

(1979) 12 AHC CK 0002
In the Allahabad High Court
Case No : S.A. No. 439 of 1971

Jaddu and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 18-12-1979

Acts Referred:

Limitation Act, 1963 — Article 28

Citation : (1980) AWC 136

Hon'ble Judges : A.N. Verma, J

Bench : Single Bench

Advocate : R.N. Singh, for the Appellant;

Final Decision : Allowed

Judgement

A.N. Verma, J.—This is a Plaintiff second appeal arising out of a suit for declaration that the Plaintiffs are the owners of 107 bags of rice seized by the Defendant No. 1 through its Marketing Inspector and delivered in the custody of Defendant No. 2 as supurdar. The trial court decreed the suit. The Defendant No. 1 appealed. The suit of the Plaintiff has been dismissed by the lower appellate court on the ground that it is barred by limitation. Hence this second appeal.

2. The facts necessary for the decision of the question of limitation, which is the only question which arises for determination in this second appeal are these:

The 107 bags of rice which are the subject matter of the suit were kept in a room of a residential house of one Raghunath. On some information received the Marketing Inspector raided the house of Raghunath, broke open the lock and seized the bags of rice purporting to act under the provisions of U.P. Food Grains Licencing Order issued under the Essential Commodities Act. After the seizure the bags were delivered to the Defendant No. 2 supurdar. On getting the information about the seizure the Plaintiffs who claimed themselves to be the owner of the bags of rice as well as of the house where they were stored, approached the authorities and claimed that the bags might be released as they

belonged to the Plaintiffs and that Raghunath was a mere tenant of the Plaintiffs. The matter was investigated and eventually an order was passed on 2-3-1967 holding that the stock was liable to be forfeited on the ground that the provisions of U.P. Food Grains Dealers Licencing Order had been contravened. Against the order of forfeiture the Plaintiff filed a revision before the learned Sessions Judge, which was dismissed on 8-7-1967. The Plaintiffs thereupon filed a revision in this Court. While rejecting the revision this Court observed that the appropriate remedy for the Plaintiffs was to institute a civil suit for establishing their claim that they were the owners of the stock. Thereupon, the Plaintiffs filed the present suit on 15-3-1969.

3. The suit was contested by the Defendant-Respondent No. 1 on a variety of grounds all of which need not be reproduced here. One of the pleas raised in the defence was that the suit was barred by limitation.

4. On the pleadings of the parties, relevant issues were framed by the trial court. It held that the Plaintiffs were the owners of the disputed bags and that they had kept the goods stored in their tenanted accommodation. The other issues were also decided in favour of the Plaintiff and the suit of the Plaintiff was decreed. The Defendant No. 1 appealed. The appellate court affirmed the findings of the trial court except on the question of limitation. On the question of limitation, the lower appellate court applied Article 28 of the Limitation Act and held that limitation began to run in the present case from 3-11-1965, the date on which the Marketing Inspector had seized the stock. Computing the period of limitation from that date the lower appellate court held that the limitation for filing the suit expired on 3-11-1968.

5. Learned Counsel for the Appellant has contended that the lower appellate court has erred in law in holding that the right to sue first accrued in favour of the Plaintiffs on 3-11- 1965. Learned Counsel contended that the seizure was only in contemplation of some proposed action. There was no adjudication implied in the seizure of the stocks. The right to sue accrued for the first time on 2-3-1967, when the Sub-Divisional Magistrate overruled the objection of the Plaintiffs and directed forfeiture of the stocks. The period of limitation, therefore, ought to be computed from 2-3-1967 and not from 3-11-1965.

6. I have heard learned Counsel for the parties, and I am clearly of the view that the contention of the learned Counsel for the Appellant is right. The right to sue clearly accrued only when the Sub-Divisional Magistrate passed the order dated 2-3-1967 directing forfeiture of the stocks. It is by this order that it could be said that the claim of the Plaintiffs had been adjudicated. Prior to this the act of seizure in contemplation of a proposed action could not with any justification be legally regarded as affording any cause to the Plaintiff to institute a suit for declaration of his rights. It was only after the authorities had determined the claim of the Plaintiff that the Plaintiffs could legitimately institute the suit. I am, therefore, clearly of the view that the suit of the Plaintiff was not barred by limitation. I also hold that the right to sue accrued first on 2-3-1967 and not on

any date prior thereto.

7. The lower appellate court, has, therefore, erred in law in dismissing the Plaintiffs Appellant's suit.

8. The result is that this appeal succeeds and is allowed. The judgment and decrees of the lower appellate court are set aside and those passed by the trial court are restored. The Plaintiffs would be entitled to their costs throughout.