

(1904) 07 CAL CK 0020

Calcutta High Court

Case No: Suit No. 233 of 1903

Bholaram Chowdhury

APPELLANT

Vs

Administrator-General

RESPONDENT

Date of Decision: July 7, 1904

Final Decision: Dismissed

Judgement

Woodroffe, J.

A preliminary objection has been taken that this suit is not maintainable inasmuch as no notice was delivered to the Administrator-General of Bengal or left at his office or delivered to or left at the office of the Secretary to the Local Government under sec. 424 of the Code of Civil Procedure. I think there can be no question since the passing of the Administrator General's Act of 1902 that the Administrator-General is a public officer within the meaning of sec. 2 of the Code and therefore in a suit instituted against him in respect of any act purporting to be done by him in his official capacity he is entitled to notice under sec. 424. The next question is whether or not the act complained of in this suit was one which purported to be done by the Administrator-General of Bengal in his official capacity. It has been contended for the Plaintiff that the Administrator-General acted in this matter not as the Administrator-General of Bengal, but as the administrator de bonis non of the estate of Assaram Burman and that as such his position is the same as that of an ordinary administrator. I think however that having regard to the provisions of Act II of 1874 and of the present Act V of 1902 all estates in the hands of the Administrator-General must be taken to be and are in fact held by him as Administrator-General, that is as a public officer. It remains, however, to be considered whether the suit having been brought against the Administrator-General as a public officer and in respect of an act purporting to be done by him in his official capacity notice has been given under sec. 424. The suit as originally instituted contained no statement that any notice had been given to the Administrator-General under sec. 424. An application was, however, made and granted to amend the plaint, and the plaint was amended on the 20th July 1904 and

in the amended plaint it is stated that notice was served on the Administrator General on behalf of the Plaintiff setting out the relief asked for in this suit on the 15th January 1903 in terms of sec. 424. This suit was instituted on the, 15th April 1903. I have some doubt whether it was intended that any notice should be given under sec. 424 and am inclined to think that that question was overlooked, but in my opinion it is sufficient if it be shewn that there was in fact a notice which does fulfil the requirements of sec. 424. The letter relied on in this respect is dated the 15th January 1903; There is no question that this letter was delivered to and left with the Administrator-General. It is contended, however, that it is insufficient as a notice under sec. 424 in the following respects : Firstly, it is argued that it does not sufficiently state the cause of action. I am of opinion that it does sufficiently allege the cause of action which is mentioned in the plaint. According to that letter the cause of action is alleged to be an encroachment made by the owner or occupier of No. 55-1, Cotton Street, which is said to form part of the estate in the hands of the Administrator-General and in his charge as such, A number of somewhat minute objections have been taken on this head, but I am of opinion in conformity with previous decisions on this point, *Secretary of State v. Perumal Pellai* I. L. R. 24 Mad. 279 (1900) and *Bachhu Singh v. Secretary of State* I. L. R. 25 All. 187 at p. 191 (1902), that the words "cause of action" ought not to be construed in a narrow sense, the object of the section being merely to inform the Defendant substantially of the grounds of complaint and this was done for all practical purposes in the present case by the notice actually given.

2. The next objection taken is that the place of abode of the intending Plaintiff is not set out. The letter was written on behalf of the Plaintiff by his attorney and give the latter's address. Further it is stated in that letter that the Plaintiff is the owner of No. 199, Harrison Road, and an address is thus given to which communications might be sent. The fact that the Plaintiff is described as living elsewhere in the plaint does not prove that prior to the date of the suit he was not living at No. 199, Harrison Road. Subsequent correspondence was held with the Administrator-General in which no question was raised as to this point. I do not think that the notice in this respect is insufficient so as to justify the dismissal of this suit on that account.

3. The next objection is as to the relief sought. As regards this it is stated in the notice that the relief sought is the removal of the encroachment. There is no doubt that the plaint goes beyond that as it asks for damages but as that claim for damages arises out of the encroachment of which notice is given in the letter, I hold that the notice is sufficient in this respect also.

4. Lastly, it is objected that the notice under sec. 424 must contain a statement that such notice has been delivered or left in the manner prescribed by the section. I think that that portion of the section is separable from the earlier portion which deals with the delivery of the notice 2 months before the institution of the suit. It is only when the notice is not given that the suit is liable to be dismissed. The suit may

however be proceeded with if, as in the present suit, notice has been given in the manner prescribed and subsequently the plaint is amended in order to state that fact. I therefore hold that the preliminary objection raised under sec. 424 fails.