

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 2nd OF FEBRUARY, 2023

SECOND APPEAL No. 1551 of 2020

BETWEEN:-

**MANAGING DIRECTOR CORPORATION
LAMTA PROJECT BALAGHAT, TEHSIL AND
DISTRICT BALAGHAT (MADHYA PRADESH)**

.....APPELLANT

(BY MS. POOJA GUPTA - ADVOCATE)

AND

- 1. BHEJANLAL (DEAD) S/O NARU PAWAR
THROUGH HIS LEGAL
REPRESENTATIVES:**
 - a. KOUTIKA BAI W/O LATE BHEJANLAL,
AGED ABOUT 65 YEARS, R/O VILLAGE
LALPUR, TEHSIL WARASEONI,
DISTRICT BALAGHAT (MADHYA
PRADESH)**
 - b. LEELADHAR S/O LATE BHEJANLAL,
AGED ABOUT 42 YEARS, R/O VILLAGE
LALPUR, TEHSIL WARASEONI,
DISTRICT BALAGHAT (MADHYA
PRADESH)**
 - c. YASHPAL S/O LATE BHEJANLAL, AGED
ABOUT 36 YEARS, R/O VILLAGE
LALPUR, TEHSIL WARASEONI,
DISTRICT BALAGHAT (MADHYA
PRADESH)**

- d. **GOURI LAL S/O LATE BHEJANLAL, AGED ABOUT 32 YEARS, R/O VILLAGE LALPUR, TEHSIL WARASEONI, DISTRICT BALAGHAT (MADHYA PRADESH)**
- e. **MEETA BAI D/O LATE BHEJANLAL, AGED ABOUT 27 YEARS, R/O VILLAGE LALPUR, TEHSIL WARASEONI, DISTRICT BALAGHAT (MADHYA PRADESH)**
- f. **ANITA D/O LATE BHEJANLAL, AGED ABOUT 24 YEARS R/O VILLAGE LALPUR, TEHSIL WARASEONI, DISTRICT BALAGHAT (MADHYA PRADESH)**
2. **KANHAIYALAL S/O NARU PAWAR, AGED ABOUT 60 YEARS, R/O VILLAGE LALPUR, TEHSIL WARASEONI, DISTRICT BALAGHAT (MADHYA PRADESH)**
3. **STATE OF MADHYA PRADESH THROUGH COLLECTOR, BALAGHAT, DISTRICT BALAGHAT (MADHYA PRADESH)**
4. **H.K.PATEL, FOREST RANGE OFFICER, KHAIRLANGI, TAHSIL KHAIRLANGI DISTRICT BALAGHAT (MADHYA PRADESH)**
5. **INDRAKUMAR MISHRA, DEPUTY RANGER CORPORATION, FOREST DEPARTMENT WARD NO.5 BEHIND GARDEN WARASEONI, TEHSIL**

**WARASEONI, DISTRICT BALAGHAT
(MADHYA PRADESH)**

6. **R.G.PATHAK DEPUTY RANGER,
CORPORATION, OFFICE OF FOREST
WARASEONI TEHSIL WARASEONI,
DISTRICT BALAGHAT (MADHYA
PRADESH)**

.....RESPONDENTS

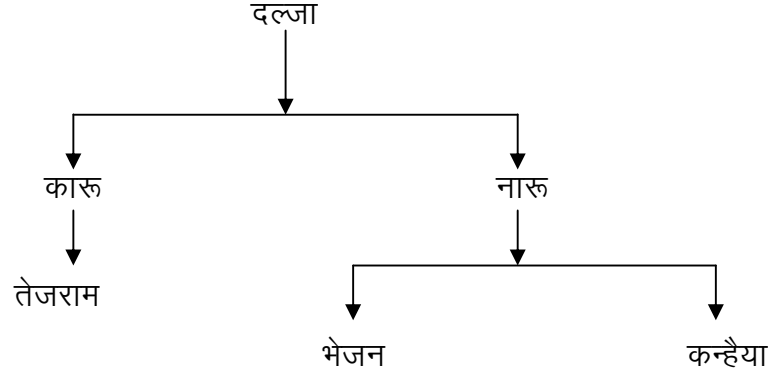
(MS. PAPIYA GHOSH – PANEL LAWYER FOR THE STATE)
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This appeal coming on for admission this day, the court passed the following:

JUDGMENT

This Second Appeal under Section 100 of Code of Civil Procedure has been filed against the judgment and decree dated 22.02.2020 passed by Additional Judge to the Court of First Additional District Judge, Waraseoni, District Balaghat (M.P.) in Regular Civil Appeal No.404A/2015 arising out of judgment and decree dated 30.09.2015 passed by First Civil Judge, Class-I, Waraseoni, District Balaghat in Civil Suit No.59-A/2013.

