

(1999) 09 P&H CK 0155

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 403 of 1980

Garib Dass (Died) through his L.R.

APPELLANT

Vs

Municipal Corporation and Another

RESPONDENT

Date of Decision : 15-09-1999

Acts Referred:

Limitation Act, 1963 — Section 22

Citation : (2000) 124 PLR 84

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Harsh Rekha, for the Appellant; None, for the Respondent

Judgement

R.L. Anand, J.—Garib Dass son of Lehna Mal had filed this R.S.A. and it has been directed against the judgment and decree dated 14.1.1980 passed by the Additional District Judge, Jalandhar who affirmed the judgment and decree dated 26.9.1979 passed by the Sr. Sub Judge, Jalandhar, who dismissed the appeal of the plaintiff- appellant.

2. The brief facts of the case are that the plaintiff filed a suit for permanent injunction on 24.1.1978, restraining the defendants from demolishing his kothas or from disturbing his possession over the premises measuring 7 marlas 35 sq. ft. bearing Khasra No. 7971, Khewat No. 75/83 s per jamabandi for the year 1969-70, situated at Mandi Road, near Ghumaran Masjid, Jalandhar City, shown red in the plan and fully described in the head note of the plaint and the case of the plaintiff was that after his migration to India from Pakistan in the year 1948 subsequent to the partition of the country, he settled in the premises in question fully described in the head note of the plaint. The site was in the form of a Chhappar belonging to Muslim evacuees. He levelled the same and constructed rooms for his residence, cattle-shed and running his business by spending a huge amount. He became owner thereof by efflux of time by virtue of his continuous possession for the last about 30 years. He also constructed a wooden Stall (khoka) measuring 2-1/2" x 2" just in front of the premises in dispute for

carrying on his business and the Municipal Committee had been charging "Teh-Bazari" with regard thereto for about 22 years. That facility was later on withdrawn and that wooden stall was demolished in the year 1972 but he continued to be in possession of the premises in question without any hindrance. After the Municipal Committee ordered the demolition of the kothas in question on 2.1.1973, without any right or title, he brought a suit challenging that order of the Municipal Committee, but his suit was dismissed by the trial Court on some technical error on 16.11.1976. He filed an appeal against the judgment and decree of the trial Court and his suit was allowed to be withdrawn with permission to file a fresh suit on the same cause of action vide order dated 11.1.1978, passed by the Addl. Distt. Judge, Jalandhar. Thereafter, he instituted the present suit seeking a decree for permanent injunction restraining the defendants from demolishing his kothas or disturb his , possession over the premises in dispute. The plaintiff alleged that the functionaries of the defendant No. 1 had started saying that the land in dispute had been purchased by them. Thus, they threatened to demolish his kothas in question in order to dispossess him forcibly.

3. Notice of the suit was given to the defendants, who contested the suit and, inter alia, pleaded that the suit is hopelessly barred by time; that the plaintiff was not allowed to file a fresh suit on the same cause of action and that the plaintiff is not in possession of the property.

4. The plaintiff filed a rejoinder to the written statement of the defendants in which he re-iterated the allegations made in the plaint by denying those in the written statement.

5. From the pleadings of the parties, the following issues were framed by the trial Court:-

"1. Whether the plaintiff is in possession of the premises in dispute for the last about 30 years continuously and is in adverse possession of the same and has become the owner of the premises? OPP.

2. Whether the suit is barred by limitation? OPD.

3. Whether the plaintiff is entitled to injunction prayed for? OPP.

3-A. Whether the plaintiff had been permitted to file a fresh suit on the same cause of action. If not, so its effect? OPP.

4. Relief."

6. Issue No. 2 and 3-A were treated preliminary by the trial Court and vide the judgment and decree dated 26.9.1979, the trial Court held that the suit of the plaintiff was not within limitation and the suit was dismissed.

7. Aggrieved by the judgment and decree of the trial Court, the plaintiff filed an appeal before the first appellate Court, who vide the judgment and decree dated 14.1.1980 dismissed the appeal for the reasons given in paras 8 and 9 of the

judgment, which read as under: -

"8. The learned counsel for the appellant has assailed the findings of the lower court on the issue No.2 of limitation. He has taken me through para 6 and later part of para No. 11 of the plaint and argued that the plea of threat on the part of the respondents to demolish the appellant's kotha in question in order to dispossess him there from forcibly, constitutes continued wrong. He has urged that after the initial such threat given on 2.1.1973 leading to the filing of the earlier suit, which was, later on, allowed vide order dated 11.1.1978, passed, in appeal by Shri R.P. Giand, then learned Additional District Judge, Jullundur, to be withdrawn with liberty to bring a fresh suit on the same cause of action, the respondents repeated that threat two days before the institution of the present suit on 24.1.1978 giving rise to fresh cause of action. He has contended that this case is, therefore, governed by the provisions of Section 23 of Limitation Act and not by Article 113 of the New Limitation Act, 1963, corresponding to Article 120 of the Old Limitation Act, 1908. He has asserted that the present suit instituted on 24.1.1978, is, thus clearly within time, but it has been erroneously held by the lower court to be time barred by taking it to be a case of complete injury giving rise to cause of action on 2.1.1973, the date of giving the initial threat by the respondents and to be governed by the provisions of Article 113 of the New Limitation Act of 1963. In order to support his arguments, he had quoted Hurmat Ali and Ors. v. Union of India and Ors. AIR 1979 Gau 21. He has thus maintained that the finding of the lower Court on this issue of limitation is liable to be upset being not warranted by law.

