(1952) 12 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 29 of 1950

Bakhshish Singh APPELLANT

Vs

Inder Singh and Others RESPONDENT

Date of Decision : 09-12-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89, 115
Evidence Act, 1872 — Section 106
Limitation Act, 1963 — Article 142, 144
Patiala Limitation (Custom) Act, 2000 — Article 3 , 4
Patiala Limitation Act, 1969 — Section 5 , 5(1)

Citation : AIR 1953 P&H 74

Hon'ble Judges : Teja Singh, C.J;Gurnam Singh, J

Bench : Division Bench

Advocate : Dalip Chand, for the Appellant; Lachhman Dass, for the Respondent

Judgement

Teja Singh, C.J.—This second appeal is directed against the appellate decree of the District Judge, Barnala whereby he dismissed Bakhshish Singh''s appeal from the decree of the trial Sub-Judge decreeing the Plaintiffs'' suit. The Plaintiffs-respondents raised a preliminary objection that because of the value of the subject-matter of the appeal no second appeal was competent. By our order dated 4-12-1952 we accepted this objection and allowed the appeal to be treated as a revision petition.

2. The facts of the case are as follows: One Kehra adopted Bakhshish Singh as his son and executed a regular deed of adoption in his favour on 20th Poh 1891 corresponding to 3-1-1935. On Khera''s death Bakhshish Singh took hold of his property including he agricultural land. The Plaintiffs who claimed to be Khera''s collaterals in the fourth degree sued Bakhshish Singh for possession of agricultural land, two houses two vacant sites and for Rs. 50/- on account of the price of cart which according to the Plaintiffs Bakhshish Singh had appropriated to himself. The Plaintiffs'' position was that though Bakhshish Singh gave out that he was Khera''s adopted son, in fact no adoption had taken place and in addition

Bakhshish Singh being son of Khera''s wife by her first husband, such an adoption was not valid according to custom. Bakhshish Singh resisted the suit on various points. He also contended that the suit was barred by time.

The Sub-Judge who tried the suit first framed only three issues namely, whether the property was ancestral qua the Plaintiffs, whether Bakhshish was Khera''s pichhlag son and whether his adoption was valid according to custom. No issue on the question of limitation was framed and the reason for this probably was that the point was not pressed by the defendant. The first issue was found against the Plaintiffs and accordingly their suit was dismissed. On appeal by the Plaintiffs the District Judge remanded the case for retrial with the direction that fresh issues be framed on all points that arose out of pleadings. When the case went back to the trial Court it allowed the three issues that had been framed originally to stand and framed six additional issues. The ninth and the last issue was whether the suit of the Plaintiffs was time barred. The land was held to be ancestral but the houses were found to be non-ancestral. As regards the price of the cart the Court held that the Defendant was not proved to have taken hold of any cart of Khera. The question relating to the validity of the adoption was found against the defendant. The issue on limitation was also found against the Defendant and as a result the Plaintiffs were granted a decree for possession of the agricultural land, but the suit in respect of the other items was dismissed. Both sides preferred appeals to the District Judge, and they also failed. This appeal which has now been treated as revision petition is by Bakhshish Singh.

3. The only point urged by the Petitioner''s counsel is that the suit was barred by limitation and the Courts below were wrong in holding that it was within time. The respondents'' counsel docs not admit this fact but he also urged that even if it be assumed that the decisions of the Courts below on the point of limitation were wrong, they cannot be upset by the High Court on a revision petition.

4. The words of Section 115 limit the re visional jurisdiction of the High Court to three cases, (i) when the subordinate Court has exercised jurisdiction not vested in it by law, (ii) when it has failed to exercise jurisdiction so vested and (iii) when it has acted in the exercise of its jurisdiction illegally or with material irregularity. A good deal of case law has grown up regarding the interpretation of the section but upon one thing there is consensus of opinion namely that where a Court has jurisdiction to determine a question and determines that question, it cannot be said that it has acted illegally or with material irregularity, because it has come to an erroneous decision on a question of fact or even of law. The leading'' Privy Council decisions on the subject are: - Amir Hassan Khan v. Sheo Baksh Singh 11 Ind App 237 (PC) (A) and - Balakrishna v. Vasudeva AIR 1917 PC 71 In the first case the following observations were made by their Lordships:

The question then is, did not Judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them (namely, whether the suit was barred as res judicata) and they did decide it.

