
(1959) 10 MAD CK 0010
In the Madras High Court

B.V. Nanja Raja and Another

APPELLANT

Vs

Lalitha Ammal and Another

RESPONDENT

Date of Decision : 01-10-1959

Acts Referred:

Limitation Act, 1963 — Section 25, 4

Citation : (1960) ILR (Mad) 397 : (1960) 73 LW 97 : (1960) 1 MLJ 415

Judgement

1. This is a petition for review of the judgment we rendered in S.T.A. No. 137 of 1954. In view of the points urged in this application for review, it

is necessary briefly to set out the point which arose for decision in S.T.A. No. 137 of 1954 and the details of our judgment in that appeal.

2. Berikai was an impartible estate which was notified and taken over by Government under the Madras Estates Abolition Act (Act XXVI of

1948). The present petitioners are the legal representatives of one Veerabadra Rao, who obtained a decree for arrears of maintenance against the

then Berikai Zamindar. The decree was passed in O.S. No. 59 of 1945 on the file of the Sub-Court, Salem, on 18th September, 1945, and

thereafter the judgment-debtor died. He was succeeded in the estate by his son who also died before these proceedings began, leaving a minor

son, Basava Raja. After the Berikai Zamin was notified and taken over, the Government deposited interim compensation, and the present

petitioners, who were the legal representatives of the decree-holder in O.S. No. 59 of 1945 who also died meanwhile, filed a petition u/s 42 of the

Abolition Act for the payment to them of the amount payable under the decree. This was O.P. No. 512 on the file of the Estates Abolition

Tribunal, Chittoor and was filed on 7th November, 1951. As respondents to this application, however, the petitioners impleaded only Lalitha

Ammani, the widow of the previous proprietor, who had only a maintenance claim against the Estate. When notice went to her, she raised an

objection that her minor son was the proprietor, and that the claim if at all had to be made against him. Thereafter, the petitioners filed I.A. No. 84

of 1954 before the Abolition Tribunal, Vellore, to which these proceedings were transferred from the Abolition Tribunal, Chittoor, and on being

impleaded, the minor second respondent raised an objection, that the claim as against him and as made in the application was barred by limitation.

The Tribunal, on the pleadings before it, raised an issue in relation to the plea of limitation and this was issue No. 4. The Tribunal held that the

application was within time as against the minor second respondent thereto and directed payment to the present petitioners as creditors. It was the

correctness of this decision of the Tribunal that was challenged before us in S.T.A. No. 137 of 1954.

3. The Tribunal had themselves held that on the decisions of this Court, to which it is unnecessary to refer at this stage, Article 120 of the Limitation

Act was applicable to the case, and that the application had to be made within six years from the date of the cause of action for the institution of a

suit. The Tribunal further held that the cause of action for the suit for a declaration would have arisen on 30th June, 1946, when the previous

judgment-debtor died and that therefore the petitioners could file such a suit for a declaration on or before 30th June, 1952. They treated the O.P.

No. 512 of 1952 filed on 7th November, 1951, was within time, notwithstanding the fact that the real legal representative, the second respondent

in the application, had not been made a party to that petition and he was impleaded only after the order in I.A. No. 84 of 1954.

4. The point urged before us by the learned Counsel for appellant was, whether the Tribunal having held (1) that the Indian Limitation Act, 1908,

applied to a petition filed u/s 42; (2) that the relevant Article under the Limitation Act, governing the present claim, was Article 120; (3) and the

starting point of time for the purpose of that Article would be 30th June, 1946, was right in holding that the petition before it should be deemed to

have been filed on 7th November, 1951, when the original O.P. was filed, or whether it should have held that the application should be deemed to

have been filed only on February, 1954, when as a result of the order in I.A. No. 84 of 1954 the amendment of the original petition was allowed,

and the minor 2nd respondent was added.

5. In our decision we pointed out that the point urged before us in that precise form was not found in the order of the Tribunal, and we therefore examined the original records to satisfy ourselves as to the true state of affairs. After analysing the facts we pointed out.

There could be no doubt that if the petition were judged with reference to Article 22 of the Limitation Act it was out of time so far as the second appellant was concerned.