2. The appellant is the defendant.
3. The plaintiffs filed a suit for recovery of damages caused due to illegal cutting of trees as well as for permanent injunction. It is the case of the plaintiffs that Dalja is the forefather of the plaintiffs. He had Khasra No.33/1 area 1.198 hectares situated in village Lalpur, Tahsil Waraseoni, District Balaghat.
4. The family tree is as under:



5. It is the case of the plaintiffs that Tejram, who represents the family of Karu has alienated a part of Khasra No.33 to Ramdas and the remaining land belongs to the plaintiffs. The plaintiffs had planted trees and were taking care of the same. About 4-5 months back, the defendants No.4 and 5 insisted for demarcation and accordingly, the plaintiffs filed an application before the Court of Tahsildar, Waraseoni. Information of demarcation was given to the defendant No.3. On 25.02.2013, the other defendants, on the instructions of defendants No.2 to 5, started cutting trees, which were standing on the disputed land. The plaintiffs tried to stop them but the defendants No.4 and 5 assured that till the demarcation is done, the cut wood/trees would be kept in a safe custody. On 12.03.2013, the Revenue Inspector and Patwari carried out the demarcation in the presence of the defendant No.5 and the Forest Guard. The defendant No.5 signed the Demarcation *Panchnama* with an endorsement that he does not agree with the same. Accordingly, the plaintiffs sent a notice under Section 80 of CPC. It was found by the plaintiffs that 34 trees of Saja, 5 trees of Dhawda, 93 trees of Sinhana and 50 trolleys of wood total worth Rs.1 Lakh have been illegally cut by the defendants No.2 to 5 and accordingly, the suit was filed for recovery of Rs.1,00,000/-

6. The defendants No.1 to 5 filed their written statement and claimed that they have not cut the trees, which were standing on Khasra No.33/1. It was the case of the defendants that the plaintiffs themselves have cut the trees. It was pleaded that by notification dated 30.01.1979, Khasra No.1 to 10, 14 to 16, 22, 25, 37, 38 to 49, 70/179 total area 560.56 hectares was declared as forest land. After the notification, the demarcation of the said land was carried out and the plantation was done in the year 2008. Since, the residents of Lalpur and the plaintiffs are in habit of illegal cutting of trees from the forest area, which is being objected by the defendants No.2, 4 and 5 accordingly, the suit has been filed with dishonest intention.

7. The trial Court by framing issues and recording evidence, dismissed the suit.

8. The respondents being aggrieved by the judgment and decree passed by the trial Court preferred an appeal, which has been decreed by the impugned judgment and decree dated 22.02.2020 passed in Regular Civil Appeal No.404A/2015.

9. Challenging the judgment and decree passed by the First Appellate Court, it is submitted by the counsel for the appellant that the findings recorded by the Appellate Court with regard to the fact that the plaintiffs had planted the trees and were lawful owner of the same is false. The State Government was a necessary party in a suit against the public servant for damages or other reliefs. It was further submitted by the counsel for the appellant that since, the suit was filed before expiry of two months from the date of service of notice under Section 80 of CPC, therefore, the suit was premature and accordingly, proposed the following substantial questions of law:

“I. Whether, the finding of the learned

- appellate court is up to the mark that the plaintiff has sown the trees and willful owner of the same?
- II. Whether the Tehsildar has exclusive jurisdiction to decide dispute regarding to right over the trees does Civil Court is competent to grant any reliefs?
 - III. Whether the learned Appellate Court committed an error or law ignoring the provision of order-27, Rule 5-A of CPC provided that government is a necessary party in suit against a public servant for damage or other reliefs in respect of any act alleged to have been done by him in his official capacity?
 - IV. Whether a party intends to sue any person who for the time being occupies any public office he must implead such person in his individual name but he cannot sued by his official title?
 - V. Any other substantial question of law which this Hon'ble court deems fit and proper?"

10. Heard the learned counsel for the appellant.

11. The First contention of the appellant is that the suit was filed prematurely because it was filed prior to expiry of sixty days from the service of notice.

12. Although the appellant has not proposed any substantial question of law with regard to premature nature of the suit but the counsel for the appellant was heard on the said aspect.

13. Before considering the submission made by the counsel for the appellant, this Court thinks it appropriate to consider the law governing the field of Section 80 of CPC.

