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(1968) 05 PAT CK 0024

In the Patna High Court

Case No : S.A. No''s. 729, 730, 731 and 732 of 1963

Kazim Sher APPELLANT

Vs

Sm. Jaswant Devi and Others, Ram Bahadur Singh and Others, Janak Singh and Others and Harbans Singh and Others RESPONDENT

Date of Decision : 14-05-1968

Acts Referred:

Contract Act, 1872 — Section 65
Limitation Act, 1963 — Section 14, 15
Registration Act, 1908 — Section 75

Citation : (1969) 17 BLJR 500

Hon'ble Judges : S.C. Misra, J;P.K. Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.C. Misra, J.—These appeals have been heard together and will be governed by this judgment. They arise out of four suits giving rise to common questions of law and fact. The plaintiff instituted the suits for recovery of the unpaid consideration money with respect to the sale deeds in favour of the various defendants. All the four sale deeds are in favour of the various respondents and dated the 1st of November, 1945-Exhibit A in all the four suits. The second sale deed was executed on the 21st of November, 1945, ignoring the first set of sale deeds, in favour of Sidheshwar Prasad Singh and others. The respondents holding the sale deeds (Exhibit A) started a proceeding for compulsory registration of the sale deeds executed in their favour and the documents were ordered to be registered on the 11th of May, 1946, by the District Sub-Registrar, u/s 75 of the Indian Registration Act. On the 25th of August, 1947, a dispute arose in land registration department between the two sets of purchasers and the names of these defendants were mutated in Register D. An appeal was preferred against that to the Collector of Patna district, who by his order dated the 17th of January, 1948, upheld the order of the Land Registration Deputy

Collector. The Commissioner of Patna Division also upheld the order of the Collector.

2. Sidheshwari Prasad Singh and others, who were aggrieved by the order of the land registration department, instituted Title Suit No. 48 of 1949 in which they impleaded not only the present defendants-purchasers under the prior sale deeds but also the present plaintiff for declaration of title and recovery of possession of the milklat share in village Jagatpur Nazir, Touzi No. 2422 and village Bad-aura, Touzi No. 15380. The suit was tried by the Additional Subordinate Judge, Patna, where it was decreed by judgment dated the 30th of April, 1952. It was held that the sale deeds dated the 1st November, 1945, in favour of the present defendants-respondents were not genuine, valid and for consideration. An appeal was preferred from that judgment and decree to this Court. The appeal was disposed of by a learned single Judge who allowed it by judgment dated the 4th of August 1958, holding that the sale deeds in favour of the present defendants were genuine and valid but Sidheshwar Prasad Singh and others were entitled to get refund of the consideration money paid to the plaintiff-vendor. A Letters Patent appeal was preferred by the vendor being L.P.A. No. 79 of 1951 from the judgment of the learned single Judge, but the appeal was dismissed on the 27th of April, 1959. In the circumstances, the plaintiff brought the present suits for recovery of the unpaid purchase money in respect of the sale deeds in their favour.

3. The defendants-respondents admitted the execution of the sale deeds in their favour. They pleaded inter alia that although the sale deeds were duly executed in their favour by the plaintiff, he executed another bogus sale deed on the 21st of November, 1945, with regard to a part of his milkiat interest in favour of Sidheshwar Prasad Singh and others for a consideration of Rs. 5,449/15/-. They narrated thereafter the course which the events took with regard to the compulsory registration and the title suit instituted by Sidheshwar Prasad Singh and how ultimately the Letters Patent appeal by the present plaintiff was dismissed. They also admitted that certain amount of unpaid purchase money remained to be paid by them to the plaintiff which they were ready to pay, but the plaintiff did not endeavour to claim the unpaid purchase money within a period of 12 years from the 1st of November, 1945, when the sale deeds were executed, or even from the 11th of May, 1946, when the order of compulsary registration was passed by the District Sub-Registrar. The suit having been instituted in 1959, it might well be contended that the suits were beyond a period of 12 years from the date of the accrual of the cause of action and hence were barred by limitation. But the contention on behalf of the appellant was that so long as the litigation was going on between Sidheshwar Prasad Singh and these defendants, the plaintiff could not claim the payment of the unpaid consideration money by these defendants. Sidheshwar Prasad Singh''s suit was decreed on the 30th of April, 1952, by the 4th Additional Subordinate Judge, Patna. It is true no doubt that in the first instance the cause of action did arise on the 11th of May, 1946, when the documents in favour of these defendants

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were ordered to be compulsorily registered, but that cause of action became defunct and there was no question of further running of time against the vendor. It was only on the 4th of August, 1958, when the learned single Judge of this Court allowed First Appeal No. 264 of 1952, that the plaintiff''s right to recover the consideration money revived. The present suits are within three years from that date and hence they are within time.

