
(1955) 08 RAJ CK 0013
In the Rajasthan High Court
Case No : First Appeal No. 42 of 1953

Dayachand and Others

APPELLANT

Vs

Sanwalchand and Others

RESPONDENT

Date of Decision : 08-08-1955

Acts Referred:

Limitation Act, 1908 — Section 25

Rajasthan Limitation (Adaptation) Ordinance, 1950 — Section 9

Citation : AIR 1956 Raj 6 : (1955) RLW 413

Hon'ble Judges : K.N. Wanchoo, C.J;D.S. Dave, J

Bench : Division Bench

Advocate : Sumerchand, for the Appellant; Hastimal, for the Respondent

Judgement

Dave, J.—This is a first appeal by the plaintiffs against the judgment and decree of the District Judge, Balotra, dated 13-7-1953 whereby their suit has-been dismissed.

2. The plaintiffs in this case "were seven in number. Their case was that plaintiffs 1 and 2 Multanmal and Dayachand and one Nenmal, who was the deceased father of plaintiff 3, carried on business to the name and style of Multanmal Juharmal and Company. Defendants 5 and 6 were also sons of the deceased Nenmal but they had separated from the father in his lifetime and so they were impleaded only as pro forma defendants.

It was averred that the remaining defendants Nos. 1 to 4 were members of a joint family and that defendants 1 and 2 Sanwalchand and Babulal, who were Kartas of "that family, borrowed from the plaintiffs" firm Multanmal Juharmal and Company Rs. 9801/- on Fagan Sud 11 Samwat 2001 and agreed to pay interest at the rate of 8 annas per cent per mensem.

The claim was thus founded on a Khata dated Fagan Sud 11 Samwat 2001 which was said to have been executed by the defendants Babulal Sanwal chand as Karta of the joint family. According to the plaintiffs, defendants Nos. 1 to 4 failed

to repay the loan and interest.

It was, therefore, prayed that a decree for the principal amount of Rs. 9801/- plus Rs. 3529/- for interest, in all for Rs. 13,330/- be given in the plaintiffs' favour against the defendants. The plaintiffs also prayed for interest pendente lite and future interest at 6 per cent, till realization of the amount and costs.

3. The, defendants Nos. 1 to 4 contested the suit on several grounds including one of limitation. On 15-2-1952, the trial Court, therefore, framed six issues. Thereafter an application was presented by the plaintiffs on 3-12-1952 saying that they had transferred their entire rights to recover the debt for which the present suit was brought and made an assignment in favour of Tikuchand son of Kesrimal Oswal resident of Bhinmal and, therefore, their names should be struck off and the name of Shri Tikuchand should be substituted in their place.

Another application to the same effect was presented by Shri Tikuchand on 5-12-1952. Defendants Nos. 1 to 4 contested these applications also and, therefore, a seventh issue was added on 2-2-1953. It is unnecessary to repeat all the issues here because the trial court has taken up the decision of issues Nos. 2 and 7 only which are as follows:

Issue No. 2:-- If the suit is within limitation.?

Issue No. 7:-- If the plaintiffs legally assigned the document in question and with consideration in favour of Tikuchand, so his name is to be substituted in place of the plaintiffs.

4. Issue No. 2 has been decided by the trial court against the plaintiffs and the suit has been dismissed on that account. Regarding issue No. 7, it was found by the trial court that the assignment deed was insufficiently stamped. That document was, therefore, impounded and sent to the Collector for realization of the stamp duty and penalty.

It was found by the court that the assignment of the debt was with consideration, but since the deed was not properly stamped, it was held that it did not give any right to Tikuchand to be substituted as plaintiff in place of the original plaintiffs.

5. Issue No. 7 is not of much importance now as we shall show hereafter. It is only issue No. 2 which is of real importance, and the main" question for our determination is whether the present suit is within limitation.

6. As pointed out above, the suit has been founded on a document dated Falgun Sud 11 Samwat 2001 which was equivalent to 22-2-1945. The claim was presented on 14-3-51 equivalent to Falgun Sud 6th Smt. 2007. It was common ground between, the parties in the trial court that the period of limitation for the present suit was six years.

The main contention between the parties was whether the said period of six years should be " computed according to the Vikrami year or according to the

Gregorian calendar. If the period is calculated by Gregorian calendar, the suit is obviously beyond six years, but it calculated according to Vikrami Samwat, six years had not elapsed by the date the suit was filed.

