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In the Andhra Pradesh High Court

Case No : Appeal No. 1208 of 1975

Ghatmal Champalal — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 11-11-1982

Acts Referred:
Customs Act, 1962 — Section 110(2), 111, 124
Limitation Act, 1963 — Section 14

Citation : (1984) 3 ECC 342 : (1983) 14 ELT 2123

Hon'ble Judges : Ramachandra Rao, J;Lakshminarayana Reddy, J

Bench : Division Bench

Advocate : M.S.K. Sastry, for the Appellant; K. Subramanya Reddy, for the Respondent

Judgement

Ramachandra Rao, J.—This appeal is preferred against the judgment and decree of the learned Subordinate Judge, Rajahmundry, dismissing the suit, O.S. No. 119 of 1972 filed by the appellant-plaintiff for a declaration that he was the owner of the plaint schedule watches and for recovery of possession of the same or in the alternative for a decree for a sum Rs. 23,397.67 P. being the value of the said watches together with interest thereon.

2. The relevant facts giving rise to the appeal are as follows : The plaintiff is a registered firm carrying on business at Rajahmundry in fancy goods etc. On 21-10-1964, D.W. 1, the Inspector of Central Excise, along with two other Inspectors, found a parcel lying in the office of the Savani Transport Company at Rajahmundry. The said parcel was received from Bombay covered by a lorry receipt, Ex. A-15, the name of the consignee being shown as "M/s. G.C." As the Central Excise authorities found the lorry receipt to be suspicious, the parcel was got opened before mediators. The said parcel contained, in addition to account books, a tin box covered with straw. On opening the tin box, 195 wrist watches (wrist watches) of foreign origin were found. A mediator report, Ex. B-4 was drawn up and an inventory, Ex. B-5, was taken and the watches were seized by

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D.W. 1. On information that the consignee''s name mentioned as "M/s. G.C." refers to one Ghatmal Champalal, the appellant-plaintiff, D.W. 1 and his staff conducted searches at the shop and residence of the plaintiff. But the plaintiff was found missing. After three days, the proprietor of the plaintiff-firm, Ghatmal (P.W. 2) appeared before the Central Excise authorities on summons being issued to him. On at date i.e. 24-10-1964, a statement (Ex. B-1) given by P.W. 2 was recorded by D.W. 2, a resident of Rajahmundry. In Ex. B-1, P.W. 2 stated that he was carrying on business in fancy goods at Rajahmundry in the name of "Ghatmal Champalal", Champalal being his younger brother. His mother is also a shareholder. He stated that he was carrying on business in all kinds of fancy goods viz., pens, watches, steel utensils etc., for which they obtained a licence and that they used to purchase the aforesaid goods from traders at Madras, Bombay and Calcutta. He further stated that "neither myself nor my shareholders have given order for the above articles in Bombay recently. Hence we are not waiting for parcel from Bombay." He further stated that a person by name Sukhraj residing in his house went to Bombay prior to ten days to purchase the goods and that he asked him to purchase account books.

3. With regard to the watches seized, he stated as follows :-

"I learnt that you have seized the watches in Savani Transport Company on 24-10-64. I also learnt that you searched my house situated in Nallamandu Gunduvari Street, Rajahmundry. I do not know why you have searched. I am not doing watch business. I have not insisted Sukraj to bring the foreign watches when I sent him to Bombay. The watches which you have seized in Savani Transport Company at Rajahmundry do not belong to me. I do not know what that parcel contains and by whose name it has come. I do not know who had sent the parcel in my name. The parcel which you have seized is not by name in person or does not belong to my company."

He further stated :

"The parcel which you have seized on 21-10-64 in Savani Transport

Company relating to the foreign watches is not concerned to me. The

foreign watches are not available either in my house or at my shop.

According to my account book, no watches are with me. * * *

* * * * The articles mentioned in the receipt are not concerned to me. I have not booked any orders relating to any kind of articles from the businessman at Bombay. My clerk whom I have sent also had not issued any such kind of order."

4. He further stated that this statement was written with his consent and in his presence and it was heard when read over and was fully understood by him. It also contains an endorsement by the scribe, S. Bhujanga Rao (D.W. 2) that the statement was written by him as narrated by Ghatmal (P.W. 2) and that it was understood by him when read over and that he admitted the same to be correct.

