

(1958) 02 AP CK 0004

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 46 of 1957

Kamat Reddy Narayan Reddy

APPELLANT

Vs

Kamat Reddy Narayan Reddy and another

RESPONDENT

Date of Decision : 12-02-1958

Acts Referred:

Citation : AIR 1958 AP 654

Hon'ble Judges : Qumar Hasan, J;Kumarayya, J

Bench : Division Bench

Advocate : Devi Prasad Mishra, for the Appellant; B.V. Subbarayudu and P. Venkatadri Sastry, for the Respondent

Judgement

1. This is a Letters Patent Appeal by the defendant against the judgment and decree of our brother Ansari, J. in which he has concurred with the findings of fact arrived at by the trial Court and the First Appellate Court and held that the suit was within limitation.

2. The only point involved in this appeal is whether the suit on the facts of the case can be said to be beyond time. In order to appreciate the contention raised on behalf of the appellant, it may, be mentioned that the Second Talukdar of Bhongir by his judgment D/- 13th Khurdad 1346F. held that the respondents were entitled to the kothwal patel watan of Anantawaram village. As a result of this judgment, the respondent became the incumbent of the watan and began to discharge the duties of police patel and enjoy the emolument(sic) thereof.

3. The appellants being aggrieved by the order of the Second Talukdar went up in appeal(sic) to the Collector of Nalgonda, who by his order dated 12th Meher 1346 F., allowed the appeal a(sic) set aside the order of the Second Talukdar. On further appeal, the Subedar of Medak by his order(sic) dated 30th Aban 1347F. concurred with the view(sic) taken by the Collector. On revision being taken by the respondents, the then Revenue Member (sic) held the orders both of the Subedar as well as (sic) Collector.

4. The respondents after having failed in Revenue Department filed the instant suit on Ardibihisht 1354F. alleging that they had been enjoyment of the watan up to 2nd Khurdad 134(sic) and were dispossessed on the said date, and date they said was the starting point of limitation.

5. The appellant in his reply contended to the limitation began in the year 1293H. All Courts who had occasion to deal with the held that since the suit was within six years fi(sic) the admitted dat3 of dispossession, it will be de(sic) (sic)ed to be within limitation having regard to provisions of Art. 106, Hyderabad Limitation corresponding to Art. 120, Indian Limitation

6. The learned advocate for the appel(sic) contended that the limitation if not from (sic) would start from the adverse judgment of Talukdar which was delivered on 12th M(sic) 1346F. and therefore, the suit would be cle(sic) time-barred. In support of his contention he referred to Kctireddi v. Abdul Cafoor, 1355 Na(sic) e-Hyd 363 (A); Babaji v. Bhuvanrao, 24 LR 393 (B) and Venkamma v. Lachmanaraj, Dec LR 235 (C). The learned advocate for respondents on the other hand relied Jitendra Nath Ghose v. Monmohan Ghouse, 1930 PC 193 (D); Mt. Bolo v. Mt. Koklan, 1930 PC 270 (E) AIR 1931 9 (Privy Council) Narayan Singh v. Sham Lai Singh, AIR 1931 89 (G).

7. After giving our anxious consideration the arguments advanced before us, we do no any reason to differ from the view taken by Courts below on the question of limitation, admitted on all. hands that Art. 106, Hyde(sic) Limitation Act corresponding to Art. 120, I Limitation Act applied to the facts of this That Article provides a period of six years suits for which no period of limitation is p(sic) ed elsewhere in the first schedule, from the when the right to sue accrues. The Privy Council in the case of AIR po 270 (E), has held that there can be no to sue until there is an accrual of the asserted in the suit and its infringement or at a clear and unequivocal threat to infringe right by the defendant against whom the suit (sic)stituted. It is thus to be seen when the inf(sic)ment of the right which had accrued to the n(sic) (sic)dents by reason of the judgment of the S(sic) Talukdar took place. The learned advocate for the appellant tends that the infringement of the right wo(sic) deemed to have occurred on the date where Collector decided against the respondents, that is (sic) say in 1346F. The advocate for the respondent, on the other hand, urges that the right to (sic)le accrued to him when he was dispossessed or other words deprived of the emoluments of the (sic)atan, which admittedly occurred in 1348F. In view of the concurrent findings of (sic)e Courts below, it must be taken as (sic)oved that the respondents lost the watan other words the enjoyment of emoluments 1348F. If the starting point of limitation is 2nd (sic)hurdad 1348F. the suit would be well within (sic)ne. The learned advocate for the appellant has (sic)t been able to satisfy us as to why the starting point limitation should be taken from the date of the (sic)ler of the Collector when the proved fact is that (sic) appellant had been in enjoyment of the watan. In (sic)r view the right to sue accrued to the appellant 2nd Khurdad 1348F. when he was deprived of (sic) emoluments of the watan.

8. In these circumstances, we do not see any son to differ from the view taken by our brother (sic)ari, J. In the result, the appeal fails and is (sic)eby dismissed with costs.