The trial court has held that the Rajasthan Limitation Act (Adaptation) Ordinance, 1950 (Ordinance No. 6 of 1950) was made applicable to Rajasthan State from 25-1-1950. According to the learned Judge, the period of limitation could therefore be calculated only according to Gregorian calendar because of the provisions of Section 25, Indian Limitation Act which was made applicable and, therefore, it was decided that the suit was beyond time.

7. Learned counsel for appellants has urged that the trial court's decision is erroneous and that it has not been able to correctly appreciate the provisions of Section 9, Rajasthan Limitation Act- (Adaptation; Ordinance, 1950 (Ordinance No. 6 of 1950)). Learned counsel for respondent has, on the other hand, tried to support the decision of the trial court and urged that its interpretation of the said sections is quite correct.

Since the decision of this case hinges upon, the interpretation of Section 9, Rajasthan Limitation Act (Adaptation) Ordinance (No. 6 of 1950) it would be proper to reproduce the same. The relevant portion runs as follows:

"9. Special provisions for certain suits, etc.--(1) Notwithstanding anything contained in this Ordinance and in the Indian Act thereby adapted to Rajasthan:

(a) any suit for which the period of limitation, prescribed by the said Act, is shorter than the period of limitation prescribed by any law relating to limitation of suits in force in any part of Rajasthan on the date of the commencement of this Ordinance and repealed by Section 12 thereof may be instituted within the period of two years next after such date or within the period prescribed for such suit by the aforesaid law, whichever period expires first."

8. It is clear from the language of the above section that this special provision was made to save those suits which would have been within limitation according to the previous law of limitation but which would have become time-barred according to the Indian Limitation Act (No. 9 of 1908) because of a shorter period being prescribed by the latter. It was; therefore, laid down that if in any suit the period of limitation prescribed by the Indian Limitation Act was shorter than the period of limitation prescribed by any law relating to limitation for suits in force in any part of Rajasthan on the date of the commencement of the Rajasthan Limitation Act (Adaptation) Ordinance, 1950 (i.e., 24-1- 1950), then such a suit could be instituted within the period of two years from 24-1-1950 or within the period prescribed for such suits by the law which was previously in force whichever" period was to expire first.

Thus in order to apply this section, it becomes necessary to determine two points. The first Question to be considered is whether the period of limitation prescribed by the Ordinance is shorter than the period of limitation prescribed by

the previous law of limitation.

If that period is not shorter than the Rajasthan Limitation Act (Adaptation) Ordinance, 1950 (which would hereafter be called Limitation Ordinance for the sake of brevity) would apply. In that case, the previous law of limitation need not be looked into. In the present case, the period of limitation for the present suit, according to the Limitation Ordinance, is three years whereas the period of limitation according to the Marwar Limitation Act, 1945 read with Section 4 thereof was six years.

This question is concluded by a Full Bench decision of this Court in -- "Jethmal v. Ambsingh", AIR 1955 Raj 07 (FB) (A) and, therefore, it is no longer in dispute and it is not necessary to dilate upon it further. The next question for determination is which of the two periods expires first. In Other words, we have to see whether the period of two years from the commencement of the Limitation Ordinance would expire first or the period of limitation prescribed by the previous law of limitation would come to an end earlier.

On this point also there is no dispute between the parties because the period of two years from 24-1-1950 ends on 23-1-1952 whereas the period of six years from the date of the loan terminated on Falgun Sud 10 Samwat 2007 if calculated by the Vikram Samwat or 21-2-1951 if calculated by the Gregorian calendar.

So in either case, the period to expire first was the period prescribed by the previous law of limitation. The dispute between the parties is, therefore, very narrow. According to the appellants, the period of six years was six "Vikram Samwat years and,, therefore, the limitation expired on Falgun Sud 10 Samwat 2007, while according to the respondents, the period of six years was according to Gregorian calendar and, therefore, limitation expired on 21-2-1951.

The reply to the disputed question revolves upon the meaning which would be attached to the" following words appearing in Section 9(a) of the Ordinance quoted above "within the period prescribed for such suit by the aforesaid law." Learned counsel for appellants contends that the words "period prescribed" should not be taken to mean only the period prescribed in the Schedule of the Marwar Limitation Ad", 1945 as amended by the Marwar Limitation (Amendment) Act, 1949.

According to learned counsel, the period prescribed should be calculated by reading the law "as a whole. He has pointed out that the word "year" was defined in the Marwar Limitation Act, 1945 as a year reckoned according to the Vikram calendar and, therefore, it is urged that wherever the word "years" appeared in the Schedule of that Act, it should be taken to mean Vikram Samwat years.