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5. On 19-2-1965, the officials of the Central Excise Department examined Sukhraj (who is said to be the Accountant of the plaintiff-firm) at Ahore in Jalore district in the State of Rajasthan. He stated that he was working in the shop of the plaintiff-firm at Rajahmundry on a salary of Rs. 1000/- per month. One month back, he took the entire amount, which was due to him, after deducting Rs. 536/- against all expenses and that he would go back whenever he found leisure.

He further stated as follows :-

"Apart from this, I have not got any money from them on credit basis either to purchase any goods or to give at Ahore at their house. I do not know the partners in the shop of Ghatmal."

6. He further stated that the plaintiff-firm was a fancy goods shop dealing in show, powder, fountain pens, blades, razors, ink etc., and categorically stated that "Articles like watches were not sold so far at the shop." He admitted that he was writing the ledger in Marwadi language. He stated :

"When necessary, goods were received from Madras, Bombay and Calcutta. Ghatmal used to personally attend to the purchases book. Once I have also purchased goods worth Rs. 3,000/- to Rs. 4,000/- from Madras which do not contain any watches. I have not ordered for purchase of any goods from Bombay. Till to-day, I do not know that watches were seized from the shop of my proprietor. I never went to Bombay for purchase of watches nor did I sent any order as long as I was in their shop."

7. He further stated that, after taking goods worth Rs. 4,000/- to Rs. 5,000/- at Madras, which did not contain any watches, he returned direct to Rajahmundry. He made another significant statement that this proprietor did not tell him to buy any account books.

8. Thus, the plaintiff did not set up any claim to the watches seized by the Central Excise Department on 21-10-1964. While so, on 14-10-1965, P.W. 2, the partner of the plaintiff-firm, sent a representation, Ex. A-17, to the Collector, Central Excise, Hyderabad, stating that no show cause notice was issued to him u/s 124 of the Customs Act, though more than six months had elapsed from the date of seizure and that, under the provisions of Section 110(2) of the said Act, he was entitled to the return of the goods seized. Thereupon, the Collector of Central Excise issued a notice, Ex. A-19, dated 16-10-1965 calling upon the plaintiff to show cause as to why the 195 wrist watches seized on 21-10-1964 should not be confiscated u/s 111(d) of the Act read with Section 3(2) of the Import and Export Control Act, 1947. P.W. 2 submitted a reply, Ex. A-20, dated 4-11-1965 stating that the statement, Ex. B-1, dated 24-10-1964 was obtained from him at the office of the Superintendent of Central Excise, Rajahmundry, by holding out a threat that he would be punished and that the said statement could not be said to have been given voluntarily and could not be used against him and that it was given before P.W. 2 received any information about the purchase of

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the watches. Therefore, the said statement, under which he denied his claim to the watches seized would not bar him from setting up a claim to the same. He further stated that he instructed Sukhraj (P.W. 4) to purchase profitable goods of various varieties especially from Bombay and not foreign watches and that, as he did not receive any information from P.W. 4, he could not definitely say as to the purchases effected or the goods transported and, therefore, he was forced to say that he had nothing to do with the said watches and that, subsequently after his clerk (P.W. 4) returned, he came to know that P.W. 4 had purchased the watches. He stated that P.W. 4 gave the statement out of fear and threat of action and, therefore, the said statement was not admissible and could not be acted upon. He stated that the purchases were accounted for in the books of account maintained by the plaintiff-firm in the usual course of business, that the purchase of 95 watches was supported by bills issued by Sha Premji Devichand of Bangalore and that the foreign watches were freely available in the open market and that some other watches were purchased at Bombay, though not evidenced by the bills, and, therefore, there were no grounds made out for believing that the said watches were of foreign origin and were unlawfully imported as such they could not be confiscated.

9. The Collector of Central Excise, after recording the evidence of the parties and holding that the statements given by both P.W. 2 and P.W. 4 were voluntary, came to the conclusion that the plaintiff did not establish his ownership of the watches seized and that the watches shown in the bills did not agree with the watches found in the seized consignment either in the total number of pieces of each make or even in the full description of each make and, accordingly, passed an order u/s 111(d) of the Customs Act directing confiscation of the 195 watches and also the package and the other contents thereof in which the watches were found concealed.

10. The plaintiff-firm carried the matter in appeal to the Central Board of Excise and Customs, New Delhi, and the Central Board, by order, Ex. A-23, dated 21-10-1967, confirmed the order of the Collector of Central Excise and rejected the appeal. A further revision to the Government was also rejected by the Government by order, Ex. A-25 dated 9-9-1968.

