

Calcutta High Court

Sm. Kalyani Dassi vs Ganesh Chandra Sreemany And Ors. on 8 June, 1931

Equivalent citations: AIR 1932 Cal 259, 137 Ind Cas 353

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JUDGMENT Buckland, J.

1. This is an application to amend the plaint. When the suit came on for hearing on a former occasion several objections were taken to the form of the plaint, and Mr. H. D. Bose asked for an opportunity to make an application to amend in such a way as to make it clear that what his client seeks is a declaration of title to the whole area of land on which in other proceedings to which his client was not a party it was alleged by the defendant Sreemany that the plaintiff's tenant Surendra Nath Dey had encroached.

2. In para. 12 of the plaint an entirely different encroachment said to have been made by the defendant Sreemany himself upon the plaintiff's land, is alleged. As to that Mr. Pugh then objected that there was no statement in the plaint as to when the cause of action arose. On the application of Mr. H. D. Bose on behalf of the plaintiff I adjourned the hearing in order to enable an application to amend the plaint to be made, and this has now been done.

3. In the course of my order I drew attention to Order 7, Rule 1 (e), Civil P.C., and to the directions given 17 years ago by Sir Lawrence Jenkins, C.J., that no plaint should be admitted unless there be a distinct statement as to when the cause of action arose, and asked for an explanation as to how it had come about that this plaint had been admitted without such a statement. Information has reached me that it was in consequence of a judgment delivered by my learned brother Lort-Williams, J., on 23rd May 1930 in Ramprosad Chimanlal v. Hazarimal Lalchand A.I.R 1931 Cal. 458 in which my learned brother, referring to the practice which had grown up of including in plaints, among others, a statement that the plaintiff's cause of action arose on such and such a date, observed that such statements are not only wholly insufficient but useless and unnecessary. In the course of his judgment the learned Judge considered the requirements of Order 7 at some length and freely criticized the existing practice in regard to the drawing of pleadings, with much of which I am in accord. Though at the moment I am only concerned with the requirements of Order 7, Rule 1 (e), I may say that I have observed of late that many pleadings are less diffuse and less wanting in conciseness than was formerly the case, and no doubt such improvement may be attribute to the observations of my learned brother on that occasion.

4. My learned brother Lort-Williams, J., in his judgment observes:

Rule 1(e) and (f) requires not that a statement should be made that the plaintiff has a good cause of action or that it arose on such and such a date, or that it arose partly or wholly within the jurisdiction but that particulars should be given of the facts. Constituting the cause of action and when it arose, and the facts showing that it arose partly or wholly within the jurisdiction and that this was the meaning and intention of the order of Jenkins, C. J., is I think made clear by his reference therein to O.7, Rule 1 (e) and (f) and to his observations in Madras Steam Navigation Co. Ltd. v. Shalimar Works Ltd. [1915] 42 Cal. 85.

5. It was as a result of what the learned Sir Lawrence Jenkins, O. J., had come across in *Madras Steam Navigation Co. Ltd. v. Shalimar Works Ltd.* (2), that the direction which is cited on p. 193, Edn. 3, of the rules of the original side was given, which is supported by the dates of the judgment in that appeal and of the direction, apart from my personal recollection of the matter, which was of considerable interest to members of the legal profession. If my learned brother moans that the learned Chief Justice meant that the allegation as to when the cause of action arose might be otherwise than most specifically stated I must respectfully dissent, for the learned Chief Justice observed: There is no specific allegation in the plaint when the cause of action arose."

