
(1970) 06 GAU CK 0004

Gauhati High Court

Case No: Second Appeal No. 46 of 1967

M/s. Assam Cold
Storage Co.

APPELLANT

Vs

The Union of India
(UOI)

RESPONDENT

Date of Decision: June 17, 1970

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100, 15, 16, 17, 18
- Railways (Amendment) Act, 1961 - Section 80
- Railways Act, 1989 - Section 30, 78B

Hon'ble Judges: P.K. Goswami, C.J; M.C. Pathak, J

Bench: Division Bench

Advocate: J.P. Bhattacharjee and D.K. Hazarika, for the Appellant; R.K. Goswami and D.C. Goswami, for the Respondent

Judgement

Goswami, C.J.

This second appeal is directed against a judgment of reversal passed by the learned Additional District Judge, Gauhati, dismissing the Plaintiffs suit for compensation of a sum of Rs. 3728.25 nP. on account of damage of a consignment of onions booked on the railway.

2. A consignment of 351 bags of onions was booked on 1-4-1962 at Lasalgaon railway station for carriage and delivery at Tinsukia railway station on the North East Frontier Railway under railway receipt No. 928395 of the same date (under Invoice No. 1). The goods were delivered to the Plaintiff in damaged condition and a certificate to that effect was given by the railway at the time of delivery. After appropriate notices under, Section 78B of the Indian Railways Act and Section 80 of the Code of Civil Procedure, the suit was instituted by the Plaintiff-company in the Court of the Subordinate Judge at Gauhati although the goods were delivered at Tinsukia, the destination station. The Defendant

Union of India, representing North East Frontier Railway, has denied the claim.

3. The learned Additional District Judge dismissed the Plaintiff's claim on the following grounds: firstly, he held that the Gauhati Court had no jurisdiction to try the suit in view of the provisions of Section 80 of the Railways Act; secondly, on the merits he held that the Plaintiff failed to prove any misconduct or negligence on the part of the railways and hence it was not entitled to damages; thirdly and lastly, he held that the Plaintiff could not prove the extent and quantum of damage to entitle it to the decree.

4. The first question turns on Section 30 of the Railways Act as inserted by the 1961 Amending Act Section 80 reads thus:

Suits for compensation: A suit for compensation for loss of the life of, or personal injury to, a passenger or for loss, destruction, damage, deterioration or non-delivery of animals or goods may be instituted,....

(a) if the passenger was or the animals or goods were, booked from one station to another on the railway of the same railway administration, against that railway administration;

(b) If the passenger was or the animals or goods were booked through over the railway of two or more railway administrations, against the railway administration from which the passenger obtained his pass or purchased his ticket or to which the animals or goods were delivered for carriage, as the case may be, or against the railway administration on whose railway the destination station lies, or the loss, injury, destruction, damage or deterioration occurred: and, in either case the suit may be instituted in a court having jurisdiction over the place at which the passenger obtained his pass or purchased his ticket or the animals or goods were delivered for carriage, as the case may be, or over the place in which the destination station lies, or the loss, injury, destruction, damage or deterioration occurred.

Section 80 indicates as to where the present suit may be instituted. There is no proof where the damage or deterioration to the goods occurred. So, u/s 80, it is submitted on behalf of the Respondent that the suit should have been instituted in the Court-at Dibrugarh under whose jurisdiction Tinsukia lies or elsewhere at the station of origin where the goods were delivered for carriage.

It is contended that the Gauhati Court has no jurisdiction to try the suit. The learned Counsel for the Appellant contends that this point was not taken by the Defendant in the written statement and no objection was taken in the trial court as to its territorial jurisdiction. The learned Additional District Judge before whom this point was first taken in appeal against the decree, however, entertained the plea and decided in favour of the Respondent.