11. Thereupon, the plaintiff-firm filed a writ petition (W.P. No. 972 of 1969) in this Court, which was also dismissed by order, Ex. A-26, dated 23-3-1971, by Alladi Kuppuswamy, J. (as he then was). The learned Judge observed :

"..... it cannot be said that the conclusion of the Collector that the petitioner has not proved that he is the owner of the watches, which is a conclusion of fact, is incorrect. It has not been shown to be arrived at due to any error of law or error of jurisdiction. The Collector very properly took into account the circumstance that the petitioner himself denied that he was the owner of the watches and the clerk also subsequently disowned any connection of the firm with the watches. There is no case made out for interference in the writ petition regarding the finding arrived at by the Collector that the petitioner has not proved that he was

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the owner of the watches seized."

12. A contention was sought to be raised before the learned Judge on behalf of the plaintiff (petitioner therein) that the show cause notice issued more than six months after the seizure, contravened Section 110(2) of the Customs Act. On behalf of the respondents therein, it was contended that the period had been extended. But the learned Judge observed that it was unnecessary to go into that question in view of the finding of the Collector of Central Excise that the petitioner had not proved that he was the owner of the watches and that he was not in any way aggrieved by the seizure and he was, therefore, not entitled to notice or to file the writ petition. It was further sought to be contended that, because a notice was given to the petitioner, he must be deemed to have been treated as the owner of the watches seized. But the learned Judge observed that the notice was issued to give an opportunity to the petitioner to prove firstly that he was the owner of the goods and secondly that the goods could not be seized. The learned Judge observed that the petitioner failed to substantiate the case that he was the owner and, therefore, the petitioner could not say that, merely because he was given an opportunity, he must be treated as the owner and that further questions should be gone into in spite of the finding arrived at by the Collector of Central Excise that the petitioner had failed to prove that he was the owner of the goods. In that view, the learned Judge dismissed the writ petition with costs. But the learned Judge observed as follows :-

"This order will not preclude the petitioner from establishing in any appropriate proceedings in a Court of law, if he is so advised, that he is the owner of the seized goods."

13. Thereafter, the plaintiff issued a notice, Ex. A-27, dated 6-5-1971 through their lawyer, u/s 80, C.P.C. to Union of India as well as the Central Board of Excise and Customs and the Collectors of Central Excise, Hyderabad and Guntur, and filed the present suit on 15-6-1972 for the following reliefs :

"(a) to pass a decree declaring that the plaintiff is the owner of the plaint schedule watches and account books and for their possession;

(b) of in the alternative to pass a decree for Rs. 23,399.67 P. in favour of the plaintiff and against the defendants and its properties :

(c) to award interest from the date of suit till the date of realisation;

(d) to award costs of the suit."

14. To the suit, the Union of India, represented by the Secretary, Ministry of Finance, the Central Board of Revenue and Customs, New Delhi, the Collector of Central Excise, Hyderabad, and the Collector of Central Excise, Guntur, have been impleaded as defendants 1 to 4 respectively. On behalf of the defendants, the 4th defendant filed a written statement, which was adopted by the other defendants, contending that the claim of the plaintiff was not sustainable, that the suit itself was not maintainable, that the Civil Court had no jurisdiction to

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entertain the suit and that the suit was not properly valued and was also not within time. On the aforesaid pleadings, the following issues were framed :

"(1) Whether the plaintiff is entitled to the declaration as prayed for ?

(2) Whether the plaintiff is entitled to recover possession of the watches or their value in the alternative ?

(3) Whether the suit is maintainable ?

(4) Whether the suit is properly valued ?

(5) Whether the suit is in time ?

(6) To what relief ?"

Oral and documentary evidence was adduced on behalf of the plaintiff and the defendants. On behalf of the plaintiff, Devichand Premji, who was alleged to have sold some of the watches under the bills, Exs. A-10, A-11 and A-12, the originals of Exs. A-1, A-2 and A-3, was examined as P.W. 1; Ghatmal, the partner of the plaintiff-firm, was examined as P.W. 2; Raichand, a resident of Rajahmundry, who attested the statement, Ex. B-1, was examined as P.W. 3; and Sukhraj, the Accountant of the plaintiff-firm-firm, who gave the statement, Ex. B-3, was examined as P.W. 4. As many as 34 documents were filed on behalf of the plaintiff. On behalf of the defendants, K. V. Subba Rao, the Inspector of Central Excise, Who seized the watches and who recorded the statement, Ex. B-1, of P.W. 2, was examined as D.W. 1 and the scribe of Ex. B-1 was examined as D.W. 2.

