

(1997) 01 P&H CK 0171

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1865 of 1979

Haryana State and Another

APPELLANT

Vs

Babu Singh

RESPONDENT

Date of Decision : 02-01-1997

Acts Referred:

Limitation Act, 1963 — Article 47

Citation : (1997) 117 PLR 158 : (1997) 4 RCR(Civil) 84 : (1997) 2 RCR(Civil) 618

Hon'ble Judges : B. Rai, J

Bench : Single Bench

Advocate : M.S. Sindhu, for the Appellant; R.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

B. Rai, J.—This Regular Second Appeal arises out of a suit filed by Babu Singh for recovery of Rs. 15,00/- which was dismissed by the Subordinate Judge First Class, Gurgaon, vide his judgment and decree, dated November 15, 1978. However, on appeal, the judgment and decree of the trial Court were set aside and suit of the plaintiff was decreed by the learned District Judge, Gurgaon, vide his judgment and decree, dated March 23, 1979.

2. Facts are that Babu Singh was granted lease for excavation of minor minerals from the quarry within the revenue estate of village Hariayhara by the Industries Department of the State of Haryana, on accepting highest bid of Rs. 2,000/- given by the plaintiff. That lease was for the period from December 6, 1971 to March 31, 1973. In accordance with the terms and conditions of the lease, an amount of Rs. 500/- was paid by Babu Singh as security and another sum of Rs. 500/- as first quarterly instalment. An agreement Exhibit P8/D containing all the terms and conditions was executed in that behalf. Babu Singh paid second quarterly instalment of Rs. 500/- after three months of the execution of the agreement Exhibit P8/D and in that way, a total sum of Rs. 1,500/- was paid by him. Some persons from village Hariayhara initiated proceedings in the civil court

challenging the right of the defendants to create such a lease in favour of Babu Singh. Babu Singh was also arrayed as defendant in that suit. The said suit was decreed by the Senior Subordinate Judge vide his judgment, dated June 10, 1974 (Exhibit P7) holding that the defendants had no right to grant issue in respect of the land in question, as no right ever vested in defendants 1 and 2. The judgment and decree of the Court of Senior Subordinate judge were challenged in appeal, but that appeal was dismissed by the learned Additional District Judge, dated February 21, 1976. It has been pleaded by Babu Singh plaintiff that he was not allowed to excavate minor minerals by the land owners of village Hariyahara and the possession thereof was not delivered to him by the defendants who had in fact, no right to create such lease on account of the findings returned by the civil court. It is alleged that defendant 1 and 2 failed to perform their part of the contract. Therefore, he had a right to claim the refund of Rs. 1,500/-. On these averments, he claimed the recovery of a sum of Rs. 1500/- and for issuance of an injunction restraining them from realising any amount from him. According to Babu Singh, he had given statutory notice u/s 80 of the Code of Civil Procedure, to the defendants before institution of the suit. The suit filed by Babu Singh was contested by the defendants alleging that the plaintiff worked the quarry for more than five months under the lease granted by the Government in his favour, as admitted by him in his petition, dated August 10, 1975, addressed to the Home Minister, Haryana, and as such, he could not claim any refund of the amount paid by him. The defendants also took up the plea that he be non-suited on the ground of limitation and for improper valuation for the purpose of court-fee; and it was also alleged that no valid notice was served u/s 80 of the Code before filing the suit.

3. As many as six issues were framed by the trial Court. The parties led evidence on those Issues. Issues 1 to 3 were taken up together and all the three Issues were decided in favour of the plaintiff. Finding on Issue No. 5 was returned against the defendants. However, under Issues No. 4 the finding was returned that in all eventuations the claim of plaintiff must be defeated on the ground of limitation. Accordingly, this issue was decided against the plaintiff. Consequently, the suit was dismissed. The judgment and decree of the trial Court on appeal were set aside and the suit of the plaintiff, as indicated earlier, was decreed.

4. Hence, this Regular Second Appeal at the instance of the State of Haryana.

5. Only issue relevant for decision of this Appeal is Issue No. 4, which is reproduced hereunder :

1. Whether the suit is within time ? OPP.

6. It was argued by the learned counsel for the appellants that the instant case is squarely governed by Article 24 of the Limitation Act, 1963, according to which the limitation prescribed in three years for filing a suit for recovery of money and the period of limitation is to be reckoned from the date when the money was received by the appellants. Suit for recovery could be filed within three years

under Article 24 of the Limitation Act, 1963. Rs. 500/- as security were paid on April 5, 1971. First quarterly instalment was also paid on the said date, i.e. April 5, 1971. Agreement Exhibit P8/D was executed on December 6, 1971. Second instalment was paid on June 27, 1972 after three months of execution of the agreement. Suit having been filed on March 28, 1977, was clearly barred by law of limitation. According to the learned counsel, the first appellate Court gravely fell in error in applying the provisions of Article 47 of the Limitation Act. It was contended that assuming that Article 47 of the Limitation Act is applicable, the suit was still barred by time inasmuch as the limitation under Article 47 is also three years. The consideration failed on the very day the lease was granted, and the learned lower appellate Court committed a legal error in holding that the consideration failed when the judgment was given by the District Judge against the State Government. It was pleaded that the interpretation placed by the first appellate Court is not correct in the eye of law. Summing up his argument, it was submitted by the learned counsel for the appellants that the lower appellate Court misdirected itself in interpreting Article 47 of the Limitation Act, 1963. As such, the judgment of the first appellate Court deserves to be set aside and that of the trial Court should be restored.

