(1965) 04 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 6 of 1965

Ganga Devi APPELLANT

Vs

Mst. Roopan RESPONDENT

Date of Decision : 28-04-1965

Acts Referred:

Constitution of India, 1950 — Article 14
Land Revenue Act — Section 111(A)

Citation : (1965) 04 J&K CK 0003

Hon'ble Judges : S. Murtaza Fazl Ali, J;J.N Bhat, J

Bench : Division Bench

Advocate : D.D. Thakur, for the Appellant; I.D. Grover and Jaswant Singh, General, for the Respondent

Final Decision : Allowed

Judgement

S. Murtaza Fazl Ali, J.—This is a Letters Patent appeal against a decision of the Chief Justice dismissing the appeal of the Appellant.

2. Briefly put the facts of the present appeal are as follows:

The Plaintiff Appellant filed an application before the Tehsildar Udhampur u/s 111(A) of the Land Revenue Act to establish her title in the land in

suit. Objections were invited to this application and the Respondent also filed her objections putting forward a rival claim. Subsequently the

Revenue Court by its order dated 9-12-1961 directed the Plaintiff to get her title adjudicated by a civil Court, within the time as stipulated in

Clause (c) of Section 111(A) of the Land Revenue Act. We night state here that under this Clause the period allowed to a party to get its title

adjudicated by the civil Court is three months.. The Plaintiff however, filed a suit before the trial Court but after die expiry of this period. A preliminary issue on the question of limitation was struck by the trial Court and decided against the Plaintiff and the suit was accordingly dismissed

The Plaintiff then went up in appeal to the Additional District Judge, Jamniu who affirmed the finding of the trial Court and held that the suit being

barred by Section 111(A)(b) of the Land Revenue Act, was not maintainable. The Plaintiff then filed second appeal to this Court which was heard

y the learned Chief Justice who agreeing with the Additional District Judge dismissed the appeal.

3. Mr. Thakur, appearing before us had raised two main points before us In the first place he submitted, as submitted by him be fore the learned

Chief Justice that the order of the Revenue Court was not passed under Clause (b) of Section 111(A) of the Land Revenue Act but under Clause

(a) and hence the question of limitation did not arise. Our attention has been drawn to the order of the Revenue Court which runs thus:

(Matter in Urdu script omitted - Ed.)

On an interpretation of this order, all the Courts below came to a concurrent finding of fact that the order was passed not under Clause (a) but

under Clause (b) of Section 111(A) of the Land Revenue Act. The learned Chief Justice further held that Section 111(A) Sub-clause (a) refers

only to pending suits and not to a suit contemplated by Sub-clause (b).

Before examining the view taken by the learned Chief Justice, we would first try to interpret the actual order passed by the Revenue Court. It is

true that in its order dated 12-1961, the Tehsildar clearly stated that the Plaintiff should get her title adjudicated by a civil Court and produce the

decision within three months from the date of the order. The contention of Mr. Thakur appearing for the Appellant is that the words three months

does not qualify the period within which the suit is to be filed but fixes a period during which the judgment of the civil Court has to be produced

before the Tehsildar. We are, however, unable to agree with this contention. Reading the order as a whole, there can be no doubt, that the

Tehsildar had asked the Plaintiff to institute a civil suit within three months and produce the judgment of a civil Court. The period of three months

fixed by the Court refers not only to the decision given by the Court but also to the filing of the suit which is mentioned in the first part of the same

sentence. Moreover, that this was the intention of the Revenue Court is absolutely clear from the next order passed by it dated 3-3-1962 which

runs thus:

(Matter in Urdu script omitted - Ed.)

4. In this order the Tehsildar has clearly stated that the Plaintiff should produce proof of the fact that she has filed the suit. This order, therefore,

clearly shows that the Tehsildar by his previous order had only directed, the Plaintiff to file a civil suit within three months, and it was therefore,

clearly an order u/s 111(A) Sub-clause (b) of the Land Revenue Act. In the view we have taken in this case, it is not necessary for us to give any

finding regarding the view taken by the learned Chief Justice with respect to the scope of Sub-clause (a) of Section 111(A) of the Land Revenue

Act. The first contention raised by Mr. Thakur is, therefore, overruled.

5. It was then contended by Mr. Thakur that Sub-clause (b) of Section 111(A) of the Land Revenue Act is ultravires as being hit by Article 14 of

the Constitution of India. The learned Counsel however did not take this point before any of the Courts below and had raised this point for the first

time in the memo random of appeal before us in view of the fact that the counsel Appellant wanted to raise a constitutional: point, we allowed him

to do so and issued, a notice to the Advocate General to appear in the case on behalf of the State. In order to appreciate the contention raised by

Mr. Thakur, it is necessary to quote . Section 111(A) of the Land Revenue Act, which run thus:

(1) If any objection is made by a recorded costumer involving a question of proprietary the to which has not been already determined by a Court

of competent jurisdiction, the Revenue Officer may either:

(a) decline to grant the application until the question in dispute has been determined by a competent Court, or

(b) require any party to the case to institute; within three months a suit in the civil court for the determination of such question, or,

(c) proceed to enquire into the merits of the objection.