Whether they decided it rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity.

This decision was followed in a number of cases by the Indian High Courts not only in cases where the question was whether the previous decision operated as res judicata but even in cases involving point of limitation and construction of a certain provision of law. See in this connection - ''Amritrav v. Balakrishna'' 11 Bom 488 ; - ''Sunder Singh v. Doru Shankur'' 20 All 78 ; - Babu Ram and Another Vs. Munna Lal and Others, and - ''Rabbaba Khanum v. Noorjehan Begum'' 13 Cal 90 . In ''Sunder Singh''s case (D)'' it was decided by the lower Court, according to the High Court wrongly, that the suit was barred by limitation and yet the decision was not interfered with. In - ''Balakrishna''s case (B) their Lordships of the Privy Council remarked as follows:

It will be observed that the section applied to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved.

These remarks were interpreted differently by different High Courts. It was held in - ''Mst. Dhanwanti Kuer v. Sheo Shankar'' AIR 1919 Pat 501 (G), that an erroneous decision on a question of law or fact after jurisdiction has been once legally assumed would not be a ground for interference u/s 115, Civil P.C., but if the decision is very basis and foundation of jurisdiction in its limited sense as distinguished from powers, it at once comes within the purview of the section the appeal arose out of an application under Order 21, Rule 89. The lower Court held that the applicant was not a person entitled to apply under the Rule and accordingly dismissed his application. The applicant went to the High Court in revision and the High Court held that because the lower Court had refused to exercise jurisdiction vested in it by law the High Court had the power to interfere. In - Yad Ram Vs. Sunder Singh, the Allahabad High Court took a different view. The following were the observations made by Banerji J.:

In the present case the Court was competent to determine whether (A) was entitled to make an application under Order 21, Rule 89, and it had jurisdiction to decide that question, and it decided it adversely to (A). The Court may have been wrong in its decision, but it cannot be said that in the exercise of its jurisdiction it acted illegally or with material irregularity in the sense in which those words have been interpreted by their Lordships of the Privy Council in the case to which I have referred and in earlier cases decided by their Lordships.

While commenting upon this decision and the decision of a Full Bench of the Madras High Court - Sundaram alias Mytheenbibi Vs. Mamsa Mavuthar, Sheikkasim Mavuthar, in which the view taken was the same as in - ''Mst. Dhanwanti''s case (G) Mulla in his well known commentary on the CPC made the following remarks:

The substantial point of difference between these two divergent views is that the Patna and Madras High Courts treat the refusal by the lower Court to entertain the application as a refusal to exercise a jurisdiction vested in it by law, while the High Court of Allahabad regards the refusal as no more than a decision, though erroneous, on a point of law in the exercise of the lower Court''s jurisdiction. There is no difference of opinion between these Courts on the point that where the lower Court assumes jurisdiction or refuses jurisdiction on an erroneous construction of a statute, the High Court can interfere in revision. The difference arises on the question - is it a case of a refusal to exercise jurisdiction or a case merely of a wrong decision on a point of law in the exercise of the Court''s jurisdiction? According to the Patna and Madras High Courts, it is the former; according to the Allahabad High Court, it is the latter.

Mr. Dalip Chand learned Counsel for the Petitioner, referred us to a recent decision of the Judicial Committee in - AIR 1949 239 (Privy Council) and contended that in view of the observation made by Sir John Beaumont who delivered the judgment, the view taken in all the above mentioned cases is no longer good law. That appeal had arisen out of a petition made by the respondents under Sections 30 and 36, Bengal Money-Lenders Act, 1940 for reopening a mortgage decree passed against the respondents in a mortgage suit. The Subordinate Judge to whom the petition was made rejected it. The respondents made a revision petition to the High Court against the order of the Sub-Judge .and the High Court set aside that order. One of the questions that arose before the Privy Council was'' whether the revision petition to the High Court was competent. It may here be mentioned that the grounds given by the Sub-Judge for rejecting the application were that the loan made by the Appellant to the respondents or their predecessors was a commercial loan within the meaning of the Act, that such a loan did not come within the terms of the Act and the application, therefore, did not lie. The High Court on revision disagreed with the Subordinate Judge that the loan was not a commercial loan, set aside his order and sent back the case to him with the direction that the decree might be reopened. While dealing with the question whether the revision petition to the High Court was competent this is what Sir John Beaumont said:

