

(1969) 02 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 95 of 1964

Bans Bahore and Others

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 19-02-1969

Acts Referred:

Limitation Act, 1908 — Section 10, 11, 12, 13, 14

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 341

Citation : AIR 1970 All 353 : (1969) 39 AWR 219 : (1969) RD 239

Hon'ble Judges : K.N. Srivastava, J

Bench : Single Bench

Advocate : Rajendra Sahai Verma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K.N. Srivastava, J.—The facts giving rise to this writ petition are as follows:--

2. Chhedi, the father of Bans Bahore and Ram Bahore petitioners and their uncle Chunna were Zamindars in village Barkuiyan, Tappa Kandar, district Basti. They mortgaged their entire Zamindari property situated in the aforesaid village to Mahadeo Ram and his brothers. The disputed land was sir and khudkasht of the petitioners. The mortgagees transferred their mortgagee rights to certain persons. Shitla Prasad, Ram Prasad and Oudh Prasad, opposite parties Nos. 6 to 8 are the representatives in interest of the purchasers of part of the mortgagee rights. The contesting opposite parties are sons of Ganesh and Ram Lochan, who were also the purchasers of the mortgagee rights. The mortgage was executed in 1926. The sale of the mortgagee rights took place in 1938.

3. After enforcement of the U. P. Zamindari Abolition & Land Reforms Act, the purchasers of the mortgagee-rights partitioned the mortgagee rights amongst themselves. Opposite parties Nos. 6 to 8 who are representatives of the other part of the mortgagee rights, deposited five times of the rent of their share of the disputed land and became sirdars of the same. The other transferees of the

mortgagee rights acquired bhumidhari rights in their share of the disputed land. In 1942, the mother of the petitioners filed a suit as their guardian for redemption of the mortgage. This suit was filed u/s 12 of the U.P. Agriculturists Relief Act. The suit was decreed on payment of certain amount. The amount was not deposited and, therefore, the mortgage could not be redeemed. In 1914, another suit was filed for redemption. This suit was filed on behalf of the minors by a person, who alleged himself to be their next friend. The suit was dismissed in default. According to the petitioners, that person who filed the second suit was not their next friend and he had no right to file the suit. The petitioners then filed another suit for redemption on 23rd April 1959.

Meanwhile, the aforesaid village was placed under consolidation operation and the suit was staved. Objection was filed by the petitioners before the Assistant Consolidation Officer. The Assistant Consolidation Officer allowed their objections. The opposite parties then filed six appeals before the Assistant Settlement Officer (Consolidation) Basti. The Assistant Settlement Officer (Consolidation) held that the petitioners were not entitled to the benefit of Section 6 of the Limitation Act and allowed the appeals. The order passed by the Consolidation Officer was set aside. The petitioners then filed seven appeals before the Deputy Director of Consolidation. The Deputy Director of Consolidation also held that the petitioners were not entitled to the benefit of Section 6 of the Limitation Act and, consequently, dismissed the appeal. The petitioners then filed revisions and the revisions were also dismissed. Being dissatisfied, the petitioners have filed this writ petition.

4. The learned counsel for the petitioners contended that the Assistant Settlement Officer (Consolidation), the Deputy Director of Consolidation who decreed the second appeal and the Deputy Director of Consolidation who decreed the revision were wrong in holding that Section 6 of the Limitation Act did not apply to cases under the U.P. Zamindari Abolition & Land Reforms Act, and therefore, their judgments were illegal and manifestly wrong.

5. The aforesaid consolidation authorities held that as provided u/s 29 of the Limitation Act, the provisions of Section 6 of the Indian Limitation Act were not applicable to local Acts and as the U.P. Zamindari Abolition & Land Reforms Act was a local Act, therefore, the aforesaid provision did not apply to the facts of the present case. In support of his contention, the learned counsel for the opposite parties relied on a Single Judge decision of this Court in Raghbir Singh v. Board of Revenue, Allahabad 1906 RD 323 . In this case, it was held that the provisions of Section 6 of the Limitation Act did not apply to the U. P. Zamindari Abolition and Land Reforms Act. As against this, the learned counsel for the petitioners contended that by virtue of Section 341 of the U. P. Zamindari Abolition and Land Reforms Act, the entire Limitation Act was made applicable to the U. P. Zamindari Abolition and Land Reforms Act, and, therefore, the view taken in Raghbur Singh's case 1966 RD 323 was not correct. Before deciding this contention of the learned counsel for the parties, a reference has to be made

to Section 29 of the Limitation Act, 1908, because the suit was started when the aforesaid Limitation Act was in force. Section 29 of the Limitation Act 1908 reads as follows:--

"29. Savings.

