

(1985) 02 KL CK 0011
In the High Court Of Kerala
Case No : S.A. No. 249 of 1979-B

Chacko

APPELLANT

Vs

Paily

RESPONDENT

Date of Decision : 13-02-1985

Acts Referred:

Limitation Act, 1963 — Article 113, 68

Citation : AIR 1985 Ker 196

Hon'ble Judges : Sukumaran, J

Bench : Single Bench

Advocate : A.N. Kuttan, for the Appellant; T.P. Mathai, for the Respondent

Final Decision : Allowed

Judgement

Sukumaran, J.—The second appeal raises an interesting question relating to limitation. The courts below have non-suited the appellant-plaintiff on the ground of limitation. The correctness of the view taken by those courts is challenged in the second appeal.

2. Some articles kept in the house of the plaintiff were stolen on 21-4-1972. The Perumbavoor Police registered a crime investigated into it, and filed a charge before the Magistrate Court. The police recovered the articles from the house of the defendant, who was the brother-in-law of the 2nd accused in the criminal case. That was on 3-5-1972. Ultimately the criminal case ended in an acquittal. The defendant herein gave evidence in the criminal case and claimed that the articles belonged to him. The articles in question were directed to be returned to the defendant, after the criminal court took evidence relating to the disposal of the property. That order was challenged before the Sessions Court and ultimately before this Court. This court observed that the ownership regarding the article should be decided through a civil court. That was on 29-1-1976. The suit was filed on 14-2-1976.

3. The question of limitation raised as a preliminary issue was considered as

such, and as noted earlier, decided against the plaintiff. The trial court took the view that Article 68 of the Limitation Act, 1963 applied, and that "at least on 3-3-1972 the plaintiff must be taken to have first learnt as to in whose possession the plaint schedule articles were." The suit obviously was beyond three years from 3-5-1972. Consequently it entailed a dismissal before that court. A contention that the cause of action arose only from 29-1-1976, the date of disposal of the revision petition by the High Court in relation to the disposal of property matter, was then considered. The certified copy of the order of the High Court had not been produced before that court. The court therefore observed :

"In its absence it is not possible to accept the plaintiffs case that the cause of action can arise only from 19-1-76 and therefore there is no bar of limitation."

4. The appellate court concurred with the conclusion that Article 68 applied and that the period started running from 3-5-1972. According to it, the order of the High Court did not give a fresh cause of action to the plaintiff; even without the observation, the plaintiff could have filed the suit -- it stated.

5. It is desirable that before the legal issues are considered, the relevant averments in the pleadings in relation to the cause of action are adverted to. Paragraph 11 of the plaint states that the cause of action arose on 29-1-1976, when the High Court had decided that the ownership over the articles has to be established in a civil court. These averments had not been specifically denied in the written statement. Paragraph 2 contained a general averment that the suit has an infirmity of limitation.

6. Article 68 which has been applied by the courts below reads :

Description of suit Period of limitation Time from which period begins to run

Part VI Suits relating to movable property.

68. For specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion. Three years. When the person having the right to the possession of the property first learns in whose possession it is.

This Article in terms will not apply having regard to the facts of the case. Column 3 which relates to the time from which period begins to run has to be read with care. Particular emphasis is to be given to the words "when the person..... first learns" and as also to the words "in whose possession it is." Paragraph 5 of the plaint only referred to the factum of recovery of the articles by the police on 3-5-1972. That is not the date on which the plaintiff first learnt about the whereabouts of the article, and when he learnt about the articles, it could not be said that that was at a time "when the possession is with the defendant" If that be so, Article in terms would not apply.

7. The view taken by me is in accord with the reasoning contained in the decision rendered by the Division Bench of the Madras High Court in N.P. Krishna Ayyar Vs. Sudalaimuthu Pillai and Another, . In respect of an illegal removal of certain

articles which had taken place on 26-1-1936, a suit was filed on 25-1-1939. The Madras High Court considered the applicability of Articles 48 and 49 of the Limitation Act, 1908. (Article 48 corresponds to the present Article 68). The court observed :

"Article 48 relates to a suit for specific moveable property lost or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the property. The period is three years from the date when the person having the right to the possession of the property first learns in whose possession it is. The suit cannot be said to fall under this Article because it is not suggested by the plaintiff that the property is now in the possession of the defendants and the claim is not made on that basis."