Learned counsel for respondents has, on the other hand, urged that the Marwar Limitation Act, 1945 as amended by the Act of 1949 was repealed by Section 12,

Limitation Ordinance, 1950 and it was no longer in force on the date the suit was instituted. He has, therefore, contended that the word "year" should be interpreted to mean the year by Gregorian calendar because Section 25, Indian Limitation Act was applicable on the date of the institution of the suit.

It was vehemently argued, that the Marwar Limitation Act, 1945 having been repealed, the definition of "year" appearing therein cannot be imported now. We have given our consideration to the arguments of learned counsel which have been addressed at length and we think that the argument advanced by learned counsel, for respondent though plausible is not sound.

He, has referred to -- "Soniram v. Kanhaiyalal", 35 All 227 (PC) (B) -- "Baleswar Prasad v. Sheikh Latafat Karim", AIR 1945 Pat 368 (C); -- "Sarabdeva Prasad v. Dwarka Prasad", AIR "1948 Pat 59 (D) and -- "Peareylal v. Solu Gir", AIR 1946 All 58 (E) in support of his "contention, that the law of limitation which governs an Action is the law which prevails on the date when the suit is instituted.

So far as that principle is concerned, we are in entire agreement with it. We have ourselves held in the case of "Jethmal y. Ambsingh (A)

"that the law of Limitation relates to the branch of procedural laws and no one can claim a vested right in any period of limitation.....,""that the law which as applicable to a suit or proceeding is the law which is in force when it is instituted".

Therefore there is no doubt about the fact that on the date when the present suit was instituted on -14-3-1951, the law in force was" the Rajasthan Limitation Act (Adaptation) Ordinance 1950 (No. 0 of 1950) and, therefore, this law alone was applicable. But as pointed out above,. Section 9 of the said Ordinance which is set out above, saved limitation in certain suits to which it was applicable and we have to interpret it reasonably.

In every case tp which that section is applicable, the Court is required to find out as to what was the period of limitation prescribed, by the law relating to limitation of suits in force" in any part of Rajasthan on the date of the commencement of the Ordinance." In our opinion, the words "within the period prescribed for such suit by the aforesaid law" did not only mean the number of years given in the schedule but the number of years as under stood by that law read as a whole.

It may be pointed out that in Marwar, the Marwar Limitation Act, 1926 was" in force till it was repealed by the Marwar Limitation Act, 1945 Section 25 of the Act of 1926 laid down that:

"All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Vikram Samwat."

On the basis of this provision, it was held by the learned Judges of the Chief Court of Marwar in -- "Geegsingh V. Thikana Raipur", 1940 Mar LR (Civil) 62 (F) that .

"the substitution of the words "Vikram Samwat for "Gregorian Calendar" in Section 25 shows that", the purposes of Limitation Act in Marwar, time is to be calculated "according to the Vikrami Samwat."

The same view was taken again in the case of -- "Bhoorchand v. Dabra", 1942 Mar LR (Civil). 149 (G). Thus even before the Marwar Limitation Act 1945 came into force, the period of limitation in Marwar was computed according to Vikram Calendar. Thereafter, when the Marwar Limitation Act 1945 was enacted, a clear definition was given of the word "year" in the following language:

"year shall -mean a year reckoned according to the Vikram Calendar."

It was thus made crystal clear that wherever the word "year" appeared in the Schedule, laying down the period of limitation, it was to be understood as Vikram Samwat years and not Gregorian calendar years. This definition was not changed when the Marwar Limitation Act, 1945 was amended by the Marwar Limitation Act, 1949,

It was this Act which was in force till it was repealed by Section 12, Rajasthan Limitation Act, (Adaptation) Ordinance, 1950 (No. 6 of 1950). There is thus no doubt left that the period of six years prescribed for the present suit by the law relating to limitation of suits on the date of the commencement of the Ordinance was six Vikram Samwat years and not six Gregorian years.

9. It is, contended, by learned counsel for respondent that the terms "prescribed period" and "years" occurring in Section 9(a) of the Limitation. Ordinance should be given the same meaning wherever they occur and it is not proper to give them different meanings according to the usual canons of interpretation. In support of his argument he has referred to -- "K.N. Guruswamy v. State of Mysore, AIR 1954 SC 592 (H). In that case it) was observed by their Lordships that

"the same word appearing in the same section of the same set of rules must be given the same meaning unless it has anything to indicate to the contrary."