(1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872.

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the first schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefore in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law-

(a) the provisions contained in Section 4, Sections 9 to 18, and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply.

(3) Nothing in this Act shall apply to suits under the Indian Divorce Act.

(4) Sections 26 and 27 and the definition of "easement" in Section 2 shall not apply to cases arising in territories to which the Indian Easements Act, 1882, may for the time being extend."

6. As provided under the aforesaid section, only Sections 4, 9 to 18 and 22 shall apply to local or special Acts provided they are not expressly excluded by such special or local law. The remaining sections of the Limitation Act shall not, therefore, apply to the aforesaid special or local Act. It cannot be denied that U. P. Zamindari Abolition and Land Reforms Act is a local Act. This High Court has held in a number of cases that the U. P. Zamindari Abolition and Land Reforms Act is a local Act. It has, therefore, to be seen as to whether by the application of Section 341 of the U. P. Zamindari Abolition and Land Reforms Act, Section 6 of the Limitation Act can be made applicable to the U. P. Zamindari Abolition and Land Reforms Act. Section 341 of the U. P. Zamindari Abolition and Land Reforms Act reads as follows:--

"Unless otherwise expressly provided by or under this Act, the provisions of the Indian Court-fees Act 1870, the CPC 1908 and the Indian Limitation Act, 1908 including Section 5 thereof shall apply in the proceedings under this Act."

7. A plain reading of Section 341 of the U. P. Zamindari Abolition and Land Reforms Act clearly goes to show that the entire Limitation Act was made applicable to the aforesaid Act. It is also not denied that the U. P. Zamindari Abolition and Land Reforms Act lays down different periods of limitation for suits and proceedings other than those mentioned in the schedule of the Limitation Act, 1908. u/s 253 of the U. P. Tenancy Act, 1939, only the provisions of Section 5 of the Limitation Act, 1908 were made applicable to the U. P. Tenancy Act. u/s

29 of the Limitation Act, Sections 4, 9 to 18 and 22 of the Limitation Act will be applicable to local Acts, if they are not so excluded by the local Act. Although u/s 29(2) (b) of the Limitation Act, 1908, the remaining provisions of the Limitation Act, 1908, were not made applicable to the local Act, yet by virtue of the provisions of Section 253 of the U. P. Tenancy Act, 1939, Section 5 of the Limitation Act was made applicable to the U. P. Tenancy Act. 1939 as well. The U. P. Zamindari Abolition and Land Reforms Act as shown above made the entire Limitation Act including Section 5 applicable to the aforesaid Act.

The words "including Section 5 thereof" were not there in Section 341 of the U. P. Zamindari Abolition and Land Reforms Act as it stood in 1952. By a subsequent amendment, it was added to Section 341 of the aforesaid Act. It was argued that if the entire Limitation Act was made applicable originally, then there was no need for making a specific amendment that that section was applicable to the U. P. Zamindari Abolition and Land Reforms Act. The word "including" is a clear reply to this argument. The use of the word "including" in Section 341 of the U. P. Zamindari Abolition and Land Reforms Act clearly goes to show that only emphasis was laid to the application of Section 5 of the Limitation Act, 1908, but the entire Limitation Act was made applicable u/s 341.

8. Under Sections 184 and 185 of the Bihar Tenancy Act, 1934, the Limitation Act of 1908 except Sections 7, 8 and 9 were made applicable to the aforesaid Act. In *Jagdeo Singh v. Babu Lal Sah*, AIR 1941 Pat 499, it was held that irrespective of the provisions of Section 29(2) of the Limitation Act, 1908, the provisions of all the sections of Limitation Act except Sections 7, 8 and 9 of the same would apply to the Bihar Tenancy Act.