6. This would necessarily have led to the allowance of the appeal. Learned Counsel for the respondent, however, urged then before us two

contentions : The first was that the error in embodying the name of the minor respondent in O.P. No. 512 of 1952 was a mere clerical error. We

rejected this contention on an examination of the record. It was the second contention that was urged then that figured, largely during the hearing of

the review petition, and it is therefore necessary to refer to it a little more fully. We then stated:

The second ground urged by the learned Counsel for the respondents was that u/s 42 of the Estates Abolition Act claims of creditors could be

preferred to the Tribunals without reference to the question whether they were barred by limitation or not. In other words the argument ran thus :

The Indian Limitation Act did not in terms apply to claims preferred to an Abolition Tribunal in that the Abolition Act provided that if a claim to a

debt were made within six months of the deposit of the compensation amount as required u/s 42 of the Abolition Act the Tribunal was entitled and

indeed bound to recognise such a claim and make payment towards it. In this connection learned Counsel relied upon Section 29(2) of the

Limitation Act"" - (which we set out) - ""and urged¹ that the period of six months referred to in Section 42 of the Abolition Act was a ""period of

limitation"" prescribed by a "special or local law" different from "the period prescribed therefore by the first schedule" within the meaning of Section

29(2) of the Limitation Act.

7. We expressed ourselves wholly unable to accept that argument. In our judgment we observed:

The only reasonable construction which we can adopt of the provisions of Sections 42 to 46 is to hold that if a claim were enforceable under the

ordinary law on the date of the petition u/s 42, it could be entertained by the Tribunal. Section 42, however, prescribes a further condition, for the

admissibility of these claims and that is, that the claim has to be made within six months of the date of the deposit.

8. We further held that as the claim against the minor second respondent was made-after the period of limitation as prescribed by the Indian

Limitation Act, the same was out of time and was therefore barred.

9. It is the correctness of this decision that is challenged in this petition for review. Our decision was rendered on 3rd May, 1957, and the

application for review (S.T.P. No. 62 of 1958) was filed on 28th September, 1957. In S.T.P. No. 62 of 1958, as originally filed, the ground for

review was that the present petitioners had filed a petition (S.T.P. No. 17 of 1957) for excusing u/s 5 of the Indian Limitation Act, the delay in

filing O.P. No. 49 of 1953 before the Tribunal, and that by oversight we dismissed S.T.P. No. 17 of 1957 stating that no orders were necessary,

while delivering Judgment in S.T.A. No. 137 of 1954. The petitioner submitted in paragraph 14 of the petition for review that ""the said S.T.P. No.

17 of 1957 was. thus disposed of by mistake or error apparent on the face of the record."" The proceeding, of which review was sought, was

therefore, really not so much S.T.A. No. 137 of 1954 but rather the order dismissing S.T.P. No. 17 of 1957, which had been filed in this Court to

excuse the delay in filing O.P. No. 512 of 1952(later numbered as O.P. No. 49 of 1953 after the proceedings were transferred to the Estates

Abolition Tribunal, Vellore). Notice was issued to the respondent on this petition, but at the stage of the hearing, the contention of the learned

Counsel for the petitioner related not to the supposed error in the order dismissing S.T.P. No. 17 of 1957, but rather to the correctness of our

decision in S.T.A. No. 137 of 1954. In view of this, we directed the petitioner to file a formal application to raise additional grounds in the petition

for review, S.T.P. No. 62 of 1958, and in compliance with our direction, S.T.P. No. 74 of 1959 was filed. The point raised in this petition for

leave to raise additional grounds was that Section 22 of the Indian Limitation Act did not apply to proceedings under Madras Act XXVI of 1948,

for the reason that Section 22 on its language applied only to suits and not to applications and was besides not one of the sections made applicable

to proceedings under the Abolition Act by Rules made u/s 67(2)(e) of the Act. As indicated earlier, at the hearing of the review petition, the only

points argued by the learned Counsel for the petitioner were those set out in S.T.P. No. 74 of 1959.

10. Before, however, dealing with the merits of this contention, it is necessary to refer to a preliminary objection raised by the learned Counsel for

the respondent, that no review lay against an order passed by the Court hearing an appeal u/s 51 of the Abolition Act. From the orders of the

Abolition Tribunals, determining inter alia claims of creditors such as the petitioner in this review petition, an appeal is provided to ""a Special

Tribunal"" to be constituted by two Judges of the High Court nominated from time to time by the Chief Justice in this behalf. The Special Tribunal

thus constituted by the Judges nominated by the Chief Justice was vested with jurisdiction as *personae designatae* under the terms of Section 51. It

is therefore necessary to set out the relevant portion of Section 51 to appreciate this contention. Section 51 ran, to quote only the relevant words:

51. (1) Any person deeming himself aggrieved by any decision of the Tribunal u/s 43 to 50 may, within three months from the date of such decision

or such further time as a Judge of the High Court nominated for the purpose by the Chief Justice may in his discretion allow, appeal to a Special

Tribunal consisting of two Judges of the High Court nominated from time to time by the Chief Justice in that behalf.

