

(1961) 12 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : Civil Revision No. 3 of 1961

Chhaju Ram

APPELLANT

Vs

Mst. Vidya Wanti

RESPONDENT

Date of Decision : 14-12-1961

Acts Referred:

Government Gazette Act — Section 3
Limitation Act, 1963 — Section 4

Citation : AIR 1963 J&K 1

Hon'ble Judges : K.V. Gopala Krishnan Nair, J

Bench : Single Bench

Advocate : R.L. Anand, for the Appellant; Nand Lal, for the Respondent

Judgement

K.V. Gopalakrishnan Nair, J.—This revision is directed against the decision of the Sub-Judge at Jammu dismissing the Plaintiff's suit on the

ground that it is barred by limitation. It is common ground that in view of the provisions of Section 5 of the Agriculturists' Relief Act only a revision

and not an appeal lies.

2. The facts lie within a brief compass and are not in dispute. The Plaintiff instituted the suit in the court of Sub-judge at Jammu on 08-07-60. The

last day of limitation instituting it was 05-07-60, if the benefit of Section 4 of the Limitation Act was to be denied to the Plaintiff. The contention on

behalf of the Plaintiff-Petitioner is that Section 4 of the Limitation Act applied to his case as the 5th, 6th and 7th of July were public holidays and

that he was therefore entitled to present his plaint in court on the next working day, namely 08-07-60, without coming under the ban of limitation. If

this contention is well founded, the Plaintiff's suit cannot be held to be time-barred. But the learned Counsel for the Defendant-Respondent urges

that 05-07-60 was a working day for the court and that, therefore, the failure of the Plaintiff to institute the suit on that day was fatal to its

maintainability. The controversy between the parties has been occasioned by a change made by the State Government in its notification of holidays

for subordinate civil courts. In the previous notification 5th and 6th July were declared public holidays, but by a subsequent order the State

Government made 6th and 7th July public holidays and declared 5th a working day. This order of the State Government was published in the

Government Gazette only on 7th July 1960 and not earlier. There is nothing to show that the Plaintiff was aware on or before the 5th July that the

Government had converted 5th July into a working day. Nor is there anything to indicate that the Government had made adequate publication of its

order so as to cause the Plaintiff reasonably to be so aware. Yet, the contention on the side of the Defendant is that as the 5th was a working day

on account of the change effected by the order of the Government published in the Gazette of 7th July 1960, the Plaintiff was in law obliged to

institute the suit on the 5th.

3. The holidays for subordinate civil courts appear to have been declared by the Government u/s 37(1) of the Civil Courts Act which reads:

Subject to such orders as may be made by the Government, the days declared in the Jammu and Kashmir Government Gazette by the

Government as public holidays shall be observed as close holidays in civil courts.

This provision no doubt permits the Government to effect a change in the notification of holidays already published by it in the Gazette, but it is

incumbent on the Government duly to publish such change also in the Gazette. Section 3 of the Government Gazette Act requires every order

made by the Government to be published in the Government Gazette. The primary object of such publication is to give notice to the general public.

It seems to me wholly untenable to say that the Government is entitled to pass an order and confine it to the secrecy of its own archives and still

claim that it ought to have been acted upon by members of the general public who in fact had no inkling of it. The position would in no way be

improved by publishing the order after the expiry of its intended period of operation, that is to say, after it has spent its force. It is futile to order

that a particular act should be done by A on Monday and give him notice of it on

the following Tuesday. How could A comply with that order on Monday when he knew about it only on Tuesday. Equally so, how could the Plaintiff in the present case have taken action on the 5th July on the footing that it was a working day when he knew or could reasonably have known it only after it was published in the Government Gazette on the 7th July. Till the amending notification of the Government was published in the Gazette, it must be taken that the previous Gazette notification of the Government remained in force - and according to the previous notification 5th and 6th were holidays. The subsequent amending notification of the 7th declared 7th also to be a holiday. Thus, 5th, 6th and 7th came to be regarded as Holidays by the Plaintiff. No doubt on the 7th he knew that 5th had been changed into a working day, but he could not do anything about it. On the 5th the earlier Gazette notification prevailed and the Plaintiff had no reason on the 5th to think that any change was effected in it by the Government. In the circumstances, I think 5th must be regarded as a holiday so far as the Plaintiff is concerned.

4. It is not the case of the Defendant that the Plaintiff knew on the 5th that it was a working day. In view of the facts set out earlier, I do not think that the Defendant is entitled to rely upon the Gazette notification of 7th July for the purpose of visiting upon the Plaintiff the evil consequences of his not having instituted the suit on the 5th. I would go further and say that the order of the Government making 5th a working day was invalid, in the absence of due publication of that order before the 5th. If 5th had been declared a working day by a notification published in the Government Gazette on a day reasonably prior to the 5th, one might attribute knowledge of it to the Plaintiff. But as the information was conveyed to the public only by a notification of the 7th, I think it impossible, except by importing a very strange fiction not permissible in law, to attribute to the Plaintiff on the 5th knowledge of the change of 5th into a working day. The Plaintiff has admittedly been residing in a sequestered village far from Jammu where the court of his resort was situate. This is perhaps an added circumstance in his favour.

5. It follows from the foregoing that it is legitimate for the purposes of Section 4 of the Limitation Act to regard 5th, 6th and 7th as Court holidays.

The Plaintiff appears to have gone to the residence of the Sub-judge on the 7th

to present his plaint to him. This he did after having gone to the court and found it closed -- a conduct strongly suggesting that he was totally unaware of the later amending notification published in the Gazette just that day. The learned Sub-Judge made an endorsement on the plaint that 7th was a holiday and that the Plaintiff should present it in court on the next working day, i.e., 8th July 1960. The Plaintiff accordingly presented his plaint in Court on 8th July 1960.

6. Taking into consideration all the circumstances of "the case, I am unable to agree that the suit is barred by limitation. I, therefore, set aside the judgment and decree of the lower court and remit the suit to it for being heard on merits. Costs of this revision will abide and follow the result of the suit.