

KARNATAKA HIGH COURT

Union of India

Vs.

C.R. Prabhanna and Sons

Second Appeal No. 756 of 1972

(E.S. Venkataramiah, J.)

14.02.1977

JUDGEMENT

E.S. Venkataramiah, J.

1. The question that arises for consideration in this second appeal relates to the jurisdiction of the trial court to entertain the suit out of which this appeal arises.

2. The plaintiffs in O.S. No. 581 of 1967 on the file of the Munsiff, Tumkur, instituted the said suit for recovery of damages or compensation for loss of goods which had been consigned by defendant 3 under Railway Receipt No. 344699 Invoice No. C-42 dated 18-9-1965 at Wadi Bunder Railway Station, Bombay, in favor of the plaintiffs. The place of destination of the goods was mentioned as Bangalore City Railway Station in the said Railway Receipt. Defendant 3 sent the Railway Receipt to the plaintiffs through the State Bank of Mysore, Tumkur Branch, Tumkur. The plaintiffs paid the amount payable to defendant 3 through the State Bank of Mysore, Tumkur, and took delivery of the Railway Receipt with the endorsement made in their favor by the Bank. The goods in question were not delivered to the plaintiffs till about January 1966. The plaintiffs, therefore, issued a notice to the Chief Commercial Superintendent of the Southern Railway and thereafter filed the suit on 4-10-1967 in the Court of the Munsiff, Tumkur for compensation or damages for loss of goods which had been booked in their favour by defendant 3.

3. The suit was contested on the ground that the Court of the Munsiff at Tumkur had no territorial jurisdiction to entertain the suit in view of the provisions of Section 80 of the Indian Railways Act as substituted by the Indian Railways (Amendment) Act, 1961 (39 of 1961). The trial court overruled the objection of the Southern Railway regarding the territorial jurisdiction and decreed the suit. The lower appellate court has affirmed it. Hence this second appeal by the Union of India.

3. Section 80 of the Indian Railways Act as it is in force now reads :

"80. 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."

We are concerned in this case with the latter part of Section 80 which deals with the territorial jurisdiction of the Courts which can entertain suits against the railways 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 booked from one railway station to another. It provides that such a suit may be instituted in a court having jurisdiction over the place at which the passenger obtained his pass or purchased its ticket or the animals or goods were delivered for carriage or; over the place over which the destination station lies, or the loss, injury, destruction, damage or deterioration occurred. It is not disputed that the railway station at which the goods in this case were booked and the place of destination are not within the jurisdiction of the Court of the Munsiff, Tumkur. Nor is it in the case of the plaintiffs that the loss, injury, destruction, damage or deterioration of the goods in question occurred at any place within the territorial jurisdiction of that court.

4. It is however argued on behalf of the plaintiffs that the railway receipt in question which had been sent by defendant 3 having been endorsed in favour of the plaintiffs on payment of the amount due to defendant 3 at the State Bank of Mysore, Tumkur Branch, Tumkur, which was situate within the jurisdiction of the trial court, had jurisdiction to try the suit by virtue of Clause (c) of Section 20 of the Civil P. C. It is argued that Section 20 of the Civil P. C. which is a general provision dealing with the territorial jurisdiction of the Civil Courts to try the suits continues to be applicable to cases falling under Section 80 of the Railways Act even after the said section was substituted by the Indian Railways (Amendment) Act, 1961. Sri Udayashankar, learned counsel for the plaintiffs, relied upon the decision of the High Court of Assam and Nagaland in *Assam Cold Storage Co. v. The Union of India*¹, and contended that Section 20 of the Civil P. C. remained unabrogated even after the substitution of Section 80 of the Railways Act by Act 39 of 1961. It is no doubt true that the said decision fully supports the case of the plaintiffs. In that case

it was argued on behalf of the plaintiff that as Section 20 of the Civil P. C. had not been expressly repealed and as the said section had also not been repealed by implication by Section 80 of the Railways Act as substituted by Act 39 of 1961, the court within whose jurisdiction any part of the cause of action arose had the jurisdiction by virtue of Clause (c) of Section 20 of the Civil P. C. The High Court of Assam and Nagaland concurred

¹ AIR 1971 Ass and Naga 69

with the above submission and held that it was possible to institute suits in a court other than those referred to in Section 80 of the Railways Act provided it had jurisdiction under Section 20 of the Civil P. C. With great respect to the learned Judges who decided that said case I have to express my disagreement with the view taken by them.

5. Section 80 as it originally stood laid down that notwithstanding anything in any agreement purporting to limit any liability of railway administration, a suit for compensation for loss of goods could be filed either against the railway administration from which the goods were booked or against the railway administration on whose railway the loss, injury, destruction or deterioration of the goods occurred. There was no reference to the territorial jurisdiction of the courts in which such suits for compensation under Section 80 could be instituted. By Act 39 of 1961, Section 80 was substituted by the new section extracted above. While doing so, the Parliament specifically mentioned in that section the courts before whom such suits could be filed. I am of the view that the Parliament when it enacted the new Section 80 intended to specify the courts before whom alone suits under Section 80 of the Railways Act could be filed. It should be remembered that Section 20 of the Civil P. C. was in existence even at the time when Section 80 was substituted in the year 1961. If the Parliament intended that Section 20 of the Civil P. C. should continue to be applicable, then there was no need for specifying in Section 80 the courts which could entertain the suits referred to therein as they would also fall within the category of courts specified in Section 20 of the Civil P. C. While interpreting statutory provisions we should bear in mind that no legislature would ordinarily indulge in superfluity. If we accept the argument which appealed to the High Court of Assam and Nagaland, we have got to attribute to the Parliament the error of enacting a provision which would amount to a surplus age.

6. Section 80 of the Railways Act enacts a complete Code regarding the courts before whom suits referred to therein can be filed. Special provisions enacted in Section 80 exclude the operation of the general provisions of Section 20 of the Civil P. C. It is well known that special provisions exclude the operation of general provisions. [see *South India Corporation (P.) Ltd. v. Secretary, Board of Revenue, Trivandrum*². and *Delhi Administration v. Ram Singh*³. The object of specifying the courts having jurisdiction to try suits under Section 80 is also clear. The Parliament apparently did not wish that any court in India merely because the Railway Receipt was negotiated within its jurisdiction should have jurisdiction to try a suit falling under Section 80 against the Railway as it would cause a good deal of inconvenience to the railway administration to defend; suits at courts far removed from the booking station, place of destination and the place where the loss of goods had occurred, when they were not concerned

with the negotiation of the railway receipt. It cannot also be said that the Union of India either resides or carries on business or works for gain in every part of India wherever a railway station is situated. The suits against the Union of India under Section 80 have to be filed only in the courts specified therein. I am, therefore, of the view that Section 20 of the Civil Procedure Code has to be read as not being applicable to suits falling under Section 80 of the Railways Act after Act 39 of 1961 came into force. Since it is not disputed that the trial court is not one of the courts referred to in Section 80 of the Railways Act, the trial court had no jurisdiction to try the suit. The decrees passed

²AIR 1964 SC 207

³AIR 1962 SC 63

by the courts below are, therefore, set aside. The trial court is directed to return the plaint to the plaintiffs for presentation to proper court.

Appeal allowed.