Mr. Pringle (counsel) for the Appellant admitted that no appeal lay from the order passed by the Subordinate Judge, and he did not challenge the revisional jurisdiction on that ground. Their Lordships accept this admission and express no opinion upon its correctness. Mr. Pringle based his objection on the principle laid down by this Board in -- ''11 Ind App 237 : 11 Cal 6 PC (A)'' and - AIR 1917 PC 71 (B), and now firmly established, that a subordinate Court does not act illegally or with material irregularity because it decides wrongly a matter within its competence. A Court has jurisdiction to decide a case wrongly as well as rightly. Mr. Pringle maintained that the learned Subordinate Judge had jurisdiction to decide that the loan was a commercial loan, and in so doing he did not act illegally or with material irregularity and the High Court had no power to interfere in revision merely because it disagreed with his decision. So far Mr. Pringle is on safe ground, but the learned Subordinate Judge having held that this was a commercial loan, was bound to go on to consider what effect that decision had upon the respondents'' application, and, since the Act in terms does not apply to commercial loans, the learned Judge was bound, upon his finding, to dismiss the application without determining whether or no the respondents brought themselves within Sections 30 and 36 of the Act as they claimed to do. In so doing, on the assumption that his decision that the loan was a commercial loan was erroneous, he refused to exercise a jurisdiction vested in him by .law and it was open to the High Court to act in revision under Sub-section (b) of Section 115.

Then his Lordship went on and these are the observations upon which Mr. Dalip Chand relies:

There have been a very large number of decisions of Indian High Courts on Section 115, to many of which their Lordships have referred. Some of such decisions prompt the observation that High Courts have not always appreciated that although error in a decision of a subordinate Court does not by itself; involve that the subordinate Court has acted illegally or with material irregularity so as to justify interference in revision under Sub-section (c), nevertheless if the erroneous decision results in the subordinate Court exercising a jurisdiction not vested in it by law, failing to exercise a jurisdiction so vested, a case for revision arises under Sub-section (a) or Sub-section (b) and Sub-section (c) can be ignored. The cases of Babu Ram and Another Vs. Munna Lal and Others, and - ''Hari Bhikaji v. Naro Vishvanath'' 9 Bom 432 (K) may be mentioned as cases in which a Subordinate Court by its own erroneous decision (erroneous that is in the view of the High Court), in the one case on a point of limitation and in'' the other on a question of res judicata, invested itself with a jurisdiction which in law it did not possess and the High Court held, wrongly their Lordships think, that it had no. power to interfere in revision to prevent such a result. In the present case their Lordships are of-opinion that the High Court, upon the view which it took that the loan was not a commercial loan, had power to interfere in revision under Sub-section (b) of Section 115.

Mr. Dalip Chand admits that the last observation was of the nature of ''obiter dictum'' but he argues that even so it must be followed and urges that according to it if a cause is in fact barred by time but the subordinate Court holds it within time and decrees it, it is tantamount to that Court exercising jurisdiction not vested in it by law. Learned Counsel has also drawn our attention to - Mohammad Khan Vs. Mohammad Salim Khan, and - ''Murari Lal v. Madan Lal'' AIR 1952 Pun 265 (M) in which the above remarks of Sir John Beaumont were interpreted in the manner he wants us to interpret them. In the former case an application was made u/s 12, U.P. Agriculturists'' Relief Act for the redemption of usufructuary mortgage dated 1-8-1878 which was executed by F grandfather of the Plaintiff in favour of the defendants, opposite party for a sum of Rs. 259/-. After the death of F his son A executed another mortgage on 30-8-1900 for Rs.