14. The Supreme Court in the case of **Bishandayal and Sons vs. State of Orissa and others** reported in (2001) 1 SCC 555 has held as under:

“15. The next question for consideration is whether the amendment suit was not maintainable for want of notice under Section 80 of the Code of Civil Procedure. In this behalf the appellants have relied upon the cases of *Amar Nath Dogra v. Union of India* [AIR 1963 SC 424 : (1963) 1 SCR 657], *State of Punjab v. Geeta Iron & Brass Works Ltd.* [(1978) 1 SCC 68 : (1978) 1 SCR 746] , *Ghanshyam Dass v. Dominion of India* [(1984) 3 SCC 46] and *Vasant Ambadas Pandit v. Bombay Municipal Corpn.* [AIR 1981 Bom 394 : 1981 Mah LJ 706 : 1981 Bom CR 793 (FB)] In these cases it has been held that a notice under Section 80 CPC or equivalent notices under Section 527 of the Bombay Municipal Corporation Act are for the benefit of the respondents and the same can be waived as they do not go to the root of jurisdiction in the true sense of the term.”

15. The Supreme Court in the case of **State of A.P. and others Vs. Pioneer Builders, A.P.** reported in (2006) 12 SCC 119 has held as under:

“14. From a bare reading of sub-section (1) of Section 80, it is plain that subject to what is provided in sub-section (2) thereof, no suit can be filed against the Government or a public officer unless requisite notice under

the said provision has been served on such Government or public officer, as the case may be. It is well settled that before the amendment of Section 80 the provisions of unamended Section 80 admitted of no implications and exceptions whatsoever and are express, explicit and mandatory. The section imposes a statutory and unqualified obligation upon the court and in the absence of compliance with Section 80, the suit is not maintainable. (See *Bhagchand Dagadusa v. Secy. of State for India in Council* [(1926-27) 54 IA 338 : AIR 1927 PC 176] ; *Sawai Singhai Nirmal Chand v. Union of India* [(1966) 1 SCR 986 : AIR 1966 SC 1068] and *Bihari Chowdhary v. State of Bihar* [(1984) 2 SCC 627].) The service of notice under Section 80 is, thus, a condition precedent for the institution of a suit against the Government or a public officer. The legislative intent of the section is to give the Government sufficient notice of the suit, which is proposed to be filed against it so that it may reconsider the decision and decide for itself whether the claim made could be accepted or not. As observed in *Bihari Chowdhary* [(1984) 2 SCC 627] the object of the section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation.”

16. Thus, it is clear that the basic purpose of the notice under Section 80 of CPC is to give an opportunity to the State and its functionaries to resolve the dispute thereby saving the valuable time and money of the

State. However, it is a procedural law. Although, provision of Section 80 of CPC is mandatory but it can be waived by the defendants.

17. If the written statement filed by the defendants is considered, then it is clear that no objection was raised before the Trial Court. Even, the said objection has been raised for the first time during the course of arguments only.

18. Be that as it may.

19. Since the requirement of Section 80 of CPC can be waived by the defendants and by not having raised the same in the written statement, this Court is of the considered opinion that once the defendants have waived the requirement of Section 80 of CPC, the respondents cannot be non-suited on the ground of premature nature of suit.

20. Accordingly, the first contention made by the counsel for the appellant is hereby rejected.

21. It is next contended by the counsel for the appellant that it is incorrect to say that the appellant had cut the trees standing on the land of the plaintiffs.

22. The First Appellate Court after appreciating the ocular evidence has come to a conclusion that the trees, which were standing on the land of the plaintiffs were cut by the defendants. No perversity could be pointed out by the counsel for the appellant in the findings recorded by the First Appellate Court. Even otherwise, it is well established principle of law that this Court in exercise of power under Section 100 of CPC cannot interfere with the findings of fact unless and until they are perverse or are based on no evidence or on inadmissible evidence. No such perversity could be pointed out by the counsel for the appellant.

23. Furthermore, Indra Kumar Mishra (D.W.2) in paragraph 12 of his cross-examination has categorically stated that the trees standing on the

land of the plaintiffs were cut by the appellant. Although, the counsel for the appellant tried to meet out the aforesaid admission by submitting that it was a typographical error but the same cannot be accepted because the deposition sheet bear the signatures of witness Indra Kumar Mishra (D.W.2) and no objection was taken by him before the trial Court that there is a typographical error in the deposition sheet.

24. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that no substantial question of law arises in the present appeal.

25. *Ex-consequenti*, the judgment and decree dated 22.02.2020 passed by Additional Sessions Judge to the Court of First Additional Sessions Judge, Waraseoni, District Balaghat (M.P.) in Regular Civil Appeal No.404A/2015 is hereby **affirmed**.

26. The Appeal fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

Shanu