* * *

(2) The members of the Special Tribunal shall hear the case as *personae designatae*, and on all points, whether of law or of fact, on which they are

agreed in their opinion, their decision shall be final. Where on any such point or points, the members are divided in their opinion, they shall state the

point or points on which they are so divided, and such point or points, together with their opinions thereon, shall then be laid before one or more

Judges nominated for the purpose by the Chief Justice, and such Judge or Judges shall hear the case as *persona designata* or as a persons

designate in so far as it relates to such point or points, and on each such point, the decision of the majority of the Judges who have heard the case,

including those who first heard it shall be final.

11. Section 67 of the Act enables the State Government to make Rules providing

inter alia for-

(b) the procedure to be followed by the Tribunals, Special Tribunal, authorities and officers appointed, or having jurisdiction, under this Act; and

(e) the application of the provisions of the Code of Civil Procedure, 1908, to applications, appeals and proceedings under this Act.

12. In exercise of the rule making powers thus conferred by the State Government, the following rules had been passed on 17th January, 1950,

which were in force on the date relevant to this petition:

1. Every Tribunal, constituted u/s 8(1) and every Special Tribunal constituted u/s 51(1) of the Act shall have all the powers exercisable by a Civil

Court in the trial of suits and in appeals.

2. The proceedings of a Tribunal shall be summary and shall be governed as far as practicable by the provisions of the Code of Civil Procedure,

1908, particularly in regard to-

(a) the issue and service of summons;

(b) the examination of parties and witnesses;

(c) the production of documents;

the payment of compensation or any other money to one person on behalf of another under disability and in particular to a guardian on behalf of a

minor; and

(d) the passing of orders.

13. Based on these the argument of the learned Counsel for the respondent was that we were constituted a Special Tribunal u/s 51(1) by reason of

our having been nominated by the Chief Justice, and were acting not as Judges of the High Court, to whom the provisions of Order 47 of the CPC

apply, but were functioning as *personae designatae* and that our powers and jurisdiction were restricted to those expressly conferred upon us by

the Act read with the Rules.

14. There is no doubt that the power to review, just like a right of appeal, is wholly statutory, and unless there was a specific statutory provision

conferring on us the Jurisdiction to review, we would have no power to interfere with the judgments rendered by us in S.T.A. No. 137 to 1954 to

which was imparted a finality by reason of the express statutory provision contained in the concluding portion of Section 51(2). Learned Counsel

urged that the Rules which conferred on the Special Tribunal the powers of a Civil Court enabled as to exercise the powers conferred on Courts

under Order 41 of the Code but not a power of review which is a separate and independent head of power and jurisdiction. There are weighty

arguments and we must say that they have not been met by the learned Counsel for the petitioner. In view, however, of the conclusion that we have

reached on the merits of the petition, we did not desire to rest our decision adverse to the petitioner on this preliminary objection to our

jurisdiction.

15. We shall now proceed to consider the additional grounds raised in S.T.P. No. 62 of 1958. Mr. Gopalaswami Iyengar who appeared for the

review petitioner rested his submission on a very narrow ground. We have already adverted to the terms of Section 67(2) of the Act, under

which the State Government is vested with power to make Rules providing for the application of the provisions of the CPC and the Limitation Act

to applications, appeals and proceedings under the Act. In exercise of this rule making power, the following rule had been made and published in

the Fort St. George, Gazette dated 17th October, 1950:

The provisions of Sections 4, 5, 12(1) and (2), 17(1)(2) and 18 of the Indian Limitation Act, 1908 (Central Act IX of 1908), shall apply to all

proceedings under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Madras Act XXVI of 1948), or under the Rules

thereunder, before the Tribunals, Special Tribunals, authorities and officers having jurisdiction under the latter Act:

Provided that Section 5 of the Indian Limitation Act, 1908 (Central Act IX of 1908), shall not apply to the proceedings under Sections 10(3) and

51(1) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Madras Act XXVI of 1948).