It is obvious- from their Lordships own observation that ordinarily the same word appearing in the same section or the same law should be given the same meaning. That is the usual mode of interpretation and it must be followed; It is, however, clear from the same observation that if there is something to indicate to the contrary, a different meaning can be given to the same word.

Thus it is not an inflexible rule that one word cannot be interpreted in two or more senses if it has been used in different senses and this is apparent from the context or the subject in which the word appears. A bare perusal of Section 9 makes it clear that the term "period prescribed" has been used in clearly two different senses by the Legislature because it is qualified by other words which follow it. It says that if ,in any suit, "the period of limitation prescribed by the said Act" (i.e. Limitation Ordinance) is shorter than "the period of limitation prescribed by any law. relating to limitation of suits in force, in any part of

Rajasthan on the date of the commencement of the Ordinance", then it may be instituted either within the period of two years next from the date of the commencement of the Ordinance or within the period prescribed for such suits by the law which was in force immediately before the new Act. If the term "period proscribed" be read without the qualifying words it would create a meaningless absurdity because the "period prescribed" cannot be shorter than "period prescribed" unless the law whereby it" is prescribed is taken into consideration.

Thus the section itself makes it clear that it contemplates two different periods -- one prescribed by the Limitation Ordinance and the other prescribed by the law of limitation which was previously in "force. Then the further words "within the period prescribed by the aforesaid law" refer to the period prescribed by the law of limitation which was in force on the date of the commencement of the Limitation Ordinance and so it is again, clear that the term "period prescribed" was used in different senses when applied to the two different laws.

In the same" way, the period of two years which was to be calculated from the date of the commencement of the Limitation Ordinance, was the year according to the Gregorian calendar because Section 25, Indian Limitation Act was made applicable; but the same word "year" appearing- in the law which was in force on the date of the commencement of the Ordinance was the Vikrami year as it was defined in the previous law.

It appears from the judgment of the learned District Judge that his attention was not drawn to the definition of the, word "year" which was given in the Marwar Limitation Act of 1945, other wise he would not have come to the contrary conclusion. He has not referred to that definition anywhere in his judgment.

If calculated by Vikram years, as it ought to have been done, the period of limitation in the present suit would expire on Falgun Sud 11 Samwat 2007. The suit was, however, brought on Falgun Sud 6 Samwat 2007 and thus according, to Vikram year, it was well within limitation. The trial court's decree dismissing the suit on the ground of limitation is, therefore, fit to be set, aside.

10. As, regards the admissibility of the assignment deed, learned counsel for appellant has filed in this Court the original certificate dated 8-3-1954 given by the Collector Jalor u/s 42(1), Rajasthan Stamp Act. The" Collector has made it, quite clear in the certificate that the deficient stamp as required by Article 23, Schedule I, Rajasthan. Stamp (Adaptation) Act, has been levied and recovered", from Shri Tikuchand son of Kesrimal Oswal resident of Bhinmal District Jalor,

Thus there is no bar left now to the admissibility of the assignment deed dated 12-10-1950. The deed itself says that the original plaintiffs have received Rs. 10,000/- from Shri Tikuchand and in consideration thereof they have transferred all their rights relating to the document on which the present suit" has been based.

Defendants 1 to 4 raised an objection in the trial Court that the assignment deed was without consideration but no evidence was led by them in that behalf; On the other hand, the plaintiffs. and defendants 5 and 6 supported Shri Tikuchand's assertion that the assignment , deed was with consideration.

The trial court has already decided that matter in favour of Shri Tiku Chand and no objection has been raised against it in the, appeal before us. Shri Tikuchand should, therefore be now substituted in place of the original plaintiffs..

11. The appeal is allowed and the decree of the trial court is set aside. Since the suit has been found within limitation, it is remanded to the trial court under Order 41, Rule 23, Civil P. C. with direction to try and decide the case on the remaining, issues.

It "is further ordered that the names of the original plaintiffs Multanmal, Dayachand, Sumermal/Pukhraj, Dudhraj, Sukhraj and Meghraj should be struck off and Shri Tikuchand son of Kesrimal" Oswal resident of Bhinmal district Jalor be substituted as plaintiff in their place.

The original plaintiffs-appellants will receive their cost in this Court from the respondents Nos. 1 to 4. The costs of the court below will abide the final result. The court-fee paid in this Court will be refunded to the appellant.