

(1938) 10 PAT CK 0003
In the Patna High Court

Kaluram Agarwala

APPELLANT

Vs

Janistha Lal Chakrabarty and Others

RESPONDENT

Date of Decision : 21-10-1938

Acts Referred:

Limitation Act, 1963 — Section 14, 14(1)

Citation : AIR 1939 Patna 86

Hon'ble Judges : Wort, J;Agarwala, J

Bench : Full Bench

Judgement

Wort, J.—This appeal from a decision of the strict Judge arises out of an action on a promissory note. So far as the merits of the case are concerned, they were decided in favour of the plaintiff, but the question upon which the suit was dismissed in the Court below was that of limitation. When the case was first opened, it appeared to present some difficulties but now it seems to be a very clear case. The short facts, so far as is necessary for raising the point, are that the plaintiff was the assignee of the promissory notes. Taken from the date of the promissory note the assignment was on the last day of limitation. On that very day the plaintiff assignee instituted the suit with the leave of the Master on the Original Side of the High Court at Fort William. The matter proceeded, it would appear,—but subsequently on 15th July 1935, about a year after the suit was instituted, Panckridge J. on the objection by the defendants, discharged the order allowing the suit to be instituted in the Calcutta High Court and rejected the plaint. The plaintiff then brought this action by filing a plaint in the Purulia Court. Now, as I have already indicated, it is clear that if the suit is taken to have been instituted on the day on which the plaint was presented in the Calcutta High Court, no question arises. But the plaint in the Purulia Court being filed on 16th July 1935, it was clearly barred by limitation, unless the plaintiff can take advantage of Section 14, Limitation Act. The requirements of Section 14 are that the plaintiff must have been prosecuting in good faith the suit in another Court which from defect of jurisdiction or other cause of a like nature was unable to entertain it. The learned Judge in the Court below has come to the conclusion

that the action of the plaintiff was mala fide; that is to say, the act of the plaintiff in instituting the suit in the Calcutta High Court was mala fide, and therefore the Judge comes to the conclusion that Section 14, Limitation Act, did not apply.

2. The first matter to be considered is whether the Calcutta High Court was unable to entertain the plaint for defect of jurisdiction. Now, there could be no question on that narrow point; but, had the plaintiff bona fide started his suit in the Calcutta High Court and that Court had ultimately decided that it had no jurisdiction, Section 14, Limitation Act, would have no doubt applied. The question seems to me to be determined by asking the question whether the Section could be said not to apply when the Calcutta High Court having given leave to prosecute the suit in that Court eventually revoked that leave. In my judgment it is impossible to contend that the plaintiff in those circumstances (quite apart from the question of mala fides and bona fides) can be in a worse position than he would be in circumstances to which I at first referred. Now, was there any defect of jurisdiction? That seems to me to be determined by the effect of the order of Panckridge J. made in July 1935. It is impossible to look to that order other than to deal with it as an order which dated back from the date of the institution of the suit; in other words, anything done in the suit would necessarily fall (if I may use the expression) as the result of the revocation of the order of Panckridge J. and it seems to me to be a question to be determined in relation to the jurisdiction of the Court which ultimately decided the case. The Purulia Court had jurisdiction in this case, and could it be said that the High Court at Calcutta had jurisdiction to pronounce judgment and make a decree? There seems to me to be only one answer to that question and that is that the Court, by reason of the order of Panckridge J. would not have such jurisdiction.

3. The only question that remains is whether the plaintiff was prosecuting in good faith in a Court which suffered from defect of jurisdiction. Was he prosecuting in good faith. I should have thought that that matter is concluded by stating the fact that the Court gave the plaintiff leave to pursue his remedy in the Calcutta High Court. Even assuming that it does not conclude the matter, we have to determine whether the plaintiff acted in good faith? Dr. Sen contends that the finding of the learned Judge in the Court below is conclusive of the matter. The finding of the Judge had better be stated in order to make the matter perfectly clear. The learned Judge says this:

It should be borne in mind however that the real question with which we are concerned here is not so much whether there was a genuine assignment for consideration, but whether in making the assignment in Calcutta the parties acted in good faith or did so with the ulterior motive of harassing the defendants. I think that if the matter is considered in the light of reason and probability it is difficult to escape the conclusion that the object was vexatious and tainted with mala fides.

So far as that part of the judgment is concerned, with respect to the learned Judge, he was considering a wholly irrelevant matter, and that finding of his

cannot be binding on this Court in second appeal. A little later the learned Judge says:

The point therefore is not that the plaintiff was under any incorrect impression of the law, but rather that his motive in bringing the suit in Calcutta was malicious and vexatious.... I have no doubt that the Section (Section 14) is intended to apply to plaintiffs who have been misled into litigating in a wrong Court by a bona fide mistake of facts and law, and never to those who have deliberately chosen a remote Court with an ulterior motive which is essentially vexatious.

4. That again in my judgment is a wholly irrelevant consideration. Whether it was vexatious to the defendant or it harassed the defendant, whether his (the plaintiff's) motive was malicious is wholly irrelevant for the consideration of this point. If the plaintiff was acting as the law would allow him to act, whatever his motive be, it could not be said that he was not prosecuting his case in good faith. The learned Judge seems to be under the impression that the plaintiff here went to the Calcutta High Court for the purpose of getting perhaps a summary judgment against the defendant and that in doing so he intended to harass the defendant. I suppose that by getting a summary judgment the plaintiff would to some extent harass the defendant; but the question that had to be determined under the Section was whether the plaintiff was pursuing or prosecuting this suit in good faith in another Court; in other words, whether he really was under the impression that that Court had jurisdiction to entertain his suit. It is only in those circumstances could it be stated that Section 14 applied. The motive of the plaintiff as between him and the opposite party (the defendant) had nothing to do with the matter. Could it be said that he was not acting in good faith when he asked for leave from the Calcutta High Court and that Court gave him leave to bring his suit in that Court Only one answer to this is possible. It is unnecessary for us to consider whether there was evidence on which the learned Judge could come to his conclusion on the point but there are conclusions expressed by the learned Judge in the Court below which are wholly irrelevant for the purpose of the decision of this case.