167/- in favour of the same mortgagees reciting the existence of the previous mortgage. The applicant alleged that the limitation for redemption was saved by the acknowledgment about the prior mortgage made in the second mortgage by F. The defence inter alia was that the application was barred by time. The trial Court held that the application was not barred by limitation and that the entire amount had been paid up by the usufruct of the property. It, therefore, allowed the redemption without payment of the mortgage money. The defendants appealed and the lower Court held that the application was barred by limitation and without going into the merits of the case dismissed it. Against this decree the applicant went in revision to the High Court. A preliminary objection was raised by the respondent that no revision lay to the High Court because no question of jurisdiction was involved and even if the decision of the lower appellate Court was wrong it was an error of law and could not be corrected in exercise of the re-visional jurisdiction of the Court. All the three above mentioned Privy Council decisions were cited before the High Court. After'' discussing them and a number of other cases the learned Judges held that when a Subordinate Court decided a question of limitation or a question of res judicata wrongly it commits an illegality in the exercise of its jurisdiction with the result that it either fails to consider the case upon its merits or considers it upon its merits when it ought not to have done so. Agarwala J. with whom his learned colleagues agreed remarked as follows:

It will be observed that the questions of limitation and res judicata are questions of procedure. In deciding wrongly upon these questions the Court adopts a wrong procedure for the decision of a case and thereby acts illegally in the exercise of its jurisdiction with the result that one of the parties is severally prejudiced.... Whether the question falls under Clauses (a) and (b) of Section 115 or under Clause (c) of that section, the result is the same, namely, that the Court of revision can correct the error and set the matter right.

As regards the merits it was held that the lower appellate Court was right in holding that the application was barred by time and hence the revision petition was dismissed. In the latter case the question was whether a previous decision operated as res judicata and the learned Chief Justice held on the basis of remarks of their Lordships of the Privy Council in - ''Joy Chand Lals Babu''s case'', (J), that a wrong view taken by a subordinate Court can be set aside by the High Court on a revision petition.

5. I agree with Mr. Dalip Chand that the observations of Sir John Beaumont in - ''Joy Chand Lal Babu''s case'' (J), are binding upon us and I respectfully accept the interpretation placed upon them in the Allahabad and Punjab cases just referred to I must, however, add that as I read these cases the impression that I form is that the High Court will be justified in interfering with the decision of a subordinate Court on the point of limitation if it is based upon the application of wrong law or upon the wrong interpretation of the correct law and not when it happens to be a mixed question of law and fact and it is urged before the High

Court that the decision of the subordinate Court on the question of fact is erroneous.

In order to make my meaning clear I would take a concrete case. A Plaintiff brings a suit for possession of immovable property on the allegation that he was in possession but was dispossessed wrongly within 12 years of the date of the suit. There can be no denying the fact that so far as the limitation is concerned the case comes within the purview of Article 142, Limitation Act. The Court, however, ignores this fact and holding that the suit is governed by Article 144 passes a decree against the Defendant on the ground that he has failed to prove adverse possession extending over 12 years or more. In cases of this kind the decision of. the lower Court, if the unsuccessful Defendant comes to the High Court on a revision petition and the revision is otherwise competent, will be interfered with by the High Court, because the erroneous decision of the lower Court on the point of limitation amounted to illegal assumption of jurisdiction on its part.

Let us now suppose that in a case of the same kind the lower Court applied the correct Article of limitation that is Article 142 and calls upon the Plaintiff to prove possession and dispossession within 12 years. The Plaintiff adduces evidence to establish that he was dispossessed within 12 years of the date of the suit and the Court after holding that the evidence was sufficient to prove dispossession decrees the Plaintiffs suit. The Defendant after unsuccessfully appealing to the lower appellate Court and being not entitled to prefer further appeal, applies to the High Court for the revision of the decisions of the Courts below and urges that they were wrong in holding that the Plaintiff had proved that he was dispossessed within 12 years of the date of the suit. Would the revision petition be competent and would the High Court set aside the finding of the Courts below on the questions of fact, because it affects the question of limitation? In my opinion the answer to that question must be in the negative for the simple reason that the Courts had jurisdiction to decide the question of fact raised before them and even if it be assumed that they decided it wrongly it cannot be said that they were guilty of illegal assumption of jurisdiction. The principle that when a Court has jurisdiction to decide a matter it has a jurisdiction to decide it wrongly as well as rightly was also affirmed in - ''Joy Chand Lal Babu''s case'' (J), and as will be seen from the quotation of the judgment of Sir John Beaumont that I have given above, he clearly laid down as firmly established that "a subordinate Court does not act illegally or with material irregularity because it decides wrongly a matter within its competence."