15. The learned Subordinate Judge, on a careful consideration of the entire oral and documentary evidence, came to the conclusion that the claim of the plaintiff that he got the watches purchased at Bangalore and Bombay and that he was the owner of the watches could not be accepted and that, therefore, the plaintiff was not entitled to recover possession of the watches or their value and, consequently, he was not entitled to the declaration prayed for. On issues 3 and 4, it a appears, no arguments were advanced. Hence the suit was held to be maintainable and the valuation of the suit was found to be proper. On issue No. 5 relating to limitation, the learned Subordinate Judge held that the proceedings before the Central Excise authorities were pending and the revision filed by the plaintiff was rejected by the Government on 9-9-1968 and the writ petition filed by the plaintiff was dismissed on 23-3-1971 and, therefore, the aforesaid period should be deducted u/s 14 of the Limitation Act and hence the suit was within time. However, in view of the findings on Issue Nos. 1 and 2 against the plaintiff, the learned Subordinate Judge dismissed the suit with costs.

16. In this appeal, Sri M. S. K. Sastry, the learned Counsel for the appellant plaintiff, sought to challenge the findings recorded by the lower Court against the plaintiff on Issue Nos. 1 and 2. He contended that the statements, Exs. B-1 and B-3 recorded from P. Ws. 2 and 4 respectively, were not voluntary and could not

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be acted upon, that they were made in ignorance of the real state of affairs and, therefore, they should not be treated as admissions on the part of the plaintiff, that when once the real facts have come to the knowledge of P.W. 2, he made a claim for the watches and that the Central Excise authorities wrongly rejected the claim of the plaintiff for the watches seized. He further contends that the purchases were evidenced by the receipts, Exs. A-10, A-11 and A-12, the originals of Exs. A-1 to A-3, and the lorry receipts, Ex. A-15, that the account books contain entries relating to these purchases and, therefore, there is no reason to disbelieve the plaintiff''s version that the watches were purchased by him. He also contends that, when the Central Excise authorities themselves issue a notice to the plaintiff treating him as the owner of the watches, it is not open to them to negative the plaintiff''s claim to the said watches and that no grounds were made out for confiscating the watches.

17. But we are unable to agree with these contentions for the reason that the statements, Exs. B-1 and B-3, recorded by the Central Excise authorities at the earliest point of time from P.W. 4, clearly show that the plaintiff denied that he had anything to do with the watches seized.

18. It is contended by the learned Counsel for the appellant that no reliance can be placed upon the statement of P.W. 2 (Ex. B-1), as it was not made voluntarily. But there is no merit in this submission. Both D.W. 1 and D.W. 2 stated that the statement, Ex. B-1, was given by P.W. 2 voluntarily. Ex. B-1 contains a recital that the statement was read over to P.W. 2 by the scribe, D.W. 2, and that P.W. 2 admitted the same to be correct. D.W. 2 is an independent witness and nothing has been suggested in his cross-examination to discredit his testimony. There are, therefore, no grounds made out for holding that the statement, Ex. B-1, was not voluntarily given. Further, the statement, Ex. B-3, given by P.W. 4, the clerk of the plaintiff-firm, shows that no watches were purchased by him and that, in fact, the plaintiff did not ask P.W. 2 to purchase any watches. He goes to the extent of saying that the plaintiff-firm was not dealing in wrist watches. This statement was recorded by the Central Excise authorities and no reasons have been given for holding that the said statement was not voluntary or that it was taken by any threat or coercion.