9. u/s 160 (3) of the C. P. Land Revenue Act, the provisions of Limitation Act were applied to the C. P. Land Revenue Act. In *Mishrilal Oswal v. Ratanlal Maheshri* 163 Ind.Cas 623 the provisions of Section 6 were applied to the C. P. Land Revenue Act. While dealing with this case, it was observed as below:--

"The amended section applies to the local law certain specified sections, namely Section 4 and Sections 9 to 18 and Section 22 unless they are expressly excluded by the local law, and further says that the rest of the provisions of the Limitation Act, in which Section 6 is included, shall not apply. Since here again Section 29 refers back to the provisions of the local law, one must, while interpreting Clauses (a) and

(b) of Sub-section (2) of the Section 29, look to the provisions of the local law to see how far it excludes the operation of the Indian Limitation Act. Now turning to Section 160, Sub-section (3) of the C. P. Land Revenue Act, one finds that it applies all the provisions of the Indian Limitation Act and does not exclude any. Here is a clear conflict between Section 29 (2) (b) which says that the remaining provisions which includes Section 6 of the Limitation Act shall not apply and Section 160 (3), C. P. Land Revenue Act which says that the provisions of the Indian Limitation Act shall apply. Now it is a well recognised principle of

interpretation of statutes that the general law does not affect the particular law. The rule is that the general provisions such as those contained in the Limitation Act do not derogate from special provisions, but that the latter do derogate from the former:"

10. Section 341 of the U. P. Zamindari Abolition and Land Reforms Act applies all the provisions of the Limitation Act, 1908 to the U. P. Zamindari Abolition and Land Reforms Act without any reservation. It will mean that all the sections of the Limitation Act would apply to the U. P. Zamindari Abolition and Land Reforms Act irrespective of the fact that applications of the other sections of the Limitation Act, other than Sections 4, 9 to 18 and Section 22 were made inapplicable by virtue of Section 29 (2) (b) of the Limitation Act, 1908. In the earlier tenancy law, the Limitation Act was not applied to it, except so far as mentioned by it. In the U. P. Tenancy Act, 1939, as shown above, only Section 5 of the Limitation Act was made applicable to the aforesaid Act. The legislature, therefore, in the U. P. Tenancy Act did not intend to apply the other provisions of the Limitation Act except Section 5. In the U. P. Zamindari Abolition and Land Reforms Act, the legislature in its wisdom had thought it proper to make the entire Limitation Act applicable to the aforesaid Act. No doubt, there is a prohibition in the Limitation Act, 1908, of application of all the sections of Limitation Act, 1908, except Sections 4, 9 to 18 and 22, but the Indian Limitation Act would be deemed not to derogate from the provisions made in the local Act to the contrary. It is a general principle of law that where there is inconsistency in the general law and the local law, the local law shall prevail. In this view of the matter also, the entire Limitation Act, 1908 would apply to the U. P. Zamindari Abolition and Land Reforms Act, as provided u/s 341 of the Act.

11. The Assistant Settlement Officer (Consolidation) and the Deputy Director of Consolidation relied on certain, cases decided by the Board of Revenue and held that Section 6 of the Limitation Act did not apply to the U. P. Zamindari Abolition and Land Reforms Act. In *Mewa Ram v. Khushi Ram etc.*, 1961 RD 153, the Board of Revenue held that Section 6 of the Indian Limitation Act, 1908 was applicable to the U. P. Zamindari Abolition and Land Reforms Act. The cases referred to by the consolidation authorities in their judgments are of earlier date than *Mewa Ram*'s case 1961 RD 153.

12. Relying on *Raghubir*'s case 1966 RD 323 (Supra), the learned counsel for the respondents contended that Section 6, Indian Limitation Act, 1908 was not applicable to U. P. Zamindari Abolition and Land Reforms Act. In the case of *Raghubir* 1966 RD 323 (Supra) it was observed as below :--

"The only point raised in this petition by the learned counsel for the petitioner is that Section 6 of the Indian Limitation Act should have been applied in the circumstances of this case. Learned counsel has submitted that by virtue of Section 341 of the U. P. Zamindari Abolition and Land Reforms Act the whole of the Limitation Act has been made applicable to proceedings under the U. P. Zamindari Abolition and Land Reforms Act; consequently he submits that the

benefit of Section 6 of the Indian Limitation Act should have been given to the petitioner. The Board while repelling this submission of the petitioner very rightly observed that by virtue of Section 341 of the U. P. Zamindari Abolition and Land Reforms Act if the entire Limitation Act has been made applicable, Section 6 as well as Section 29 of the Limitation Act must be read together....."

Further on, the learned Judge observed as under:--

"Section 29 (2) (b) clearly says that the provisions contained in Section 4, Sections 9 to 18 and Section 22 of the Limitation Act would apply to Special and Local Laws unless they are expressly excluded but the remaining provisions of this Act would not apply. This would show that Section 6 of the Indian Limitation Act would be covered by Section 29 (2) (b) of the Indian Limitation Act. Even apart from this, language of Section 6 of the Act itself makes it amply clear that it cannot be held to be applicable to limitation prescribed by the U. P. Zamindari Abolition and Land Reforms Act."