6. I now turn to the facts of the present case. The suit was for possession on the ground that the appointment of Bakhshish Singh as heir by Kehra never took place or it was invalid and it came within the purview of Article 4 of the Schedule of Patiala Limitation (Custom) Act of 2000. The Article reads as under:

A suit for possession of ancestral immovable property on the ground that an appointment of an heir is invalid or never in fact took place:

(a) if no declaratory decree of the nature referred to in Article 3 is obtained, 6 years, from the date on which the alleged appointment of an heir becomes known to the Plaintiff,

(b) if such declaratory decree is obtained, 6 years, from the date on which the right to sue accrues, or the date on which the declaratory decree is obtained, whichever is later.

It is admitted that no declaratory decree was obtained. Accordingly the period of limitation was six years from the date on which the appointment of Bakhshish became known to the Plaintiffs. The position taken up by the Plaintiffs in para. 5 of the plaint was that cause of action for possession of the property left by Kehra accrued to them on Kehra''s death which took place a month ago. In para. 6 it was stated that the Defendant did not admit the Plaintiffs'' right to take possession of the property left by Kehra and the suit was within time because of the Notification published in the gazette of 21st Phagan 2002. Evidently the Plaintiffs referred to the amendment of the above Act which took place in Sammaf 2002 by means of Custom Amendment Act 11 of 2002 and by which the following sub-section was added to Section 5 of the original Act:

(2) Notwithstanding anything contained in Sub-section (1) of the Patiala Limitation Act, 1969, a suit for declaration that the alienation or appointment of an heir is not binding on the Plaintiff according to custom shall be competent, if instituted at any time within the period of 3 years next after the commencement of this Act provided the right of the Plaintiff to bring a possessory suit in respect of such alienation or appointment survived, if this Act had not come into force.

The Defendant in his written statement admitted para. 5 of the plaint. Paragraph 6 of the plaint was denied and it was pleaded that the suit was barred by time, but the Plaintiffs'' contention'' that the case was governed by Clause (2) of Section 5 which was inserted by the amended Act 11 of 2002, was not denied in so many words. On the other hand the fact that the Defendant did not claim a specific issue on the question of limitation shows that the Plaintiffs and the Defendant were both agreed that the case was within limitation because of the amendment of the Act. The order of the trial Sub-Judge who decided the case first also strengthens this conclusion. It appears that when the matter went in appeal to the District Judge the counsel who appeared for the respondent again raised the question of limitation and for this reason the learned District Judge while remanding the case directed the trial Court to frame an issue on the point and this was done. The issue placed the burden upon the Defendant to prove that the suit was beyond time. It is urged by the Petitioner''s counsel that the onus was wrongly placed upon his client. His argument is that terminus quo in cases of this kind is the date when the adoption becomes known to the Plaintiff and since that date can only be within the knowledge of the Plaintiffs it was for them to prove this fact and to establish that the suit was within time. Learned Counsel for the respondents has cited a couple of authorities in support of his contention that the onus was rightly placed upon the defendant. In - ''Ghulam.

Muhammad v. Mt. Mirza'' AIR 1925 Lah 25 , K executed a registered deed appointing M as his heir on 2-12-1914. K died on 6-1-1922. On 28-0-1922 his widow got the mutation of his land effected in favour of M. The Plaintiffs who were nephews of K brought a suit for declaration that mutation should not affect their reversionary rights. The Sub-Judge dismissed the suit as barred by time and held that the Plaintiffs must have had knowledge of the adoption as it was by a registered deed and since more than six years had expired after the date of registration the suit was time barred under Article 3 of Schedule attached to Punjab Act 1 of 1920. The learned Judges of the High Court relying upon - ''Tilakdhari Lal v. Kheden Lal'' AIR 1921 PC 112 held that mere registration of a document is not per se constructive notice of the transaction to which it relates. As regards the knowledge this is what they observed:

It cannot be said that the suit is ''prima facie'' barred by time and in our opinion, therefore, the defendants should have$ proved clearly that the suit was barred by time by reason of the Plaintiffs having knowledge of the adoption more than six years before the date of institution.

