Beohar Rajendra Sinha & Ors vs State Of M.P. & Ors on 11 March, 1969

Equivalent citations: 1969 AIR 1256, 1969 SCR (3) 955, AIR 1969 SUPREME COURT 1256

Author: V. Ramaswami

Bench: V. Ramaswami, M. Hidayatullah, G.K. Mitter

PETITIONER:
BEOHAR RAJENDRA SINHA & ORS.

Vs.

RESPONDENT:
STATE OF M.P. & ORS.

DATE OF JUDGMENT:
11/03/1969

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
HIDAYATULLAH, M. (CJ)
MITTER, G.K.

CITATION:
1969 AIR 1256 1969 SCR (3) 955
1969 SCC (1) 796

ACT:
Civil Procedure Code 1908, S. 80-Karta of Hindu Joint Family giving notice of suit under section 80-Thereafter members of family dividing on partition-Divided members joining as plaintiffs in suit Whether fresh notice necessary by divided members or previous notice of Karta was in representative capacity.

HEADNOTE:
The appellant, who was at the time the Karta of a Hindu Joint Family, gave notice in January, 1954, to the respondent State under section 80 of the Civil Procedure Code. Thereafter a suit was filed in July, 1954, by which time a partition had taken place in the family. In view of

this the appellant's three grand-sons were joined as plaintiffs in the suit the plaintiffs sought a declaration that three nazul plots in suit had been in the possession of the plaintiffs and their ancestors from time immemorial and their status was that of Raiyat Sarkar; so that an order of the State Government in the Survey and Settlement Department refusing to recognise their possession over the plots was wrong and ultra vires. Apart from contesting the suit on the merits, the respondent State contended that plaintiffs 2, 3 and 4 i.e. the appellant's grand-sons had no right to institute a suit because no notice under section 80 C.P.C. was given on their behalf. The trial court dismissed the suit. In an appeal, the High Court held that the appellant had lost the right to represent the joint family as karta at the time of institution of the suit because their had been severence of joint status and the notice served by him could not enure to the benefit of other plaintiffs. On the merits the High Court found that the plaintiffs had shown their possession for the statutory period of 6 years.

On appeal to this Court,

HELD: (1) The notice given by the appellant in January, 1954, was sufficient in law to sustain a suit brought by all the divided coparceners who must be deemed to be as much the authors of the notice as the Karta who was the actual signatory of the notice. There was substantial identity between the person giving the notice and the persons bringing the suit in the present case. [959 B]

At the time of giving notice the appellant was admittedly the eldest member of the joint family and being a Karta he was entitled to represent the joint family in all its affairs. The cause of action had accrued at the time of giving of the notice and it was not necessary to give a second notice merely because there was a severance of the joint family, before 20th July, 1954, when the suit was actually instituted. [958 G-H]

Although the terms of section 80 C.P.C. must be strictly complied with, that does not mean that the terms of the notice 'should be scrutinised in an artificial or pedantic manner. [960 A]

Dhian Singh Sobha Singh & Anr. v. The Union of India, [1958] S.C.R. 781, referred to,

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State of Andhra Pradesh v. Gundugola Venkata Suryanarayan Garu, [1964] 4 S.C.R., 945; Vellayan Chettiar & Ors. v. Government of the Province of Madras and Anr., A.I.R. 1947, P.C. 197; Government of the Province of Bombay v. Pestonji Ardeshir Wadia & Ors., 76 I.A. 85, distinguished.

(2) On the merits, the appellants had failed to produce reliable oral or documentary evidence to prove that their ancestors had possession over the disputed land for many years. On the contrary this land was always recognised as Milkiat Sarkar and the respondent State Government was justified in holding it as such.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 386 and 387 of 1966.

Appeal by special leave from the judgment and_decree dated April 16, 1963 of the Madhya Pradesh High Court in First Appeal No. 217 of 1959.

S. V. Gupte, P. C. Bhartari and J. B. Dadachanji, for the appellants (in C.A. No. 386 of 1966) and the respondents (in C.A. No. 387 of 1966).

