

(1976) 07 KL CK 0014
In the High Court Of Kerala
Case No : S.A. 33 of 1973

Janardhana Panicker

APPELLANT

Vs

Mohammed

RESPONDENT

Date of Decision : 20-07-1976

Acts Referred:

Constitution of India, 1950 — Article 80, 91
Criminal Procedure Code, 1898 (CrPC) — Section 514, 516A, 525
Limitation Act, 1963 — Section 14

Citation : (1976) 07 KL CK 0014

Hon'ble Judges : T. Chandrasekhara Menon, J; R. Bhaskaran, J

Bench : Division Bench

Advocate : P.C. Balakrishna Menon and V.P. Mohankumar, for the Appellant; P.K. Shamsuddin and P.K. Abdul Hassan, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskaran, J.—The Defendant in O. S. 436/68 on the file of the Munsiff Court, Parappanangadi is the Appellant in this S.A.A. calf involved in C.C. 136/60 on the file of the Sub Divisional Magistrate, Malappuram was entrusted to the Defendant, presumably as per an order u/s 514, Code of Criminal Procedure 1898. Though there was a conviction in that case in the trial court, the conviction and sentence were set aside by the appellate court and there was also a direction to give the calf to the accused. As the Defendant did not do so on the motion of the accused, the criminal court directed the Defendant to produce the calf in court. On failure to do so, he was sentenced to a fine of Rs. 200, the bond having been forfeited.

2. Thereafter the accused in the criminal case, who is the Plaintiff in the suit instituted a small cause suit No. 9/1963 on the file of the Munsiff Court, Parappanangadi. The suit was filed on 2nd April 1963. Ultimately that court returned the plaint on 29th November 1966 for presentation at the proper forum. On 20th January 1967 the suit is stated to have been filed as an original suit and

that is the suit out of which the present S. A. has arisen.

3. The trial court dismissed the suit holding that the Plaintiff had no "cause of action in as much as the Plaintiff could have prayed for getting possession of the calf through criminal court. The first appellate court disagreed with the finding of the trial court and allowing the appeal remitted the matter to the trial court for fresh disposal, particularly with reference to issues 2 and 3. It is against that decision of the first appellate court that the S. A. has been preferred by the defeated Defendant. When the matter came up for hearing before the learned Single Judge it was thought that a question of law of substantial importance was involved and the matter should be decided by Division Bench. That is how the matter has now come before us.

4. On behalf of the Appellant it was argued that there was no privity of contract between the Plaintiff and the Defendant and therefore the suit is not maintainable. Counsel submitted that under the provisions of Chapter 43 (Sections 516A to 525) of the Code of Criminal Procedure, 1898 a Magistrate who tries the case has the power to pass appropriate orders regarding the disposal of the property involved in the case. Therefore, what the Plaintiff ought to have done was to invoke the relevant provisions in that chapter before the criminal court. There is, no doubt, wide powers for the criminal court to compel the production of the property entrusted on bond to be produced when so directed. This does not, however, mean that a person in the position of the Plaintiff is without any remedy in the civil court. The suit has been filed on the allegation that the Plaintiff is the owner of the calf and that he was entitled to have it recovered from the Defendant to whom during the pendency of the criminal proceedings it was entrusted. We are, therefore, of the opinion that the remedy available in Chapter 43 of the Code of Criminal Procedure would not and did not preclude the Plaintiff from seeking relief in a civil court on the grounds available to him.

5. It was then contended by the counsel for the Appellant that in any event the suit deserves to be dismissed in as much as the suit was filed after the period of limitation. No provision of the Limitation Act which would be applicable to the case on hand has been mentioned in the plaint. However, it is the case of the Appellant that it would fall only under Article 80 of the Limitation Act, 1963, which prescribes a period of limitation for compensation for wrongful seizure of movable property under legal process. Assuming that it is Article 80 and without examining whether Article 91 would apply, if we examine this case we would find that the Plaintiff filed the suit within time. The decision of the appellate court in the criminal appeal was rendered on 19th March 1962. The Petition for directing the Defendant to make over the custody of the calf to the Plaintiff was disposed of only on 15th January 1963. Thereafter on 2nd April 1963 the small cause suit was filed. It was only on 29th November 1966 that the small cause suit was returned for presentation to the proper court. On 21st January 1967 the present original suit was filed.

6. It is the contention of the counsel that in as much as the original suit has been filed only in 1967, whereas the cause of action actually arose as early as on 15th January 1963, the suit is filed out of time. In support of his contention he has cited the decision in *Amar Chand v. Union of India* 1972 2 S.C.W.R. 805. We have carefully gone through the decision of the Supreme Court and we find that it has no application. The Supreme Court in the case had to deal with a matter where the suit was initially filed out of time and the application of Section 14 of the Limitation Act would not have been of any avail to the Plaintiff therein to save limitation. That is not the case here. Here within the time prescribed the suit was filed in the Munsiff Court as small cause suit. Thereafter, again without much loss of time the original suit has been filed. When the time spent in pursuance of the proceedings by way of small cause suit is excluded it could be found that the Plaintiffs suit was within time. Therefore, we do not find any merits in the contention that the suit was barred by limitations.

7. Counsel then argued that there was no need for any remand: the first appellate court could have decided the matter on merits in as much as there was a finding by the trial court that the Plaintiff could not prove that the calf belonged to him. We find from the judgment of the appellate court that issues 2 and 3 which deal with the right of the Plaintiff to calves and milk and the correct amount, if any, due to him were found to be not having disposed of correctly and the remand is for the purpose of having a fresh disposal after entering proper finding on issues 2 and 3, after having found that the Civil Court has jurisdiction and that the finding on issue No. 1 has to be reversed.

8. We find no grounds for interference on merits also at this stage, because it is open to both parties to adduce evidence and substantiate their respective contentions. The second appeal is, therefore, dismissed; but in the circumstances without costs.