No case law was discussed and no reasons were given why it was for the Defendant to prove that the Plaintiffs had the knowledge of adoption more than six years before the suit. Ordinarily it is for the Plaintiff to prove that his suit is within time. This is more so in a case like the present when time begins to run from the date of the Plaintiff''s knowledge of a particular event and since the knowledge of that event can only be within the knowledge of the Plaintiff and no one else, Section 106, Evidence Act applies and the onus should be upon him. The other case cited by the counsel, - ''Harn''am Singh v. Dharam Singh'' AIR 1949 EP 156 (P) is a single Bench decision. In that case the learned Judge merely cited the above-mentioned ruling and held that where the suit challenging the adoption is not ''prima facie'' barred by time it is for the Defendant to prove that the Plaintiff had knowledge of the adoption more than six years before the suit. For the reasons mentioned above I respectfully dissent from this view and my opinion is that the onus in this case was wrongly placed upon the defendant-Petitioner. This, however, cannot help him, because the question of knowledge was a question of fact and since the Defendant did not produce any evidence whatsoever, he is not entitled to have the unanimous decisions of the lower Courts set aside merely on the ground that the onus of the issue was wrongly placed upon him. It may be pointed out in the connection that according to the judgment of the trial Court the Petitioner''s counsel conceded that the suit was within time i.e. it was admitted by him that the Plaintiffs had knowledge of the adoption within six years of the date of the suit. It was urged on behalf of the Petitioner that most probably the counsel who appeared for him in the trial Court believed that the suit was governed by Section 5 of the Act of 2000 as amended by Act of 2002. There is no material on the record from which it can be decided that this contention is well founded, but even if it was since, the amendment of Section 5 made a provision only for suits for declaration and this was a suit for possession the Petitioner''s counsel made a grievous mistake 4 and the Petitioner must suffer for it. In any lease when the Petitioner''s appeal from the judgment and decree of the trial Court was heard by the District Judge there was absolutely no scope for any mistake because by that time a Full Bench of this Court had held in - Sahib Ditta v. Mangal Singh AIR 1951 Pepsu 41 that Section 5 of Act 10 of 2000 as amended by Act 11 of 2002 applied only to a suit for declaration and it did not extend time for a suit for possession, brought on the ground that an alleged adoption is invalid etc. This case was decided on 29-3-1949 while the ?appeal was decided by the District Judge on 128-4-1950. The part of the District Judge''s Judgment which deals with the question of limitation reads as follows:

Before the lower Court the issue regarding limitation was not contested. Rather it appears from the judgment that the counsel for the defendants had conceded that the suit was within limitation, moreover according to the Patiala Custom (Power to Contest) Act, 2000, the limitation for a suit for possession of ancestral immovable property on the ground that an appointment of heir is invalid or never took place is six years from the date on which the alleged appointment of an heir becomes known to the Plaintiffs. The burden of the issue being on the defendants it was for them to show that the Plaintiffs had knowledge of the appointment of the heir more than six years prior to the institution of the suit. Mere registration of the adoption deed cannot be presumed to have given intimation to the Plaintiffs that an appointment of an heir had taken place.

There is not a word in the District Judge''s judgment showing that it was urged before him that the Petitioner or his counsel had been misled either by the wrong law quoted in the plaint or by the fact that the onus of the issue was wrongly placed upon him. For this reason I am not prepared to say that the Courts below were wrong in holding that the suit was within time but even if I hold to the contrary, my view is that the question of limitation in this case being a mixed question of law and fact, it cannot be said that the Courts below by erroneously holding the suit to be within time exercised jurisdiction not vested in them by law or they acted in the exercise of: that jurisdiction illegally or with material; irregularity and consequently the High Court has the power to set aside these decisions u/s 115, Civil P.C.

7. The result in my opinion is that the revision petition fails and is dismissed. In the peculiar circumstances of the case the parties shall bear their own costs throughout.

Gurnam Singh, J.

8. I agree.