The Appellant further contends that in view of Section 20 of the CPC the suit was properly instituted as the Defendant carries on business at Pandu within the - jurisdiction of the Gauhati Court. The Respondent replies, to this submission by stating that Section 80 . of the Railways Act, which is a special" provision on the point, impliedly repeals Section 20 of the CPC and Section 20 cannot be invoked by the Appellant. Prior to the amendment of Section 80, there was no provision in this section itself about the place of suing and fear, the first time by the 1961 amending Act, such a provision has been made.

5. The question that arises for consideration is whether after the amendment it is permissible for a Plaintiff to sue the Defendant at a place not provided for u/s 80 of the Railways Act. Section 20, CPC Code, finds its place in a group of sections (Ss. 15 to 25) in Part 1 of the Code under a sub-heading, namely "Place of Suing" Section 20, subject to the limitations of Section 16 to 19, provides inter alia for a suit to be instituted in a court within the local limits of whose jurisdiction the Defendant actually and voluntarily resides or carries on business or personally works for gain. It is not disputed that the Defendant carries on business within the jurisdiction of the Gauhati Court. It is strenuously contended that after the amendment of Section 80, a suit cannot be instituted at any place not included in that section by taking recourse to Section 20, CPC Code. Section 20 is the earlier law on the point and it was meant for various suits indicated therein. This section was the only resort prior to the amendment of Section 80.

The precise point that arises for consideration in this appeal is whether, after the amendment of Section 80, it is permissible to add any other place of suing outside the limits of Section 80 even though it may be permissible u/s 20, CPC In other words, has Section 80 impliedly repealed Section 20, CPC Or, could these two sections co-exist without any inconvenience or difficulty? It will be noticed that when the Legislature sought to amend Section 80, it must be assumed that it had Section 20, before it, which was the earlier section in the field on the subject. If so, in absence of an express provision to the contrary, or in absence of a clear implication in the provision, it is not possible to hold that Section 20, CPC has been impliedly repealed by Section 80. When it is a question of the place of suing, both the sections can co-exist and there is no repugnancy or inconsistency in the two sections standing together. In this context, we may refer to a decision of the Supreme Court in [Municipal Council Palai Vs. T.J. Joseph and Others](#), Municipal Council, Palai v. T.J. Joseph, where the following observations occur at page 1564:

It is undoubtedly true that the legislature can exercise the power of repeal by implication. But it is an equally well settled principle of law that there is a presumption against an implied repeal. Upon the assumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject the failure to add or repealing clause indicates that the intent was not to repeal existing legislation. Of course, this presumption will be rebutted if the provisions of the new Act are so inconsistent with the old ones that the two cannot stand together, As has been observed by Crawford on Statutory Construction, p. 631, para 311a

There must be what is often called "such a positive repugnancy between the two provisions of the old and the new statutes that they cannot be reconciled and made to stand together". In other words they must be absolutely repugnant or irreconcilable. Otherwise, there can be no implied repeal.....for the intent of the legislature to repeal the old enactment is utterly lacking.

We are, therefore, clearly of opinion that no objection could be taken on the ground of lack of territorial jurisdiction of the Court and the suit was properly instituted in the Gauhati Court, We are therefore, unable to agree with the conclusion of the learned Additional District Judge on the point.

6. The second ground on which the learned Additional District Judge rejected the Plaintiff's claim depends on a finding of fact. The learned Court, after considering the evidence produced held that merely because the Railways took 34 days in delivering the consignment, they cannot be made liable for the damage on the ground of misconduct or negligence on their part. The High Court will refrain from interfering with a finding of this nature u/s 100. CPC thirdly, the learned Additional District Judge held on the evidence that the Plaintiff could not prove by independent evidence the extent and quantum of damage caused to it. This again is a finding of fact and cannot be disturbed in second appeal.

7. Although therefore we have disagreed with the conclusion of the learned Additional District Judge regarding territorial jurisdiction of the trial court, the appeal must be dismissed on the other two grounds mentioned above. In the entire circumstances of the case, we will make no order as to costs.

8. Delivery of this judgment was delayed as my learned Brother was trying an election case on the original side and this Bench was not available.

M.C. Pathak, J.

9. I agree