9. These arguments are not tenable. The appellant himself has pleaded in earlier part of para No. 11 of his plaint that the cause of action arose to him against the respondents on 2.1.1973 when originally they threatened to demolish his Kothas. He has nowhere pleaded in his plaint that the said threat given by the respondents on 2.1.1973, in order to evict him from the premises in question forcibly constituted continuing wrong. In the absence of such a plea in his plaint, he cannot be allowed to make out a new case of continuing wrong. He has, of course, pleaded in the later part of para No. 11 of the plaint that fresh cause of action arose to him two days back when the respondents again threatened to eject him forcibly by demolishing kothas in the premises in dispute, but this cannot help him when, he himself, has admitted during the cross-examination, that from the very beginning till today, the defendant is insisting upon demolishing the construction in suit and taking possession thereof. This admission of his unmistakably implies that the respondents never withdrew the said threat given on 2.1.1973 and, as such, there was no question of their giving fresh threat in respect thereof two days before the institution of the present suit. Further, the withdrawal of the previous suit was allowed with liberty to institute a fresh suit on the same cause of action and this is compatible with the present suit brought by him subsequently being based on the same cause of action, which had led to the institution of the earlier suit and not on any new cause of action. The injury resulting from the said threat on the part of the respondents

was complete on the date that threat was given and it did not cause any continuing wrong to the appellant. It has been held by their Lordships in *Khair Mohd. Khan and Anr. v. Mt. Jannat and Ors.* AIR 1940 Lah 369, cited by the learned counsel for the respondents at page 360 that-

"Where the injury complained of is complete on a certain date, there is no "continuing wrong", even though the damage caused by that injury might continue. In such a case, the cause of action to the person injured arises once and for all, at the time when the injury is inflicted, and the fact that the effects of the injury are felt by the aggrieved person on subsequent occasions, intermittently or even continuously, does not make the injury a continuing wrong so as to give him a fresh cause of action on each such occasion."

The same view has been taken by their Lordships in *Balkrishna Savalram Pujari and Others Vs. Shree Dnyaneshwar Maharaj Sansthan and Others*, cited by the learned counsel for the respondents. In the face of these two authorities, the said ruling AIR 1979 Gau 21, depended upon by the learned counsel for the appellant wherein Quit India Notice had been given to the plaintiff- appellants, cannot be helpful to the appellant for threat of deportation thereby given to the plaintiff-appellants of that case constituted continuing tort. So, the present case wherein the injury complained of was complete on giving of the said threat by the respondents on 2.1.1973 is governed by the provisions of Article 113 of the New Limitation Act of 1963 according to which the period of limitation was three years from the date when the right to sue accrued to the appellant. The present suit having been instituted on 24.1.1978, more than 3 years after the accrual of right to sue the appellant, is hopelessly barred by limitation. The period spent during the previous litigation between the parties, is not liable to be condoned by virtue of the provisions of Order 23, Rule 2, C.P.C. It follows that the lower court rightly held the present suit to be barred by limitation. Thus, I see nothing wrong with its finding on this issue."

8. I have heard Ms. Harsh Rekha, counsel for the appellant and with her assistance gone through the record of the case. No assistance has been provided to me from the side of the respondents.

9. In the opinion of this Court, both the courts fell in error in dismissing the suit of the plaintiff little realising that it was a suit for injunction. The case of the plaintiff" throughout was that his possession is going to be disturbed by the defendants and that the property in question was a evacuee property in the shape of a Chhappar. He levelled this property and had incurred a huge expenditure and had also constructed some Kothas, etc. When the plaintiff alleges that his possession is going to be disturbed by the defendants, each day will be a threat to the plaintiff so that he may not be dispossessed from the property in question. In such a situation, it furnishes successive cause of action. Such like suit cannot be held to be time barred by any stretch of imagination in view of the provisions of Section 22 of the Indian Limitation Act, which deals with the continuing breaches and torts. According to this section in the case of a

continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or tort, as the case may be continues. In a continuing wrong, the wrongly act complained of creates a continuing source of injury and is of such a nature as to render the doer of it responsible for the continuance. A wrongful act produces a state of affairs, every moment's continuance of which is a new tort for which a fresh action is maintain able. Even as per Article 113 of the Limitation Act, where no limitation is prescribed, the suit can be instituted within three years when the right to sue accrues.

10. I have stated above that every day furnished a fresh cause of action to the plaintiff because of the threatened act, therefore, in the opinion of this Court, there is no limitation in such like cases.

11. In this regard, reliance can be placed upon Nur Mohammad v. Gauri Shankar and Anr. AIR 1920 Lah 195, wherein it was held by the Hon"ble Judge that "it seems to me that the plaintiffs had a fresh cause of action on each occasion when the defendant discharged water through the parnala on to the plaintiffs" roof and that they are entitled to rely upon the last occasion when this was done as the starting point of limitation, unless the defendant has acquired an indefeasible right of easement by 20 years" enjoyment."

12. It is the specific case of the plaintiff that he is being threatened by the defendants on the plea that they had purchased this land. When the plaintiff is complaining regarding the continuing threat to his possession, it will furnish him a fresh cause of action on every day and, therefore, the suit of the plaintiff was within limitation. The Courts below wrongly came to the conclusion that it is a complete act. Rather, it was a continuing wrong, therefore, the suit of the plaintiff was within limitation.

13. Resultantly, the judgment and decree of the Courts below are hereby set aside and the case is hereby remanded to the trial Court to dispose of the issues No. 1, 3 and 4 on merits. The plaintiff-appellant is directed to appear before the trial Court on 1.10.1999.