(2) When the proceedings have beer postponed under Clause (b) if such party fails to comply with the requisition, the Revenue Officer shall decide

the question against him. if he institutes the suit, the Revenue Officer shall deal with the case in accordance with the decision of the civil Court.

(3) If the Revenue Officer decides to into the merits of the objection, he shall follow the procedure laid down in the CPC for the trial of original

soils.

6. An analysis of this Section clearly shows that when an objection is made by a recorded Proprietor involving a question of proprietary title, which

has not been previously determined by a civil Court, there are three alternatives open to a revenue officer, either (i) he can refuse to grant the

application and reject it until the applicant has got a decision from a competent Court on the question of title, (ii) make a reference to the civil Court

through the agency of one of the parties and in such a case Clause (b) fixes limitation of three months for filing a suit and (iii) that a Revenue Officer

may instead of insisting on an adjudication of title by a civil Court, proceed to enquire into the merits of the objections and give a decision thereon.

These three powers given to a Revenue Officer are obviously mutually exclusive the Revenue Officer has to decide as to which' of the courses he

would adopt In case a reference is made to a civil Court, under Clause (b) the proceedings have to be postponed and if no such suit is instituted,

then the Revenue Officer will have to decide the question of title against the party concerned. If, .however, a suit is instituted, he would have to

decide the case the accordance with the decision of the civil Court

Mr. Thakur argued that Clauses (a) and (b) give unfettered and unanalyzed power to the revenue Officer to reject or allow the application of any

party he likes to adjudicate their tide and if the Revenue Officer chooses to act under Clause, (b) the course is extremely detrimental to a indigent

because his right to militate a suit is circumscribed by aperiod of limitation which is fixed at three months. Thus while exercising-these powers, the

revenue, officer is likely to discriminate between two citizens equally placed we are however, unable to accept this contention under both these

clauses a party concerned, has,"" undoubtedly a right to go to a civil Court for adjudication of its title. In one case a period of limitation is fixed and

in the other: no period of limitation is fixed. Thus generally the right of the parties to institute a suit for the purposes of declaration .of their title is by

no means barred by any of these provisions. So far as the time limit prescribed by Clause (b) is concerned, it is 'based on a reasonable

classification.

The provisions of Clause (b) are really in the nature of giving the Court a power to make a reference to the Civil Court through the agency of one

of the parties and while making such a reference, since the Court has to postpone the proceedings, and retain the control of them, it was thought

necessary and advisable to fix a time limit or institution of suits in cases.' In ""cases' covered by Clause (a) as the application filed by- the applicant

is dismissed and the proceedings are not retained by'-the Revenue Court nor they are postponed, it was not thought , necessary to fix any time limit

These two sub-clauses, therefore, refer to two different contingencies and the distinction between these two clauses is absolutely clear. Moreover,

when these powers are given to a revenue officer, it is normally presumed that the Revenue Officer will act in a proper manner and the mere fact

that a particular revenue officer may abuse the privilege is not a ground for striking down the whole provision as being discriminatory.

The principles laid down by the Supreme Court in cases where Article 14 is attached have now been settled by a long course of decisions, the

latest being Rani Ratna Prova Devi Rani Saheba of Dhenkenal Vs. State of Orissa and Another, , where their Lordships of the Supreme Court

have observed as follows:

In considering' the validity of a statute under Article 14 we cannot ignore the well established principle that the legislature can make legislation,

provided the classification on which it purports to be based is rational and has a reasonable nexus with the object intended to be achieved by it and

so on the failure of the party to show that said classification is irrational or has no nexus with the object intended to be achieved by the impugned

Act the initial presumption of constitutionality would hold the State to urge that the failure of the party challenging the validity to rebut the initial

presumption goes against his claim that the Act is invalid In all cases where the material adduced before the Court in matters relating to Article 14

is unsatisfactory the Court may have to allow the State to lean on the doctrine of initial presumption of constitution and, that is precisely what has

happened in these cases. on the whole, therefore must us hold that the Petitioners have felled to show that the impugned Act contravenes Article

14 of the Constitution.

7. In our opinion the provisions impugn ed by the learned Counsel for the

Appellant having been based on a reasonable and rational class incision

and there being a clear nexus with flu object intended to be achieved these provisions it cannot be held that the provisions the in contravention of

Article 14 of the Contention of India.

8. This contention raised by Mr. Thakur v. therefore, overruled. The result is that the appeal is dismissed but in the circumstances without any

order as to costs.

J.N. Bhat, J.

9. I agree.

