

## ALLAHABAD HIGH COURT

Kamta Prasad

Vs.

Union of India

Civ. Rev. No. 1259 of 1950

(V.D. Bhargava, J.)

03.01.1957

### JUDGMENT

**V.D. Bhargava, J.**

1. This is an application in revision under Section 25 of the Small Cause Courts Act by Kamta Prasad who was the plaintiff in the suit. The suit was for recovery of a sum of Rs. 118/12/- from the Defendant.

2. A consignment of blankets was dispatched from Panipat to Allahabad and there was a shortage of nine blankets in the consignment. The small Cause Court Judge has found all the issues in favor of the plaintiff except issues No. 3 which was about notice under Section 80, Civil Procedure Code. He has come to the conclusion that there was shortage and that was due to the negligence of the Railway Administration. On Issue No. 3 he has held that the notice was served on the opposite party by the firm Bisheshwar Prasad Raghunath Prasad of Allahabad while the present suit has been filed by Kamta Prasad as the proprietor of the firm, the notice was, therefore, bad. Under Order 30, Civil Procedure Code, it is open to a firm to sue in the name of its proprietor or its partners. In the present case Kamta Prasad happens to be the sole proprietor of this firm and there is, in effect, an identity between Kamta Prasad and the firm Bisheshwar Prasad Raghunath Prasad; and it cannot be said that by this omission the opposite party was in any way prejudiced or misled. The railway receipt was endorsed in the name of firm Bisheshwar Prasad Raghunath Prasad and, therefore though the notice was served by the firm the suit was filed in the name of Kamta Prasad, because he happened to be the sole proprietor and there was no question of its being a registered firm. In the circumstances, I think that the suit had wrongly been dismissed on that score.

3. I accordingly, allow the revision, set aside the decree of the trial court and decree the plaintiff's suit with costs throughout

Revision allowed.