

(1965) 01 AP CK 0005

In the Andhra Pradesh High Court

Case No : Second Appeal No. 771 of 1959

Chinna Ram Reddy (Died) Venkat Reddy and Others

APPELLANT

Vs

Kishta Reddy

RESPONDENT

Date of Decision : 20-01-1965

Acts Referred:

Limitation Act, 1908 — Article 120, 124, 131

Citation : AIR 1965 AP 471

Hon'ble Judges : Gopal Rao Ekbote, J;Basi Reddy, J

Bench : Division Bench

Advocate : Upenderlal Waghray, for the Appellant; Sadasivarao, for the Respondent

Judgement

Gopal Rao Ekbote, J.

(1) The action out of which this second appeal arises was laid by the appellants against the defendants. It was alleged inter alia in the plaint that the watan of Police Patel of Village Siddapur, Sangareddy Taluq, belonged to the family of the parties. Although once the family was joint, it is now divided, in the said watan, Kishta Reddy the grand - father of the defendant, had eight annas share, Sur Reddy, the father-in-law of the 4th plaintiff, had four annas share and the father of the first three plaintiffs had the rest of four annas. There is no dispute in so far as eight annas share belonging to Bag Reddy are concerned. The dispute is confined only to the four annas, share, which according to the parties, belonged to Sur Reddy. Sur Reddy died in 1339 Fasli and he is succeeded by his widow Chandramma. Chandramma also died on 4th Dai, 1350 Fasli. The 4th plaintiff Sangamma claimed the succession after the death of Chandramma. she applied in the Tahsil office for the grant of succession in her favour. Plaintiffs 1 to 3 filed an application stating that they have no objection if the said succession is granted in favour of Sangamma. They, however, stated that in case, it is found that Sangamma is not entitled to the share, the succession should be granted in their name. It seems Peddaram Reddy, the surviving son of Kishta Reddy,

intervened and objected to the grant of the share to either Sangamma or the three other plaintiffs.

There is no record to show as to what recommendation the Tahsildar made after holding the necessary enquiry. It is, however, claimed on behalf of the respondent that the Revenue Divisional Officer did not accept the claims put forward by the plaintiffs but accepted the claims of Peddaram Reddy. Whatever that may be, it is common ground that when the matter went in appeal before the Collector he granted the succession in the name of Sangamma. Peddaram Reddy dissatisfied with that order of the Collector carried the matter in appeal to the Board of Revenue. The Board of revenue under its order on 29th Azur, 1354 F. reversed the order of the Collector and granted the succession in the name of Peddaram Reddy, the father of the defendant. Sangamma seems to have preferred a revision to the Revenue Minister, pending which Peddaram Reddy died on 28-6-1952. The legal representatives were not brought on record within the prescribed time. Consequently it was held by the Revenue Minister on 25-10-1955 that the revision stood abated and a result dismissed the revision petition.

(2) Sangamma thereafter filed a writ petition No. 82 of 1956 in the high Court of former State of Hyderabad . The writ petition was dismissed on 28-1-1958 holding that the petition involves disputed questions of fact and that the rival claims could conveniently be got settled from a civil Court The present suit was instituted thereafter by the plaintiffs.

(3) It was claimed that the plaintiffs 1 to 3 are the nearest sapindas to the last holder of the four annas share and therefore, their right to hold the office should be declared in their favour. In so far as the question of limitation was concerned, it was alleged in the plaint that the plaintiffs demanded from the defendant to concede their right to the four annas share in 1955 but the defendant refused to so concede. The cause of action, arose on 1-11-1955.

(4) the contentions of the defendant, apart from other contentions, was that the suit of the plaintiffs is time-barred.

(5) The Trial Court after framing appropriate issues and without recording any evidence as it was not adduced by the plaintiffs suit mainly on the ground the stature of limitation. The trial Court found that Art. 120 of the Limitation. The trial Court found that Art. 120 of the Limitation Act is applicable to the fact of the case. and as the cause of action had risen more than six years prior to the date of the suit, the suit is time-barred.

(6) The plaintiffs carried the matter in appeal. In the appellate Court, apart from contending that Art. 120 is applicable an alternative plea was raised that in view of the allegations made in the plaintiff plaint, Art. 131 also can be applied. Rejecting both these contentions, the lower appellate Court affirmed the decision of the trial Court. hence this second appeal.

(7) it was conceded by the learned Advocate for the parties as the matter involved in the suit related to a period prior to the constitution, there is no question of Art. 16 of the Constitution in this case.

(8) it was contended first by the learned Advocate for the appellants that we should treat the present suit as a suit for possession of a hereditary office and if treated so, it will fall under Art. 124 of the limitation Act and on question of limitation in that case would arise. It is true that Art. 124 applies to suits for possession of hereditary office. Admittedly the defendant, at the time when the suit was instituted was not in possession of the hereditary office. A suit for declaration that the plaintiff are entitled to the office is not a suit for possession and it cannot, therefore, be governed by Art. 124 of the Limitation Act. No question of treating the present suit therefore, as a suit for possession of hereditary office arises. The suit is not drafted for that purpose, nor the circumstances justify any such conversion at this stage.

(9) It was then contended that we should consider the Article applicable to the case, keeping in view the fact that plaintiffs 1 to 3 can at any moment in future institute a suit for possession of hereditary office against the defendant and in that case no question of limitation would arise. we find no force in this contention. Merely because the plaintiff may file any suit at a future date, that is no ground for construing the Article, which is applicable to the facts of the case in a different manner.