8. It is not necessary to deal with the latter portion of the judgment where the Madras High Court considered the applicability of Article 49, on which the plaintiff in that case relied. The plaintiff in the present case, as noted earlier, bases his cause of action on the date of the order of the High Court when the plaintiff was directed to a civil court for establishment of his right.

9. If Article 68 does not apply, the residuary Article, 120 of the 1908 Act corresponding to Article 113 of 1963 Act should necessarily apply. That reads :

113. Any suit for which no period of limitation is provided elsewhere in this Schedule. Three years When the right to sue accrues."

10. The aspect which assumes importance while considering this Article is the date of the accrual of the right to sue. The lower appellate court, as noted earlier, took the view that the judgment of the High Court did not furnish a fresh cause of action. That was obviously on the basis that Article 68 applied and the cause of action, related to that Article, arose on 3-5-1972. The relevant pleadings in relation to the disposal of the goods involved in the criminal case and the ultimate direction of the High Court had not been properly appreciated by that court. It has also overlooked the provisions in the Criminal Procedure Code in relation to the disposal of goods involved in a criminal lease. Chapter XXXIV of the Criminal Procedure Code, 1973 deals with disposal of property. Section 451 deals with Order for custody and disposal of property pending trial and Section 452 pertains to the disposal of the property at the conclusion of trial. The order u/s 452 is appealable u/s 454. The appellate order is amenable to revision u/s 401 of the Code. It is certainly possible, circumstances justifying it, for the High Court to direct return of the property to the party who complained of theft. If such an order is passed, such a party would not have any cause of act on at all. If on the other hand, a direction as in the present case for establishment of the right in a civil court is made, that would certainly afford a cause of action. As observed by Lord Pearce in *Cartledge v. E. Jopling & Sons Ltd.* (1963) 1 All ER 341 :

".....no cause of action arises unless and until the plaintiff can show some actual injury. Normally the injury is contemporaneous with the wrongful act, but it is not necessarily so.

In Sparham-Souter v. Town & Country (1976) 2 All ER 65, Lord Denning M. R. observed :

"Another thing is quite clear. A statute of limitations; cannot begin to run unless there are two things present: "A party capable of suing and a party liable to be sued."It would be most unjust that time should run against a plaintiff when there is no possibility of bringing an action to enforce it."

The decision contains illuminating thoughts on the accrual of the cause of action.

11. Viewed in the above background, and on a consideration of the relevant provisions of the Criminal Procedure Code adverted to above, I am of the view that a cause of action did arise to the plaintiff on the date on which the High Court disposed of the revision petition, directing the plaintiff to have resort to a civil court for the enforcement of the ownership of the articles.

12. Reliance was placed on the observations of the Supreme Court in K.S. Nanji and Company Vs. Jatashankar Dossa and Others, , in relation to Article 48 of the Limitation Act, 1908. Those general observations do not have any particular significance in the present case, having regard to the averments in the plaint, the specific case relating to the arising of the cause of action, and the nature of the reliefs sought for in the plaint.

13. Counsel for the respondent placed reliance on the decision in Pun Aung v. Brijlal AIR 1923 Rang 11, where the two Articles -- Articles 49 and 120 of the Limitation Act, 1908 -- were considered and the applicability of Article 120 was ruled out. It has, however, to be noted that the decision rested on the interpretation of the plaint in that particular case. The court took the view that the nature of the main relief claimed, determined the applicability of the one Article or the other. As regards the plaint therein the court observed that manifestly it was possession and control of the article that was sought for in the suit. Though two declaratory reliefs were also made, according to the court, "the declarations were unnecessary, or, at best, merely ancillary to the main relief." The facts of the present case are therefore clearly distinguishable. Relief No. 1 seeks a declaration of right over the properties in question. The direction for recovery is dependant upon and consequential to such a declaration. The main relief is therefore the declaration. Article 113 would get properly attracted to such a situation.

14. As noted earlier, the suit has been disposed of on the preliminary ground of limitation. In the light of the above discussion, that view is unsustainable. The decision of the courts below have therefore to be, and are hereby, set aside.

15. The merits of the case have not been gone into by the courts below. They have necessarily to be probed, inasmuch as the suit is found to be maintainable and not barred by limitation. For that purpose, the matter will stand remitted to the trial court. The parties will appear on 25-3-1985.

16. The second appeal is accordingly allowed with costs through out.