Section 6, Limitation Act, reads as below:

"6. (1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefore in the third column of the first Schedule.

(2) Where such person is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

(3) Where the disability continues up to the death of such person, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

(4) Where such representative is at the date of the death affected by any such disability, the rules contained in Sub-sections (1) and (2) shall apply.

13. With profound respect, I beg to differ and say that the language of Section 6 does not in any way indicate even the implication that Section 6 would not apply to the U. P. Zamindari Abolition and Land Reforms Act. It appears that in Raghubir's case, 1966 RD 323 no argument was advanced at the bar that the provisions of the Limitation Act, 1908 did not derogate from the special provision, but on the other hand the provisions of the Special Act do derogate from the former. In other words, the general statute does not affect the special provisions of the Special Act. Had this aspect been brought to the notice of my learned brother, the result certainly would have been otherwise.

14. It was next contended that sitting singly, I should respect the view taken in Raghubir Singh's case 1966 RD 323. There is unreported Division Bench decision of this Court in Civil Misc. Writ No. 768 of 1961, D/- 28-8-1961 (All), Chhote v. Board of Revenue U.P. Allahabad. In this case the question arose about the application of Section 6 of the Limitation Act to cases under the U. P. Zamindari Abolition and Land Reforms Act. It was observed by the Bench as below:--

"We have heard learned counsel for the petitioners who has urged that two points arise in this petition. One point according to him is that Section 6 of the Limitation Act has been wrongly applied by the Board of Revenue to the suit of which the proceedings went up before the Board. Section 341 of the U. P. Zamindari Abolition and Land Reforms Act clearly applies all the provisions of the Limitation Act to proceedings under that Act. From the circumstance that under the Rules framed under the U. P. Zamindari Abolition and Land Reforms Act the period of limitation for various kinds of suits and the time from which period of limitation starts running are prescribed no inference follows that the provisions of exceptional nature contained in Section 6 of the Limitation Act have become inapplicable. Since Section 341 of the U. P. Zamindari Abolition and Land Reforms Act in clear terms applied the whole of the Limitation Act to proceedings under the former Act, the decision of the Board of Revenue that Section 6 of the Limitation Act was applicable is perfectly correct."

15. This earlier Division Bench also supports the view which I have taken. It appears that this decision was also not brought to the notice of my learned brother in Raghubir Singh's case 1966 RD 323 (Supra). As my view is being supported by the aforesaid unreported Division Bench case, therefore, the above argument too has no force in it.

16. In Vidyacharan Shukla Vs. Khubchand Baghel and Others, , it was held that Section 29 (2) should be read as a whole and not in two parts. Reading the entire Section 29, Limitation Act the words "they are not expressly excluded" in Section 29 (2) (a) only go to show that the sections mentioned in Section 29 (2) (a) of the Limitation Act would apply if not expressly excluded by the local Act. The use of the words "shall not apply" in Section 29 (2) (b) of the Limitation Act would only mean that the other provisions of the Limitation Act except Section 4, Sections 9 to 18 and Section 22 would not apply to the local Acts if they are not applied to the local Act by express provision in the local Act.

Section 29 (2) (b) does not prohibit from making a provision in the local Act for the applicability of the entire Limitation Act. If such a provision is made in the local Act, Section 29 (2) (b) does not take away the power of the legislature legislating the local Act from making a provision in the local Act to the contrary. In spite of Section 29 (2) (b) the provisions of Section 341, U. P. Zamindari Abolition and Land Reforms Act would apply and the provision of Section 341, U. P. Zamindari Abolition and Land Reforms Act would prevail. Section 29 (2) (b) cannot override Section 341 of the U. P. Zamindari Abolition and Land Reforms Act.

It is for this reason that in the Limitation Act 1963, Section 29(2) has been amended and Sections 4 to 24 (inclusive) of the Limitation Act have been applied uniformly to all local Acts unless excluded by them. I am, therefore, of the opinion that Section 6 of the Limitation Act applies to the U. P. Zamindari Abolition and Land Reforms Act and the Assistant Settlement Officer (Consolidation) and the Deputy Director of Consolidation acted illegally in holding otherwise. In the result, the writ petition succeeds.

17. The writ petition is allowed with costs. The judgment passed by the Assistant Settlement Officer (Consolidation) dated 10-9-1962, the judgment passed by the Deputy Director of Consolidation, U. P. Lucknow in second appeal dated 31-1-1963 and the judgment passed by the Deputy Director of Consolidation Basti in revision dated 16-9-1963 are quashed.