

# **BOMBAY HIGH COURT**

Mahadev Dattatraya Rajarshi

Vs

Secretary of State

(A Marten, Kt., C.J. Patkar, J.)

24.01.1930

## **JUDGMENT**

### **Patkar, J.**

1. The plaintiff's father in this case gave notice to the Secretary of State for India in Council on August 17, 1925. The plaintiff's father died on September 17, 1925, and the present suit was brought on December 23, 1925. After the institution of the suit the plaintiff gave notice on December 28, 1925. The notice given by the plaintiff after the institution of the suit is useless.

2. The only question in this appeal is whether the notice given by the plaintiff's father on August 17, 1925, is a valid notice under a 80 of the Civil Procedure Code. Under Section 80, " no suit shall be instituted against the Secretary of State for India in Council,...until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District,...stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims ". The notice, therefore, must contain the name of the actual plaintiff who would bring the suit. It is clear, therefore, from the wording of Section 80 that notice must be given by the person who becomes the plaintiff and by no other.

3. In *Bachchu Singh v. The Secretary of State for India in Council* (1902) I.L.R. 25 All, 187 it was held that the language of Section 424 is imperative, and absolutely debars a Court from entertaining a suit instituted without compliance with the provisions of the section. At p. 191 it was observed :-

If we acceded to this contention, it appears to us that we should be adding words to Section 424 which find no place in it. It would be necessary to add after the words 'name and place of abode of the intending plaintiff' some such words as 'or of the party through whom such intending plaintiff claims.' Those remarks apply with greater force to the present Section 80 in which the word " intending" has been omitted. We think, therefore, that the view taken by the lower Court

is correct.

4. It was argued on behalf of the appellant that the word "plaintiff" is defined in the Indian Limitation Act as "including any person from or through whom a plaintiff derives his right to sue". That definition has not been adopted by the legislature in the Civil Procedure Code, and would not govern Section 80 of the Code, and it must, therefore, follow that the actual plaintiff who brings the suit must give notice under Section 80, Civil Procedure Code.

5. We, therefore, dismiss the appeal with costs.