

(1960) 08 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal No. 54-D of 1956

Firm Jugal Kishore, Jagdish Prasad

APPELLANT

Vs

State of Delhi and Others

RESPONDENT

Date of Decision : 04-08-1960

Acts Referred:

Limitation Act, 1963 — Article 14
Penal Code, 1860 (IPC) — Section 411 , 457

Citation : AIR 1962 P&H 142 : (1961) 1 ILR (P&H) 46

Hon'ble Judges : I.D. Dua, J

Bench : Single Bench

Judgement

1. The only question which arises for decision in this Regular Second Appeal is whether the suit is barred by limitation by virtue of Article 14 of the Indian Limitation Act.

(2) The suit out of which this appeal has arisen was instituted on 13th February, 1952, on the ground that on 23rd March, 1949, certain bags of supari Mangolari and zira along with certain other goods, which do not concern us at this stage, had been stolen from the plaintiff-firm's godown. The theft was duly reported to the police and during investigation six bags of supari were recovered from defendant No. 4, M/s. Permeshari Dass Suraj Bhan, on 24th March, 1949, and four bags of zira were recovered from the shop of defendant No. 3, M/s. Bulaqi Das Iqbal Chand and Salik Chand, defendant No.5, were challenged u/s 457/411, Indian Penal Code. In those proceedings none of the accused laid any claim to the property either before the police or in the criminal Court. The accused persons were acquitted by the Magistrate on the finding that the plaintiffs had not been proved to be the owners of the goods and since the articles recovered were not claimed by the accused persons, the learned Magistrate directed forfeiture of the property to the Government. A revision against this order was filed in the Court of the Additional Sessions Judge, but the order of the Magistrate was upheld and it was observed that the complainant should establish his title to the goods in question in a civil Court. It is in these circumstances that the present suit was

filed which was decreed by the trial Court, but on appeal by defendants Nos. 3 and 4 the learned District Judge, while upholding the plaintiff's title to the goods in question, reversed the decision of the Court below on the ground that under Article 14 of the Indian Limitation Act the suit should have been filed within one year from the order dated 10th August, 1950, when the Magistrate forfeited the goods in question.

(3) On second appeal, the learned counsel for the plaintiff-appellants has questioned the applicability of Article 14 of the Indian Limitation Act to the present case. This Article is in the following terms:

"To set aside One year. The date of

any act or the act or

order of an order.

officer of

Government in

his official

capacity, not

herein other

-wise expressly

provided for.

The counsel has contended that the present suit is not for setting aside any act or order of an officer of Government in his official capacity with the result that the period of limitation prescribed in Article 14 does not cover his case. In the second place he has contended that the order of the criminal Court passed on the judicial side could not be considered to be an order of an officer of Government in his official capacity.

(4) In my opinion there is force in both the contentions. It is well recognised that the law of limitation is to be strictly construed in respect of a right to proceed and a citizen is to be non-suited only if his case clearly falls within the letter of a sent case, there is no prayer in the plaint for setting aside the order of the Magistrate forfeiting the goods and indeed it is asserted at the Bar that there is no express provision of law which makes such orders final till set aside by a competent Court of civil jurisdiction. Indeed such an (order) need not be expressly set aside before the claimant's title upheld by civil courts. The decision in *Gangu v. Mahanraj Chand* AIR 1934 Lah 384 (FB), on which reliance is said to have been placed in support of the view of the learned District Judge, was obviously influenced by the provisions of the Punjab Redemption of Mortgages Act, which makes the order passed by the Collector final subject to a suit to establish the right claimed by a party. It is argued that there is no such provision

making it obligatory on a party to establish such a claim failing which the order becomes conclusive.

(5) The question whether a Court of justice can be considered to be an officer of Government and Court's orders to be orders in the official capacity of such officer came up for consideration before a Bench of the Bombay High Court Govinda Bala v. Ganu Abaji 10 Bom LR 749 where it was observed that a Judge exercising his judicial functions is a civil Court within the meaning of the Limitation Act and is not an officer of Government acting in his official capacity within the meaning of Article 14. This decision was followed by Divatia, J. in M.S. Bhopshetti v. B. V. Bhar AIR 1940 Bom 188. In the latter ruling an order of the Bench Magislature under Sections 110 and 111 of the Bombay Municipal Boroughs Act was held not to be an order within the contemplation of Art. An order of the Magistrate, according to the reported decision, was a judicial and not a quasi-judicial or executive order, subject to revision by the Sessions Court, and a judicial order, it was expressly laid down, does not fall under Article 14.

(6) On behalf of the respondents, nothing has been said in opposition and indeed the learned counsel did not find it possible to support the order of the learned District Judge, which he was constrained to concede to be against the general trend of reported cases.

(7) Before concluding, I may observe that unless an Article in the Limitation Act clearly and without doubt applies to the case made out in a plaint, a litigant should not be non-suited on the ground of time bar. The law of limitation, as is well known has not to be utilised as a trap for depriving the citizens of their right to establish their claims in a Court of law but is really meant to prevent stale cases being revived and indeed they are for this reason called "statutes of repose". In this connection it would not be out of place to state that in the written statement the Union of India has not raised the plea of limitation which has been raised only by the defendants Nos. 3 and 4, who admittedly did not claim any title in themselves. After the claim had been decreed by the Trial Court, it was not the Union of India which went up in appeal but defendants Nos. 3 and 4 who obviously has no locus stand to question the decree for goods passed in favour of the plaintiffs. It is true that the trial Court having burdened them with costs, they could have made a grievance of the decree of the Court of first instance to this limited extent, but it is difficult to understand what right they had to question the decree with respect to the goods passed in favour of the plaintiffs. But no objection having been taken to the competency of the appeal in the Court of the District Judge, I need not pursue this matter any further. In the instant case, in my opinion, the language of Article 14 cannot, without staining it, be held to bar the plaintiffs' right to institute the present suit as laid in the plaint. So far as the merits are concerned, both the Courts have upheld the plaintiffs' title.

(8) For the reasons given above, this appeal succeeds and setting aside the judgment and decree of the learned District Judge, I restore those of the trial

Court. In the peculiar circumstances of the case, however, the parties are left to bear their own costs in this Court.

9. Appeal allowed.