(10) It was next contended that it is Article 131 of the limitation Act, which is applicable and not Art. 120, as is held by the Courts below. Art. 120 being a residuary Article it is better we consider this contention before we deal with Art. 120. Where the plaintiff is entitled to a periodically recurring right, he can sue for declaration that he is entitled to such right. Such a suit undoubtedly will be one for establishment of a periodically recurring right and will naturally be governed by Art. 131. But is the present suit of that character? The first column of Art. 131 would take in its fold both kinds of suits, suit for a declaration of a periodically recurring right as well as a suit for the recovery of money which becomes periodically due. A bare declaration, therefore, that the plaintiff is entitled to a periodically recurring right may also fall within the ambit of Art. 131. It is difficult, however, to accept the contention that the present suit framed, as it is, is a suit for establishing a periodically recurring right. A suit for declaration that the plaintiffs are heirs of the last holder of the watan having four annas share and that they alone are entitled to hold the office and receive the four annas share after dividing eight annas to one branch and four annas to the other and in such a suit if there is no prayer for the recovery of any amount from the defendant, such a suit in our opinion, is not governed by Art. 131. In such a suit as the essential question is not the liability of the defendant to make a payment under a periodically recurring right which the plaintiffs are claiming, but the question is whether the plaintiffs are the heirs to the last holders of the office in preference to the defendant. A suit for declaration of title against a rival

claimant, therefore, of this character is not governed by Art. 131.

It is nobody's case that the defendant is in possession of the office and has been collecting the scale amount and he is the person liable for disbursement of the same. The crucial question involved in the suit is as to who is entitled to hold the office in so far so the four annas share is concerned. This is not a suit, therefore, for establishment of a periodically recurring right. It is true that in the plaint it is claimed that the plaintiffs should be declared entitled to four annas share, but the four annas share in so far as the present suit is concerned constitutes the whole and there is no question of any claim by the plaintiffs as against the defendant for the establishment of a periodically recurring right. We are, therefore, of the opinion that the plaint as it is framed does not attract Art. 131 of the Limitation Act.

(11) Even assuming that the suit falls with the preview of Art. 131 of the limitation Act, even then it does not advance the case of the plaintiff, because even under the Article, the plaintiff's suit is manifestly time-barred. According to the third column of that Article, the Starting point of limitation is from the first refusal of the enjoyment of the rights. It cannot be in dispute that the defendants filing the objection petition in October 1943 constituted the first refusal of the plaintiffs right. It is true that it was Sangamma, who had initiated the proceedings, but it cannot be denied that plaintiffs 1 to 3 also filed an application on 27-10-1943 stating that they have no objection of the succession is granted in the name of Sangamma. They however, claimed in the alternative that in case the succession cannot be granted in the name of Sangamma, they were entitled to the succession. The defendant was interested in contesting the claims of not only Sangamma, but also of the other plaintiffs as he was claiming himself to be the successor. The objection petition, which he had, therefore, filed, would unequivocally constitute the first refusal of the plaintiffs enjoyment of the right. Thus, the limitation under that Article would commence from 1943. The suit was instituted on 17-1958. The suit thus would be clearly time-barred.

(12) The real Article, in our opinion, which is applicable to the facts of the case, is however, Art. 120 of the Limitation Act, which is a residuary Article. The plaintiffs had conceded before the trial Court that it is Art. 120, which is applicable to the case, No other Article, which is expressly applicable to the suit for declaration of the present character, was brought to our notice, the necessary result of which is that the residuary Art. 120 would get attracted. Under that Article, the suit has to be filed within six years from the date "When the right to sue to accrues". A right to sue accrues clearly when cause of action arises. It is of course understood that the right to sue means the right to bring a particular suit with respect to which the plea of limitation is raised. In order that there may accrue a right to sue, there must firstly be a right in existence which is asserted in the suit and secondly, such a right must have been infringed or at least threatened to be infringed. The right and its infringement, therefore, would constitute in such a case cause of action which would give rise to a right to sue.

If this is the law, then, the right to succeed accrued to the plaintiffs in 1940 when the last holder of the office died. This right of theirs was clearly and unequivocally infringed when the defendant claimed himself to be the rightful heir of the deceased. It is true that mere denial of the right of the plaintiffs is not enough . It must be accompanied with some overt act of the defendant. In this case, when Sangamma initiated proceedings of succession, the defendant by filing an objection and raising a dispute unequivocally infringed the right which the plaintiffs were claiming. It cannot be in doubt that what the Article requires is an effective denial of the right which would give rise to a cause of action. It is not, therefore, the order which is subsequently passed on any such denial which would provide any cause of action to the plaintiffs but the foundation is the unequivocal denial which the defendant had made by claiming himself to be the heir. Looked at from that point of view, the cause of action had really arisen as against the defendant in 1943 or 1944. Assuming that such a denial is not sufficient, but something more is required, even then when the Board of revenue in appeal held the defendant entitled to the succession through their order made on 29th Azar 1359 F., there can be little doubt that it was clear case of infringement of the plaintiffs right. The suit ought to have, therefore, in case, filed within six years from 1359 F., in 1949. As the suit was filed beyond the period prescribed under that Article the suit undoubtedly is barred by the statute of limitation.

(13) As no other argument was advanced, the result of the foregoing is that the second appeal fails and is dismissed with costs.

(14) Appeal dismissed.