whether entitled to compensation—Doctrine of res ipsa loquitur*—applicability of.*

Held, that it is the duty of a person in charge of a motor vehicle to see that it is under proper control and this involves a duty to keep it in proper condition so that proper control can be exercised. There is imposed upon the owner of a vehicle the duty to take such steps as a prudent owner would take to keep his vehicle in a proper state of repair. If he fails to take such care and allows the vehicle to become defective as when the steering of a motor car becomes so worn that the driver cannot control the car that will be evidence of negligence on his part.

Held, that the owners of mortor vehicles are required to see not only that the vehicle is in a roadworthy condition before it is used on the road but also to see that it is not overloaded. The defect in the tie rod is evidence on which, in the absence of satisfactory explanation, negligence on the part of the defendants can be rightly found. Of course, the defendants would not be considered to be at fault if despite having exerted proper care and skill the defect could not be discovered.