I. N. Shroff and Rama Gupta, for the State of Madhya Pradesh.

The Judgment of the Court was delivered by Ramaswami, J. These appeals are brought by special leave from the judgment of the High Court of Madhya Pradesh dated 16th April, 1963 in' First Appeal No. 217 of 1959, whereby the High Court modified partly the judgment of the first Additional District Judge, Jabalpur dismissing Civil Suit No. 10-A of 1954.

The suit was instituted against the State of Madhya Pradesh by Beohar Raghubir Singh and his three grand-sons. Beohar Raghubir Singh's son, Beohar Rajendra Sinha, was a pro-forma defendant. A notice under section 80 of Civil Procedure Code had been given by Raghubir Singh on 11th January, 1954. Plaintiffs 2, 3 and 4, his grand-sons were joined as plaintiffs because in a partition made subsequent to the giving of the notice, they were each entitled to 1/5th share along with the first plaintiff. Beohar, Rajendra Sinha was joined as a defendant because he did not choose to join as the plaintiff. The plaintiffs sought a declaration (1) that the three nazul plots in suit had been in possession of the plaintiffs and the predecessors in their own right from time immemorial and their status was that of Raiyat Sarkar; and (2) that the order of the State Government in the Survey and Settlement Department refusing to recognise their possession over the plots was wrong and ultra vires. The dispute relates to Phoota Tal a tank situated within the town of Jabalpur. It was plot No. 282 in the settlement of 1863 A.D. Its area then was 5.24 acres. it was recorded as malkiat Sarkar and in the last column there was an entry showing possession of Aman Singh Thakur Prasad. The next settlement took place in 1890-91. The survey number of Phoota Tal was changed to plot No. 325. Its area remained the same, it was recorded as "water (pani)" and in the last column, the entry showed the possession of Beohar Narpatsingh Raghubir Singh. , The third settlement took placed in 1909-10. The plot number of Phoota Tal was then , it was still recorded change to 327. Its area remained the same it was still recorded as 'water", but there was no entry in favour of any one showing possession. The nazul settlement took place in 1922-23. In this settlement, the tank was given numbers 33, 34, 35, 36, 37 and 171. Its area was recorded as 5.24 acres. In this settlement about 2 acres of land was found to be occupied by the Municipal Committee, Jabalpur. The land so found to be occupied was recorded in the possession of the Muncipal Committee, Jabalpur and the remaining land was again recorded as "Milkiat Sarkar". There was no entry regarding possession in the remarks column so far as the remaining land was concerned. The plaintiffs alleged that Thakur Prasad and Aman Singh were their ancestors, that they had been in continuous possession of the

disputed landand the omission to record their possession in the last two settle- ments of 1909-10 and 1922-23 was due to some oversight. In 1948 the first plaintiff made an application for correction to the Deputy Commissioner, Jabalpur who made an order in his favour Ex. P-5. The order of the Deputy Commissioner was however set aside by the State Government on 28th May, 1953 and it was held that the plaintiffs had no title to the disputed land. The plaintiff therefore prayed for a declaration of the title to the disputed plots and for the correction of the entry in the settlement record showing the status of the plaintiff as that of "Raiyat Sarkar". The suit was contested by the State of Madhya Pradesh. It was urged that the plaintiff had no possession over the disputed land and the order of the State Government dated 28th May, 1953 was correct. It was contended that plaintiffs 2, 3 and 4 had no right to institute the suit because no notice under section 80 of the Civil Procedure Code was given on their behalf. The suit was not contested by the second defendant Beohar Rajendra Sinha. By its judgment dated 24th January, 1959 the trial court held that there was no documentary evidence from 1891 to 1932 to support the possession of the ancestors of the plaintiffs regarding Phoota Tal. The trial court also held that- in all the settlement entries, the land was recorded as belonging to the Government "Milkiat Sarkar". In any event, between 1891 to 1932 there was no evidence regarding the user of the property by the plaintiffs and in the subsequent years a part of the property was found in possession of the Municipal Committee. The trial court dismissed the suit. Against the judgment of the trial court the plaintiffs preferred an appeal to the High Court. The High Court held in the first place the notice Ex. P-8 was not in conformity with section 80 of the Civil Procedure Code. The High Court held that Beohar Raghubir Singh had lost the right to represent the joint family as karta at the time of institution of the suit because there had been a severence of joint status and the notice served by Beohar Raghubir Singh could not ensure to, the benefit of the other plaintiffs. On the merits of the case, the High Court found that the plaintiffs had established their possession for the statutory period of 60 years. The High Court held that the plaintiffs had acquired the right of Raiyat Sarkar and that the order of the State Government refusing to correct the revenue record was illegal. On these findings the High Court modified the judgment of the trial court to the extent that there was a declaration in favour of the plaintiffs that they were entitled to 1/5th share of the property in dispute and the claim regarding the 4/5th share was dismissed The order of the State Government dated 28th May, 1953 refusing to recognise the possession of the plaintiffs was held to be wrong and illegal.