19. One other circumstance to be noticed is that the seizure of the watches was made as early as on 21-10-1964 and P.W. 2''s statement was recorded on 24-10-1964 and P.W. 4 returned from Ahore to Rajahmundry on 4-11-1964. Therefore the plaintiff must have been aware by 4-11-1964 that P.W. 4 had purchased the watches at Bangalore and Bombay. But the plaintiff did not immediately send any representation to the Central Excise authorities setting up a claim for the said watches. It is only on 14-10-1965 under Ex. A-17 that the plaintiff for the first time set up a claim to the watches seized on 21-10-1964. But this belated claim belies the claim of the plaintiff. Further, there is no reason why P.W. 4 should have consigned these watches from Bombay when he is alleged to have purchased some of the watches at Bangalore. Moreover, the

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suspicious way in which the watches were sent by a lorry concealed in a dealwood box also does not show that the purchases were true. Further, the purchases of all watches were not evidenced by bills. The receipts, Exs. A-10, A-11 and A-12 cover only 95 watches. For the other watches, the plaintiff did not produce any evidence to show from whom he had purchased or at which place. The entries in the account books with regard to the make of the watches do not tally with the watches seized. The account books of P.W. 1 were not produces to support the bill alleged to have been issued by P.W. 1 in respect of the said 95 watches. Even before the Central Excise authorities, P.W. 2 did not produce any account books when they wanted to verify the same. When the Central Excise authorities wanted to inspect the accounts P.W. 2 stated that the accounts upto 4-11-1964 were sent away to Rajasthan in connection with some estate duty proceedings and that he would produce the same within fifteen days; but for more than eight months thereafter, he did not take any steps to produce the same. The account books were produced at a very belated stage on 16-2-1965. On a scrutiny of the said account books, it was found that blank spaces were left at the end of every day''s transactions. A suggestion was made that these blank spaces were left with a view to facilitate fabrication of entries as and when necessary. The learned Subordinate Judge was not inclined to place any reliance on the entries in the account books. Even otherwise, in the face of the clear admissions made in the statements, Exs. B-1 and B-3, by P.W. 2 and P.W. 4 respectively at the earliest point of time denying that they had anything to do with the wrist watches seized, coupled with the other evidence on record, it follows that the plaintiff had not established his ownership of the watches seized. The finding of the lower Court that the plaintiff was not the owner of the watches seized is correct. It, therefore, follows that the plaintiff is not entitled to a declaration that he was the owner of the watches seized or for recovery of possession of the said watches or in the alternative for recovery of the value of the said watches. We, therefore, confirm this finding of the lower Court. On this finding, the appeal is liable to be dismissed.

20. Even on the question of limitation, the lower Court does not seem to have taken a correct view. It has to be remembered that goods were seized on 21-10-1964 and the proceedings before the Central Excise authorities terminated by dismissal of the revision petition by the Government of India on 9-9-1968. The plaintiff preferred a writ petition (W.P. No. 972 of 1969) in this Court on 11-1-1969 and the same was dismissed on 23-3-1971. It is thereafter that the plaintiff issued a suit notice u/s 80, C.P.C. on 6-5-1971 and filed the suit on 15-6-1972. The cause of action for the suit is the seizure of the watches alleged to belong to the plaintiff and the suit is now based on title. This is not a suit where the plaintiff is challenging the order of the Central Excise authorities. In fact, it is highly doubtful whether such a suit would lie. However, the suit, as framed, is for establishing the plaintiff''s title to the watches seized and for recovery of possession of the same. In the writ petition the learned Judge was not inclined to interfere with the finding of face arrived at by the competent

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Central Excise authorities in their exercise of their jurisdiction under the statute, that the plaintiff had failed to establish his title to the watches seized. That means, even in the writ petition, the finding arrived at by the Central Excise authorities was not shown to be vitiated by any error of law or error of jurisdiction or any error apparent on the face of the record. If so, we do not see how the plaintiff can challenge the said finding once again by way of a suit. No doubt, an observation was made in the writ petition that it was open to the plaintiff to establish his title by way of a civil suit in an appropriate forum. But that can only be done if such a suit is open to him according to law. We do not think that the said observation would enable the plaintiff to get over the period of limitation or to challenge the findings of fact arrived at by the Central Excise authorities on a proper appreciation of the relevant evidence adduced before them. We are, therefore, inclined to hold that the plaintiff is not entitled to invoke the benefit of Section 14 of the Limitation Act and exclude the period during which the writ petition was pending for purposes of computation of the period of limitation for filing the present suit. If that period cannot be excluded, the suit would be clearly barred u/s 69 of the Limitation Act, which prescribes a period of three years for recovery of specific movable property, from the date when the property was wrongfully taken. We, therefore, hold that the suit is also barred by limitation.

21. For the foregoing reasons, the appeal fails and is dismissed with costs.

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