6. It is necessary to distinguish between the two parts of Sub-rule (e) which says that the plaint shall contain particulars of the facts constituting the cause of action and when it arose, not when they arose, where such a form of expression admissible as correct; but when the cause of action arose. Now the cause of action is not a single fact. It has been described as the bundle of facts which have to be established to enable a plaintiff to succeed, but it does not arise on various days. It may be a continuing one and arise on successive days or it may arise on a specific day. It may be that the paragraph to which exception has been taken stating that the cause of action arose on such and such a day is superfluous and unnecessary, when from the statement of the facts constituting the cause of action there can be no ambiguity whatever about the day to which the plaintiff commits himself as being that upon which the cause of action arose. For instance, in an action for damages for breach of contract by reason of failure to take delivery upon the agreed date there can be no doubt about the matter, which would not admit of argument. But there are many cases, for instance title suits, in which it is by no means so simple a matter by a statement of the facts to allege specifically and without ambiguity when the cause of action arose. Indeed the very matter with which I am now concerned is an example though a better one might be found. Para. 12 of the plaint says that the defendant has also wrongfully encroached on the plot of land belonging to the plaintiff by surreptitiously projecting the shed on his premises No.17, Darmahatta Sreet over a triangular piece of land belonging to the plaintiff along the northern boundary of bet premises 16 Darmahatta Street to the extent of about 20 square feet and has thereby deprived the plaintiff of the use of the same.

7. It is now sought to amend in relation to this by adding a paragraph which contains the statement that the plaintiff's cause of action in respect of the wrongful act mentioned in para. 12 of the plaint arose in the year 1922 and is also a continuing one. On Mr. Pugh again pointing out that no specific date has been given, learned Counsel for the plaintiff found himself in a difficulty in stating the precise date, but in this instance it was of no consequence, because it appears that if the cause of action arose in the year 1922 the suit would not be barred by limitation whatever the exact date might be, a proposition which Mr. Pugh on behalf of the defendant accepted.

8. I find myself unable to agree with my learned brothers' general proposition that a paragraph in the plaint stating that the plaintiff's cause of action arose on such1]1 and such a date is either wholly insufficient or useless or unnecessary. That; will be the case if the date upon which the cause of action arose is otherwise alleged specifically. But if that has not been done in stating the facts which constitute the cause of action, which method I agree is to be preferred, then, in my judgment, the plaintiff should be required to allege the date specifically, though whether he does so in a separate paragraph or not is a matter of no account, but whatever form is adopted the defendant should be

able to ascertain from the pleading upon which day the cause of action is alleged to have arisen. *Madras Steam Navigation Co. Ltd. v. Shalimar Works Ltd.* [1915] 42 Cal. 85 case explains the need for this. Formerly, it was not the practice to state on what day the cause of action arose, and apparently in that case the suit in form was for the malicious abuse of the process of the Court, but the only case made on appeal was trespass pure and simple, and the day on which the cause of action was alleged to have arisen had not been stated. It was to avoid the recurrence of consideration to which this gave rise that the learned Chief Justice gave his direction, I have no doubt, and the statement in the plaint alleging when the cause of action arose whether it is to be found in the statement of facts constituting the cause of action, or whether it is to be found in another paragraph should be such as not to admit of argument as to what it is intended to allege.

9. It may be that what I have endeavoured to express was what was in the mind of my learned brother Lort-Williams, J., when he delivered his judgment, and indeed I do not think that there is any difference in substance between his view of this matter and mine. But an extreme view seems to have been taken of what he then said and I should not have dealt with this matter at such length had it not come to my notice that it is in consequence of that judgment that plaints are now being admitted without any statement as to when the cause of action arose. The pendulum seems to have swung entirely in the opposite direction, for in the plaint with which I am now concerned not only is there no separate paragraph stating when the cause of action expressed in para. 12 of the plaint arose, but it is impossible for anybody upon a perusal of the facts alleged to constitute the cause of action to ascertain for himself when it is alleged to have arisen. It is very important that there should be continuously a uniform practice in this respect, and I have therefore dealt with the matter at considerably greater length than otherwise would have been necessary for the guidance of the officers of the Court and of the profession generally.

10. There will be an order for amendment of the plaint as prayed. The applicant must pay the costs of this application. The defendant Srimany will be at liberty to file an additional written statement of which the applicant must also pay the costs.