The first question to be considered in these appeals is whether the High Court was right in holding that the notice given under section 80 of the Civil Procedure Code by the first plaintiff was effective only with regard to Raghubir Singh and. the notice was ineffective with regard to the other plaintiffs and therefore Raghubir Singh alone was entitled to a declaration as regards the 1/5th share of the dispute plot. On behalf of defendant No. 1 it was contended by Mr. Shroff that at the time of giving notice the plaintiffs and the second defendant were joint and plaintiff No. 1 Raghubir Singh was karta of the joint family. The notice was given on 11th January, 1954 and the suit was instituted on 20th July, 1954. It was admitted that between these two dates there was a disruption of the joint family of which Raghubir Singh was a karta. It was argued that the right of the first plaintiff to represent the family had come to an end before the institution of the suit, and hence plaintiffs 2, 3 and 4 had to comply individually with the provisions of section 80 of the Civil Procedure Code before appearing as plaintiffs in the suit, In our opinion, there is no justification for this argument., We consider that there is substantial identity between the person giving the notice and the persons

filing the suit in the present case. At the time of giving notice the first plaintiff Beohar Raghubir Singh was admittedly the eldest member of the joint family and being a karta he was entitled to represent the joint family in all its affairs. The cause of action had accrued at the time of giving of the notice and it was not necessary to give a second notice merely because there was a severence of the joint family, before 20th July, 1954 when the suit was actually instituted. It is obvious that the notice was given by Beohar Raghubir Singh as a representative of the joint family and in view of the subsequent partition the suit had to be instituted by, all the divided members of the joint family. We are of the opinion that the notice given by Beohar Raghubir Singh on 11th January, 1954 was sufficient in law to sustain a suit brought by all the divided coparceners who must be deemed to be as much the authors of the notice as the karta who was the actual signatory of the notice. There is substantial identity between the person giving the notice and the persons bringing the suit in the present case and the argument of defendant No. 1 on this point must be rejected. The object of the notice under section 80, Civil Procedure Code is to give to the Government or the public servant concerned an opportunity to reconsider its or his legal position and if that course is justified to make amends or settle the claim out of court. The section is no doubt imperative; failure to serve notice complying with the requirements of the statute will entail dismissal of the suit. But the notice must be reasonably construed. Any unimportant error or defect cannot-be permitted to be treated as an excuse for defeating a just claim. In considering whether the provisions of the statute are complied with, the Court must take into account the following matters in each case (1) whether the name, description and residence of the plaintiff are given so as to enable the authorities to identify the person serving the notice; (2) whether the cause of action and the relief which the plaintiff claims are set out with sufficient particularity; (3) whether a notice in writing has been delivered to or left at the office of the appropriate authority mentioned in the section; and (4) whether the suit is instituted after the expiration of two months next after notice has been served, and the plaint contains a statement that such a notice has been so delivered or left. In construing the notice the Court cannot ignore the object of the legislature, viz., to give to the Government or the public servant concerned an opportunity to reconsider its or his legal position. If on a reasonable reading of the notice the plaintiff is shown to have given the information which the statute requires him to give, any incidental defects or irregularities should be ignored.

