

State of Karnataka and Another Vs D.K. Ramakrishna

Court: Karnataka High Court

Date of Decision: Nov. 9, 1981

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 80

Citation: (1982) 1 KarLJ 184

Hon'ble Judges: G. N. Sabhahit, J

Judgement

1. This appeal by the State is directed against the judgment and decree, dated: 27-9-1980, passed by the Civil Judge, Chitradurga, in RA No.

21/1980, on his file, dismissing the appeal of the Government on confirming the judgment and decree, dated 20-2-1980, passed by the Munsiff,

Chitradurga, in OS No. 140/1979, on his file.

Plaintiff filed a suit for declaration that his correct date of birth is 14-3-1952 and not 14-1-1951 as mentioned in the cumulative records.

According to the plaintiff, his parents have 7 sons and 2 daughters. Plaintiff is the third son. The elder daughter Yeshodamma of his parents is 2

years 4 months younger to the plaintiff and the plaintiff is 3 years 5 months younger to his immediate elder brother Shanmukhappa. In between

Shanmukhappa and plaintiff as also in between the plaintiff and Yeshodamma, there are no children born to their parents. The plaintiff's correct

date of birth is 14-3-1952 and the date of birth of Shanmukhappa and Yeshodamma are 30-10-1948 and 12-7-1954 respectively. The date of

birth of plaintiff finds entry in the Birth and Death Register of Alur village where he was born. Plaintiff's father, also maintained a book of

horoscopes of his children in usual course. When the plaintiff was a young boy, this maternal grandmother Kenchajji got him admitted in the school;

either on the basis of the age given by her at that time or guessed by the Head Master himself on approximation, the date of birth of the plaintiff

seems to have been entered in the register wrongly. On these averment he sought for correction of his date of birth as 14-3-1952 in his school

records. The suit was resisted and inter alia it was contended that the suit was bad because no notice under S. 80 CPC. was issued. Both the

Courts-below turned down that contention on the basis of a decision of this court in K.P. Kulkarni v. Dy. Comrr. Bangalore, (1969) 2 Mys. L.J.

503. Aggrieved by the said finding of the courts-below, given concurrently that no notice under S. 80 of CPC. is necessary to institute a suit, the

State has instituted the present appeal.

The sole point, therefore, that arises for my consideration in this appeal is:

Whether the notice under S. 80, CPC. is necessary to correct the date of birth as prayed for on the facts of the present case?

It is true that in the said case of K.P. Kulkarni v. Dy. Commr., (1969) 2 Mys. L.J. 503, his Lordship Justice Somnath Iyer has ruled that since

Deputy Commissioner was a party in such a suit, as per Government notification dated June 5, 1963, the suit was not one falling within S. 80,

CPC. Subsequently, however, the said notification was withdrawn. A Division Bench of this court in R.S.A. No. 982/1976, decided on 24-6-

1977, has held that the decision rendered in the case of K.P.Kulkarni, (1969) 2 Mys. L.J. 503, would no longer be applicable, as the notification

No. Ed. 62 GDB 70, Bangalore, dt. 5-6-"63 was withdrawn subsequently on 9-6-"71. Hence the Division Bench held that notice under S. 80

CPC. would be necessary after 9-6-"71. The present suit in question is instituted in the year 1979. Therefore it is obvious that notice under S. 80

CPC. would be necessary for the maintainability of the suit.

It may be noted in this context that S. 80 of the Code of civil procedure states that no suit shall be instituted against the Government or against a

public officer in respect of any act purported 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 or left at his office etc.

In the instant case, the act complained of is that of a public officer in recording the age of the present plaintiff. Therefore, it is obvious that notice

under S. 80 CPC would be absolutely necessary before institution of the suit. The Supreme Court has pointed out that there is no exception to this

rule, it being mandatory, explicit and express. That being so, I am of the considered (view that the suit instituted, with regard to an act done by a

public officer, in the discharge of his official duty, without issuing a notice under S. 80 CPC, is bad in law and hence without more, the suit is liable

to be dismissed.

In the result, therefore, the appeal is allowed, the judgments and decrees of the courts below are set aside and the suit of the plaintiff is dismissed.

No costs throughout.