5. Dr. Sen in support of his argument relies upon certain authorities. The first of them is Bonomali Gope Vs. Fakir Chand Pal and Others, . That was a case in which a suit had been brought (as in this case) in another Court. The first Court there was the Union Court of Behar. Then on an order of the Court the suit was brought in the Court of the Small Cause Court Judge. That case has no application to the facts of this case, because it was decided in that case on an application in revision that having regard to what fell from the Union Court on 6th June the learned Judge was not prepared to hold that that Court intended thereby to decline to entertain the suit or to decide that it had no jurisdiction. Once that is stated, of course, Section 14 becomes inapplicable. Reliance was then placed upon the decision in Shaikh Fazlul Jamil and Others Vs. Shaik Helaluddin, which was again a case on Section 14. There the Court held that the plaintiff's agent negligently filed an execution application in the Munsif's Court

and in those circumstances his act could not be said to be done with due care and attention and he was not entitled to have the time during which the petition was pending in the Munsif's Court excluded u/s 14, Limitation Act.

6. This is again a case which has no application to the facts of the case before us. The third case relied upon is G.S. Hays v. Padmanand Singh (1905) 32 Cal. 118. There both suits had been commenced in the same Court. The first suit had claimed mesne profits and whether by inadvertence or otherwise the Court had given the full amount which the plaintiff desired. He then brought another suit. The mere statement of the facts, I should have thought, is sufficient to show that Section 14 did not apply and this is what the Court held. In any event that case has got no application to the facts of the case before us. In my judgment this is a clear case in which the plaintiff should have had the advantage of the time extended by reason of Section 14, Limitation Act, and, as the merits of the case were decided in favour of the plaintiff, in allowing the appeal of the plaintiff I would direct that he be given a decree in the terms of the relief claimed in the suit. The appeal is allowed with costs throughout, the decision of the learned Judge in the Court below is set aside and that of the trial Court is restored.

Agarwala J.

7. The plaintiff-appellant is the assignee of a handnote dated 2nd June 1931. The handnote was executed by defendants 1 and 2 in favour of defendant 3 who assigned the same to the plaintiff. The suit out of which this appeal has arisen was instituted at Purulia on 16th July 1935. It was decreed by the Munsif who tried it, but that decision has been reversed by the learned District Judge of Purulia on the ground that the action was barred by limitation. Prima facie the decision of the learned District Judge on the ground of limitation is correct, but the plaintiff-appellant invokes the provisions of Section 14, Limitation Act, 1908. The material words of Sub-section 1 of that Section are as follows:

In computing the period of limitation prescribed for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding against the same defendant shall be excluded where the proceeding is founded on the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

8. The facts upon which this Section is called in aid are as follows: Defendant 3 assigned the handnote to the plaintiff on 1st June 1934, that is to say, one day before the expiry of the period of limitation, prescribed for the suit. On the same day the assignee instituted a suit on the handnote in the Calcutta High Court and under Clause 12, Letters Patent of that Court obtained the leave of the Court to do so. That leave was subsequently recalled on 15th July 1935, on the ground that there was no reason why the discretionary powers of the High Court should have been exercised, in a suit of this nature to enable the plaintiff to sue in Calcutta instead of in the district of Purulia where the handnote was executed.

The plaintiff-appellant seeks to exclude the period which elapsed between the date when the leave to sue in the Calcutta High Court was granted, namely; 1st June 1934, and the date when it was recalled, namely 15th July 1935. In my view there can be no doubt that from the date when leave to sue in the Calcutta High Court was granted until the date when the leave was recalled the Calcutta High Court had jurisdiction to entertain the suit. It seems to me however that; where the jurisdiction of a Court to entertain a particular suit depends upon leave: being granted by that Court, and leave is so granted, the subsequent recalling of the leave brings the case within the words "other cause of a like nature" in Sub-section (1) of Section 14, Limitation Act.

9. Learned Counsel for the respondents however relies upon what he calls the finding of fact of the learned District Judge with regard to the good faith of the plaintiff in instituting the suit at Calcutta. This finding, in the first place, relates to the conduct not of the plaintiff but of the assignor. The learned District Judge has found that the object of the assignor was to harass the defendant and that this object was achieved by making the assignment of the handnote at Calcutta which had the effect of enabling the assignee to institute the suit in the Calcutta High Court, instead of at Purulia where the defendant's witnesses were more readily available. Now the phrase "in good faith" in Sub-section (1) of Section 14 is clearly an adverbial phrase governing the verb "prosecuted," and it seems to me that what the Court ought to have investigated was whether the plaintiff prosecuted the suit in good faith, and not what the object of the assignor was in making the assignment at Calcutta.

10. It is not contested that the claim on the handnote is a good one, nor is it contended that the assignor had no right to make the assignment at Calcutta; nor could it be contended that a plaintiff who has a right to institute a suit in more than one Court is bound to consider the convenience of his opponent in making his choice. If the unfortunate effect of that choice is to cause inconvenience to the defendant, it does not constitute lack of good faith on the part, of the plaintiff in the sense in which that phrase is used in Section 14, Limitation Act. I agree to the order proposed.