7. On the other hand, learned counsel for the respondent has vehemently contended that provisions of Article 47 and not of Article 24 of the Limitation Act, 1963, are attracted in the facts and circumstances of the instant case.

8. I have given my thoughtful consideration to the contentions raised on behalf of the parties and have carefully gone through the provisions referred to by them. Article 24 of the Act reads as under :-

Description of Suit Period of Time from which period For money payable Limitation begins to run. by the defendant to plaintiff for money received Three years. When the money is the by the defendant for received. the plaintiffs use.

This Article came to be considered by the apex Court in A. Venkata Subba Rao Vs. State of Andhra Pradesh, , wherein it was held that the conditions necessary for the applicability of this Article are as under :

- (1) The suit must be for money received by the defendant.
- (2) The money must in justice and equity, belong to the plaintiff at the time of such receipt.
- (3) The circumstances under which the money is received by the defendant must be such that, in the eye of the law, the receipt is by the defendant for the use of the plaintiff.

It is, therefore, clear that where money is paid by the plaintiff to the defendant under an agreement which is void, the money would be money received by the defendant for the use of the plaintiff within the meaning of this Article and a suit for the recovery of such money will be governed by Article 24 of the Act.

9. Article 47 of the Act reads as under :

Description of Suit Period of Time from which period For money paid Limitation begins to run. upon an existing con- Three years. The date of the failure. sideration which afterwards fails. There is catena of authorities wherein it has been held that this Article applies to suits for the recovery of money paid, based on the failure of consideration which existed at the time of such payment. The words "paid upon an existing consideration" would imply that the money has been paid in the pursuance of a contract between the parties. Alternatively it implies that where the money has not been paid in pursuance of any contract, a suit for the recovery thereof would not be governed by this Article. A conjoint reading of Articles 24 and 47 of the Act would show that both the Articles provide a period of limitation of three years for filing a suit. The period of limitation under Article 24 of the Act is to be reckoned from the date when the money is received by the defendant, whereas under Article 47 of the said Act, the date of reckoning the period of limitation is the date of failure of consideration. In the instant case, there was a contract of lease for excavation of minor minerals between Babu Singh and the appellants herein and an agreement to that effect containing the terms and conditions of the lease was entered into between the parties. The lease was for the period from December 6, 1971 to March 31, 1973 and Babu Singh respondent herein was to pay Rs. 2,000/- as lease money. He paid Rs. 500/- as security and another sum of Rs. 500/- was paid by him as first quarterly instalment. He also deposited second quarterly instalment of Rs. 500/- after three months of the execution of the agreement as per terms and conditions contained therein. It was nowhere pleaded in the written statement that possession of the area, subject-matter of lease was delivered to Babu Singh. No doubt, a plea has been taken in the written statement that in a petition, dated August 10, 1975 addressed to the Home Minister, Haryana, Babu Singh had admitted that he carried on the mining work in the quarry in question for a period of five months and it was also so stated by DW-1 Mining Inspector Bhola Ram, but he has also not stated that possession of the area in question was delivered to Babu Singh. It is significant to note that when petition, dated August 10, 1975 Exhibit D1 was being exhibited, it was objected to on behalf of the plaintiff. When Babu Singh examined himself as PW-1 in support of his claim, he was not confronted with this document. Even suggestion that he had undertaken the mining work for a period of five months, as stated in Exhibit D-1 was not put to him. From this, it clearly emerges that possession of the area, subject matter of the lease, was not delivered to Babu Singh. It is not disputed that when Babu Singh went to the spot, he was not permitted by the villagers of village Hariyahara to undertake the mining work and they filed the suit for declaration that they were the owners of the quarry and for permanent injunction against the present appellants and Babu Singh, and their suit was decreed. The appeal filed by the State against that Judgment and decree also failed. It was held that the State Government had no right to give the quarry on lease. From the above, it is clearly proved that when the money was paid by Babu Singh, the

consideration was subsisting which afterwards failed on the date i.e. June 10, 1974 when the civil Court declared that the Government had no power to grant the lease of the area, subject-matter of the contract between the appellants and the respondents. Therefore, in the facts and circumstances of the case in hand, the District Judge Gurgaon, rightly came to the conclusion following the law laid down in Nathulal Vs. Sualal and Others, and Narsing Skivbakas Marwadi v. Pachu Rambakas Marwadi ILR 37 Bom 538 that it is Article 47 and not Article 24 of the Limitation Act, which is applicable to the controversy in question and, as such Babu Singh had filed the suit within limitation of three years. The finding returned by the first appellate Court is accordingly affirmed.

10. The appeal being without merit is dismissed with costs.