In the present case, the notice was served on 11th January, 1954 by Beohar Raghubir Singh. The notice stated the cause of action arising in favour of the joint family. The requirements as to cause of action, the name, description and residence of the plaintiff were complied with and the reliefs which the plaintiff claimed were duly set out in the notice. It is true that Beohar Raghubir Singh did not expressly describe himself as the karta. But reading the contents of the notice Ex. P-8 in a reasonable manner it appears to us that the claim of Beohar Raghubir Singh was made on behalf of the joint family. It is true that the term of section 80 of the Civil Procedure Code must be strictly complied but that does not mean that the terms of the notice should be scrutinised in an artificial or pedantic manner. In Dhian Singh Sobha , Singh & Anr. v. The Union of India & Anr. (1) Bhagwati, J. observed in the course of his judgment :-

> "We are constrained to observe that the approach of the High Court to this question was not well-founded. The Privy Council no doubt laid down in Bhagchand Dagadusa v. Secretary of State (2) that the terms of this section should be strictly complied with.

> That does not however mean that the terms of the notice should be scrutinised in a pedantic manner or in a manner completely divorced from common sense. As was stated by Pollock C. B. in Jones v. Nicholls(3) We must impprt a little common sense into notices of this kind'. Beaumonth, C.J., also observed in Chandu Lal Vadilal v. Government of Bombay(4) "One must construe section 80 with some regard to common sense and to the object with which it appears to have been passed....."

As already pointed out, the suit was instituted in the present case by the divided members of Hindu joint family on 20th July, 1954. The notice had been given on 11th January, 1954 by Beohar Raghubir Singh who was the karta of the undivided joint family. In our opinion there was identity between the person giving a notice and the persons filing the suit because it must be deemed in law that each of the plaintiffs had given the notice under s. 80 of the Civil Procedure Code through the karta Beohar Raghubir Singh. It is not disputed that the cause of action set out in the notice remained unchanged in the suit. It is also not said that the relief set out in the plaint is different from the relief set out in the notice. We are accordingly of the opinion that the notice given by the karta was sufficient to sustain the suit brought by the divided coparceners and the decision of the High Court on this point must be over-ruled.

The view that we have expressed is borne out by the judgment of this Court in State of Andhra Pradesh v. Gundugola Venkata Suryanarayan Garu(5).. In that case, the Government of Madras applied the provisions of the Madras Estates Rent Reduction Act, 1947 to the lands in the village Mallindhapuram on the ground that the grant was of the whole village and hence an estate within the meaning of s. 3 (2)

(d)of the Madras Estates (1) [1958] S.C.R. 781. (2) [1927] L.R. 54 I.A. 338. (3) [1844] 13 M & W 361, 363; 153 E.R. 149,150.(4) I.L.R. [1943] Bom. 128.

(5) [1964] 4 S.C.R. 945.

Land Act, 1908. The respondent and another person served a notice under s. 80 of the Code of Civil Procedure upon the Government of the State of Madras in which they challenged the above mentioned notification and asked the Government not to act upon it. Out of the two persons who gave the notice, the respondent alone filed the suit. The trial court held that the original grant was not of the entire village and was not so confirmed or recognised by the Government of Madras and as it was not an "Estate" within the meaning of s. 3 (2) (d) of the Madras Estates Land Act, the Madras Rent Reduction Act, 1947 did not apply to it. But the suit was dismissed on the ground that although two persons had given notice under s. 80 of the Code of Civil Procedure, only one person had filed the suit. The High Court agreed with the trial court that the grant was not of an entire village but it also held that the notice was not defective and the suit was maintainable as it was a representative suit and the permission of the Court under 0.1, r. 8 had been obtained in this case. The High Court granted the respondent the relief prayed for 'by him. Against the order of the High Court the appellant appealed to this Court which dismissed the appeal holding that in the circumstances of the case there was no illegality even though the notice was given by two persons and the suit was filed by only one. If the Court grants permission to one person to institute a

representative suit and if the person had served the notice under s. 80, the circumstance that another person had joined him in serving the notice but did not join him in the suit, was not a sufficient ground for regarding the suit as defective. At page 953 of the Report Shah, J. observed as follows :-

> "The notice in the, present suit was served by the plaintiff and Yegneswara Sastri. They raised a grievance about the notification issued by the Government of Madras on May 16, 1950; it was not an individual grievance of the two persons who served the notice but of all the Inamdars or agrahamdars. The relief for which the suit was intended to be filed was also not restricted to their personal claim. The notice stated the cause of action arising in favour of all the Inamdars, and it is not disputed that the notice set out the relief which would be claimable by all the Inamdars or on their behalf in default of compliance with the requisition. The plaintiff it is true alone filed the suit, but he was permitted to sue for and on behalf of' all the Inamdars by an order of the Court unuder O. 1, r. 8 of the Code of Civil Procedure. The requirements as to the cause of action, the name, description and place of residence of the plaintiff was therefore complied with and the relief which the plaintiff claimed was duly set out in the notice. The only departure from the notice was that two persons served a notice under s. 80 informing the Government that proceedings would be started, in default of compliance with the requisition, for violation of the rights of the Inamdars, and one person only out of the two instituted the suit. That in our judgment is not a defect which brings the case within the terms of s. 80".

