
(1945) 02 BOM CK 0009

In the Bombay High Court

Case No : Civil Revision Application No. 179 of 1944

Hafasji Ibrahim

APPELLANT

Vs

Mangalgirji Mathuragirji

RESPONDENT

Date of Decision : 21-02-1945

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151
Mamlatdars Court Act, 1906 — Section 18(3), 23

Citation : AIR 1946 Bom 201 : (1945) 47 BOMLR 845

Hon'ble Judges : Chagla, J

Bench : Single Bench

Judgement

Chagla, J.—On June 10, 1942, a decree was passed in favour of the opponent against the petitioners by the Court of the Extra Avalkarkun at Godhra u/s 19 of the Mamlatdars' Courts Act ordering the petitioners to hand over possession of the suit lands to the opponent. On June 29, 1942, the petitioners applied to the Collector of Broach and Panchmahals, Godhra, in revision u/s 23 of the Mamlatdars' Courts Act. On October 7, 1942, the original defendant died, and on January 5, 1943, the present petitioners applied to bring themselves on record as the heirs of the original defendant. On November 26, 1943, the Collector issued notice to the parties for the hearing of the revisional application. On December 15, 1943, the matter came before the Assistant Collector and he took the view that the revisional application had abated inasmuch as the petitioners had not applied to bring themselves on record within one month of the death of the original defendant, and on that ground he held that the application was barred and rejected it. It is from this order of the learned Assistant Collector that this revisional application has been preferred.

2. Now Section 18, Sub-clause (3), of the Mamlatdars' Courts Act, provides that in case of the death of any party, while the suit is pending before him, if application is made within one month of such death, the Mamlatdar shall determine summarily who is the legal representative of the deceased party and shall enter on the record the name of such representative; and if no such

application is made, the suit shall abate. Section 23, Sub-clause (I), provides that there shall be no appeal from any order passed by a Mamlatdar under the Mamlatdars' Courts Act; but Sub-clause (2) of that section gives revisional powers to the Collector. There is no provision in the Act for bringing on record the heirs of the applicant in a revisional application in the event of the applicant dying nor is there any provision for the abatement of the revisional application on the death of the applicant. In *Ganpatram Jebhai v. Ranchhod Haribhai* I.L.R (1892) Bom.645 Mr. Justice Fulton and Mr. Justice Telang held that under the provisions of the then Mamlatdars' Courts Act (III of 1876), if a party to a suit pending before the Mamlatdar's Court died the suit abated and the heirs of the deceased party could not intervene to proceed with the suit; and Mr. Justice Fulton took the view that as the object of the Act was to provide speedy and temporary relief it was thought inexpedient to make any provision for the continuance of a suit on the death of one of the parties. After this decision was given, the Mamlatdars' Courts Act has been amended; and as I have just pointed out, Sub-clause (3) of Section 18 now provides for the continuance of the suit on the death of a party to the suit pending before the Mamlatdar's Court.

3. The question arises: what is to happen to a revisional application pending before a Collector when the applicant dies? Does it abate? Or is there any period of limitation prescribed for bringing the heirs on record in default of which it would abate? Or is there no limitation at all for the purpose of the heirs of the applicant continuing the revisional application? Mr. C.K. Shah for the opponent has relied on the Bombay decision to which I have just referred; but that dealt with proceedings in a suit pending before the Mamlatdar and it dealt with the law as it then existed and which has been radically amended now. In any case that was not a decision on the question which I have to determine in this application.

4. To my mind the provisions of Order XXII of the CPC cannot apply to the revisional proceedings before the Collector. Order XXII applies in terms to all suits and appeals. The question is whether by reason of Section 141 of the Code the procedure provided under Order XXII can be made applicable to these proceedings. Their Lordships of the Privy Council in *Thakur Pershad v. Shaikh Fakir ullah* (1894) L.R. 22 I.A. have laid down that the proceedings spoken of in Section 141 of the Code refer only to original matters in the nature of suits such as proceedings in probates, guardianships, and so forth. Now it cannot possibly be said that a revisional application is an original matter in the nature of a suit and, therefore, to my mind Order XXII would not apply to the revisional application pending before the Collector. I find that a learned Judge of the Madras High Court in *Basawanjanayulu v. Ramalingayya* A.I.R [1938] Mad. 115 has taken the view that Order XXII, Rules 3 and 4, are applicable to proceedings u/s 115 of the CPC and an order passed by the High Court on a petition u/s 115 in ignorance of the fact of death of the petitioner more than ninety days previously is one made without jurisdiction and is a nullity. In that case the learned Judge took the view that Order XXII, Rule 3, applied to revisional proceedings u/s 115 of the Code and he also took the view that Article 176 of the

Indian Limitation Act applied. With respect to the learned Judge, he does not seem to have considered the decision of the Privy Council to which I have referred, nor did he consider whether revisional proceedings u/s 115 can be called an original matter in the nature of a suit. In any case it is difficult to see how Article 176 of the Indian Limitation Act would apply, because Article 176 refers to the legal representative of a deceased plaintiff or of a deceased appellant; and in a revisional application you neither have a plaintiff nor an appellant but only an applicant or a petitioner. To my mind it seems that the better view is the view taken by the Lucknow Court in *Kazim Husain, Nawab, Syed v. Pearey Lal Seth* I.L.R (1939) Luck.26. Mr. Justice Radha Krishna Srivastava took the view there that Order XXII of the CPC does not apply to an application for substitution of the name of a legal representative in place of a deceased party in a revision application and he further held that there was no rule of limitation governing an application for substitution of parties in a revision application. The learned Judge further points out that the revising Court would require a representative of the deceased applicant or opponent in order to decide the matter and, therefore, the Court would require a legal representative to be brought on record u/s 151 of the Civil Procedure Code. The learned Judge further took the view that assuming any article of the Limitation Act applied at all, it would not be Article 177 but Article 181 which is the residuary article as far as applications are concerned.

5. The learned Assistant Collector took the view-and rightly-that there was no specific provision under the Mamlatdars' Courts Act with regard to the abatement of pending revisional applications before the Collector. But he proceeded on a rather curious reasoning that because the period of one month was given in the case of a party to the suit dying for the heirs to be brought on record, therefore a similar time-limit must be imposed in the case of a revisional application. You cannot surely bar litigants' applications or suits by analogy. The learned Assistant Collector then went on to say that as the application in this case was made nearly three months after the death of the original defendant, the application was time-barred and he would not hear the application on its merits and rejected the application. Now, in my opinion, the learned Assistant Collector was definitely wrong in coming to the conclusion that the limitation for the revisional application before him was one month, and he acted with material irregularity in refusing to exercise his jurisdiction to hear the revisional application pending before him on the ground that the application was barred by limitation. It was open to him to take the view that under all the circumstances of the case he would not exercise his inherent power u/s 151 of the CPC to bring the heirs of the applicant on record and that he would not proceed with the application, the applicant being dead. But that is not what he has done. He has refused to hear the application merely because, according to him, it is barred by limitation, which in my opinion clearly is not.

6. It is to be noted that even if one accepts the view of the Madras High Court in *Basawanjanayulu v. Ramalingayya* that revisional applications fell under Article

176 of the Indian Limitation Act, even so the applicant in this case was within time because his application was made within three months of the date of the death of the original defendant.

7. I would, therefore, send back this matter to the Assistant Collector to decide whether under the circumstances of the case he should in his discretion allow the petitioners to bring themselves on record as the legal representatives of the original applicant; and if he so decides, to hear the revisional application on merits.

8. The rule will, therefore, be made absolute with costs.