16. The contention of Mr. Gopalaswami Iyengar was that Section 22 of the Indian Limitation Act was not one of the Sections enumerated in this

rule, and that therefore, our judgment in S.T.A. No. 137 of 1954, based on the applicability of Section 22 to determine the period of limitation

within which the claim of the petitioner could have been filed, was erroneous. We find ourselves wholly unable to accept this argument which

proceeds upon a misapprehension of the scope of this rule. Mr. Gopalaswami

Iyengar did not challenge the correctness of the basis of our judgment, that Article 120 of the Limitation Act applied to determine the period of limitation within which the petitioner's claim could be made. If

Article 120 of the First Schedule of the Limitation Act applied, it is clear that Sections 3 to 25 of the Limitation Act automatically applied. In this connection, the relevant provision of the Limitation Act that has to be considered is Section 29, which enacts:

29. (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 in 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.

17. It is only where a special or local law enacts a period of limitation, which varies from or is in substitution of any period prescribed by Schedule

I of the Limitation Act, that the question of the applicability of Sections 4 to 25 dealing with the computation of limitation and the extension of

limitation in particular cases owing to disability, etc., could arise. It is to such cases that Section 29 of the Limitation Act applies, and by reason of

that provision, where a period of limitation alone is specified in a special or local law without a further provision being made for the computation of

limitation or for the exclusion of periods, when for example, a Court is closed, or a person is under a disability, Section 29(2) applies and certain

provisions of the Limitation Act apply as ancillary to the computation of limitation prescribed by the special or local law. In the present case, the

contention that was urged upon us at the hearing of S.T.A. No. 137 of 1954 was that the period of six months set out in Section 42 of the

Abolition Act itself constituted a period of limitation. If that contention had prevailed, the argument now put forward based upon the Rules framed

u/s 67(2)(e) would have relevance and force, but we rejected that argument for the reason that on the scheme of Sections 42 to 46 of the

Abolition Act, it could not have been the intention to permit the payment out in respect of claims which are long ago barred under the Indian

Limitation Act. For instance, Section 42 uses the word "Creditor" which would mean a person to whom a debt is due and a debt cannot be said to

be due when it is barred by limitation. Cf. *Hunsraj Gupta v. Official Liquidators of Dehra Dun* (1932) 64 M.L.J. 403 : ILR (1932) All. 1067 : L.R.

60 IndAp 13. Similarly, in Section 43, a Tribunal is directed to enquire into the validity of claims. Normally speaking, unless a strained and

unnatural construction was put upon these words, it would include an investigation into the exigibility and enforceability of that claim at the date of

the application. More than all, Section 45(3) enjoins on the Tribunal the duty of directing payments to those who were lawfully entitled to have their

claims paid. In view of these provisions, we could not entertain any doubt that a debt barred by the Law of Limitation by the application of the

First Schedule of the Limitation Act could not be the subject-matter of a claim by a creditor u/s 42. As we have already stated Mr. Gopalaswami

Iyengar did not in this petition seek to challenge this basic principle which underlay our judgment adverse to the petitioner in S.T.A. No. 137 of

1954. If Article 120 of the First Schedule applied to determine whether the claim was in time, it followed that Sections 3 to 25 of the Act also

applied. Cf. *Ram Dutt v. Sassoon* (1929) L.R. 56 IndAp 128.

18. The question next that arises is the scope of the rule promulgated on 17th October, 1950, which we have extracted earlier. u/s 67(2)(e), the

State Government was enabled to make Rules providing for "the application of the Indian Limitation Act to applications, appeals and proceedings

under this Act, and the rule must accordingly be read as applicable to such proceedings. It would therefore have relation only to the periods of time

set out in the various provisions of the Act or the Rules under which applications, appeals or other proceedings have to be filed before the

Tribunal. In other words, it would apply for instance to the six months" period within which after the making of a deposit, the applications u/s 42

have been filed and to appeals under Sections 15(2) and 51(1) of the Act and similar proceedings. Where the basic time is prescribed by the

Abolition Act, the Rules set out the method of computation of such time and the periods or days which might be excluded in making such

computation. The rule cannot have any application to determine the computation of the period of limitation prescribed by the First Schedule of the Limitation Act, which we have held, determines the period of time within which the petitioner's claim could have been made. The rule relied on is therefore wholly inapplicable to determine whether the claim of the petitioner which was brought up before the Tribunal was within time or not under the Indian Limitation Act.

19. The petition fails and is dismissed with costs.