On behalf of respondent No. 1 reference was made, to the two decisions of the Judicial Committee in Vellayan Chettiar & Ors. v. Government of the Province of Madras and Anr.(1) and Government of the Province of Bombay v. Pestonji Ardeshir Wadia & Ors.(2) But the 'principle of these decisions has no bearing on the question presented for determination in the present case. In Vellayan Chettiar's case(1) a notice was given by one plaintiff stating the cause of action, his name, description and place of his residence and the relief which he claimed although the suit was instituted by him and another. It was observed by the Judicial Committee:

> "The section according to its plain meaning requires that there should be in the language of the High Court of Madras 'identity of the person who issues the notice with the person who brings the suit' : See Venkata Rangiah Appa Rao v. Secretary of State(3) and on appeal Venkata Rangiah Appa Rao v. Secretary of State (4). To hold otherwise would be to admit an implication or exception for which there is no jurisdiction"

Two persons had sued for a declaration that certain lands belonged to them, and for an order setting aside the decision of the Appellate Survey Officer in regard to those lands. It was found that one alone out of the two persons had served the notice. The relief claimed by the two persons was personal to them and the right thereto arose out of their title to the land claimed by them. It was held by the Judicial Committee that without a proper notice under s. 80 the suit could not be instituted for to hold otherwise would be to admit an, implication or exception for which there was

no justification. In the other case, in Pestonji Ardeshir Wadia's case(2) two trustees of a trust served a notice in October, 1933 upon the Government of Bombay under S. 80 intimating that the trustees intended to institute a suit against the Government on the cause of action and for the relief set out

(1) A.I.R. 1947 P.C. 197.

(2) 76 I.A. 85.

(3) I.L.R. Mad 416.

(4) A.I.R. 1935 Mad. 389.

therein. One of the trustees died before the plaint was lodged in court, and two more trustees were appointed in the place of the deceased trustee. Thereafter the two now trustees and the surviving trustee filed the suit out of which the appeal arose which was decided by the Judicial Committee. No notice was served on the Government on behalf of the two new trustees. The Judicial Committee accepted the view of the High Court that where there were three plaintiffs, the names and addresses of all of them must be given in the notice. Their Lordships observed that :

> "the provisions of s. 80 of the Code are imperative and should be strictly complied with before it can be said that a notice valid in law has been served on the Government. In the present case it is not contended that any notice on behalf of plaintiffs 2 and 3 was served on the Government before the filing of the suit".

It is clear that the principle of these two decisions of the Judicial Committee has no application in the present case because the material facts are different. We proceed to consider the next question arising in these appeals viz., whether the High Court was right in holding that the plaintiffs had established their title as raiyat sarkar with regard to 1/5th share in nazul plots Nos. 34/3, 33 and 171/1 mentioned in the Deputy Commissioner's order dated 7th May, 1948 in Revenue Case No. 9/45-46. It was argued on behalf of defendant No. 1 that there was no evidence to show that the plaintiffs were in possession of the land from 1909 to 1932, and the plaintiffs had not established their title by prescription for the statutory period of 60 years. It was contended that the High Court had no justification for holding that the plaintiffs had established the title of "Raiyat Sarkar" and the finding of the High Court was not based upon any evidence. In our opinion, the argument put forward on behalf of defendant No. 1 is wellfounded and must be accepted as correct. In the settlement of 1863-64 Ex. P-1 the names of Amansingh and Thakurprasad were noted in the remarks column. But the column regarding tenancy right is definitely blank. The owner is shown in the Khasra as the State "Milkiat Sarkar". In the settlement of 189091 Amansingh Narpatsingh is again shown in the remarks column of the khata. But the column regarding any kind of tenancy right is again blank. It is clear that in the settlements of 1860 and 1890-91 the ownership of the land is recorded as that of the Government. The possession of the plaintiffs or of their ancestors could not be attributed to ownership or tenancy right of the property. In the settlement of 1909-10, Ex.P-3 there is no entry in the remarks column showing the possession of the ancestors of the plaintiffs. It was said on behalf of the plaintiffs that no (1) 76 I.A. 85.

L11 Sup. C.I./69-12 96 4 notice was given to them of the proceedings of the. settlement of 1909-10. Even assuming that this allegation is correct, the entries of the khasra P-3 cannot be treated to be a nullity and of no effect. In any event, it was open to the plaintiffs to adduce other reliable evidence to prove their possession between the years 1909 to 1932. But the plaintiffs have failed to produce any such evidence. ln the nazul settlement of 1922-23 the tank was given new plot numbers 33, 34, 35,36, 37 and 171 and its area was recorded as 5.24 acres. In this settlement about 2 acres of land was found to be occupied by the Municipal Committee, Jabalpur. The land so found to be occupied was recorded in the possession of the Municipal Committee, Jabalpur and the remaining land was again recorded as "Milkiat Sarkar". There is no entry as regards the remaining land recording anybody's possession in the. remarks column. Actually proclamations were made during this settlement and objections were invited as per Ex.ID-14. A date was fixed upto 31-8-1924 but no one came forward. The proclamation clearly recited that the vacant sites which were not in possession of anybody were not recognised as belonging to any person. It is impossible to believe that the plaintiffs or their ancestors were unaware of such a proclamation. Had they been in possession they would not have failed to make a claim. For the period after 1933-34 the plaintiffs produced account books to show that they exercised certain rights. Certain receipts were also proved but they also relate to a period after 1939. We have gone through the oral evidence produced by the plaintiffs and it appears to be unreliable. The result is that for the period 1891 till 1932 there is no reliable oral or documentary evidence to prove that the plaintiffs or their ancestors had any possession over the disputed land. On the contrary the disputed land i.e. Phoota Tal was always recognised as Milkiat Sarkar and the State Government was justified in holding that the order of the Deputy Commissioner dated 7th May, 1948 should be set aside.

In the course of the argument reference was made by Mr. Gupte to the following passage in the Central Provinces Settlement Instructions (Reprint of 1953) page 213 "In dealing with proposed method of the settlement of titles it will be convenient in order to remove all causes for misapprehension among residents, to lay emphasis on the policy of Government in making these settlements. That policy was defined in the Chief Commissioner's Resolution No. 502-B-X dated the 19th October, 1917, in the Revenue & Scarcity Department, but its main principles will bear repetition.

As it is not the intention of Government in making the settlement to disturb long possession, but only to obtain an accurate record of the lands which are its property and to secure its right to any land revenue to which it may be entitled, long possession even without clear proof of a definite grant from Government will be recognised as entitled the holder to possession. In deciding what constitutes long possession in any individual town, regard will be had to the special circumstances of the place, and while this point will be dealt with more particularly in the Deputy Commissioner's report, the following general principles will ordinarily be observed :

> (1) all occupants who are able to prove possession to any land prior to 1891 or such later date as may be fixed for each town, either by themselves or by a valid title from a previous holder, and all occupants who can prove a definite grant or lease from Government will be recorded as entitled to hold such land as against Government (paragraph 6 of the Resolution) On the basis of this passage it was argued that it was

> the duty of the settlement officer to treat the plaintiffs as having established their title because they were shown to be in possession in the settlement of the year 1890-91. We are unable to accept this argument as correct. The passage quoted above only applies to a case where the ownership of the land was unknown i.e. where possession is proved for a long time, but its original title could not be traced, and not to a case where the land is recorded as Government land.

For the reasons expressed, we hold that the suit brought by the plaintiffs being Civil Suit No. 10-A of 1954 should be dismissed. Civil Appeal 386 of 1966 is accordingly dismissed and Civil Appeal 387 of 1966 is allowed with costs in favour of defendant No. 1 i.e. State of Madhya Pradesh. There will be one hearing fee.

R.K.P.S. Civil Appeal 386/66 dismissed.

Civil Appeal 387/66 allowed.