4. The first question for consideration is which is the article of the Limitation Act that would be applicable to the facts and circumstances of the present case. According to Mr. Lalnarain Sinha for the appellant, the article applicable would be 97, and according to Mr. Raghunath Jha for the respondents, the article applicable, however, is 111 of the Limitation Act, Mr. Lalnarain Sinha has placed reliance in support of this contention on the following cases: Bassu Kuar v. Dhum Singh ILR 11 All 47; Hem Chandra Chowdhry v. Kali Prosanna Bhaduri ILR 30 Cal 1033; Midnapore Zemindary Co. Ltd. Vs. Naba Kumar Singh Dudhoria and Others, ; Midnapore Zemindary Co. Ltd. Vs. State of West Bengal and Others, and Mr. Raghunath Jha relies upon Mt. Ranee Surno Moyee v. Shooshee Mokhee Burmonia 12 MIA 244; Dwijendra Narain Roy Vs. Joges Chandra De and Others, and Srimati Sarat Kamini Dasi Vs. Nagendra Nath Pal, It may be stated that the learned Munsif of Biharshariff, who decreed the plaintiff''s suits, proceeded upon the footing that although the cause of action arose on the 11th of November, 1945, it was extinguished or cancelled. He observed:

It is further evident that the cause of action extinguished or cancelled by reason of the judgment and decree passed by the fourth Addl. Subordinate Judge, Patna and the plaintiff had no right of suit against the defendants thereafter and this cancellation was removed by the judgment and decree of the Hon''ble Court and the cause of action revived or emerged thereafter.

He relied upon two judgments of the Calcutta High Court, reported as mentioned above, in Srimati Sarat Kamini Dasi Vs. Nagendra Nath Pal, and Midnapore Zemindary Co. Ltd. Vs. Naba Kumar Singh Dudhoria and Others, . The learned Additional Subordinate Judge, Bihar-sharif, who allowed the appeal, however, held that the two cases referred to in the judgments of the learned Munsif were not in point and the plaintiff was not entitled to the exclusion of any period in computing the period of limitation in the present suit, nor was the cause of action which. arose to the plaintiff on the 11th of May 1946 when the sale deeds were compulsorily registered, suspended or cancelled. He held that the plaintiff was not entitled to a period of 12 years for instituting the suit for recovery of the unpaid consideration under Article 132 of the Limitation Act, because the question of accrual of a charge on the milkiat interest could not arise since the subject matter of the suit vested in the State of Bihar under the Bihar Land Reforms Act before the suits were instituted. There was no bakasht land comprised in the vended property and as such Article 132 could not in any sense be made applicable. Hence, the suit would be governed either under Article 111 of the Limitation Act so that the suits should have been instituted within three

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years from the date of the accrual of the cause of action, or within six years under Article 120 of the Limitation Act. The period which elapsed between the accrual of the cause of action and the institution of the suits could not be excluded in favour of the plaintiff, because after the accrual of the cause of action after the execution of the sale deeds complication was caused on account of the conduct of the plaintiff himself in executing the sale deed in respect of the same property in favour of Sidheshwar Prasad Singh and others either for a higher consideration or for reasons best known to him. The question of suspension of the running of limitation, once it has begun, could only have arisen if the conduct of the plaintiff had been absolutely bona fide. In the peculiar circumstances, however, in which he executed the sale deeds in favour of other persons in respect of the self same property after having conveyed them to these defendants-respondents, the plaintiff could not claim suspension of the period of limitation. The cases have to be analysed in order to see which of the two positions is sound in law.

5. Mr. Lalnarain Sinha has relied upon a decision of the Judicial Committee in the case of Bassu Kuar v. Dhum Singh ILR 11 All 47. That was a case in which there was money due on an account stated and the limitation prescribed under Article 64 of the Limitation Act was three years from the date of the statement. But no suit could be brought within that period as there was an arrangement between the parties by which the purchaser, who was the creditor, could not have to pay Rs. 55,000/- for buying certain villages of the debtor, the vendor receiving only the balance in cash. On account of a dispute, however, between the parties, the sale deed could not be executed and a suit for specific performance of the contract by the purchaser also failed. Accordingly, the creditor brought a suit for recovery of the amount which was payable to him on the account stated within the time allowed under Article 64 and the defendant set up the plea of limitation. The Subordinate Judge who tried the suit overruled the plea of limitation and gave the creditor a decree according to his prayer. On appeal, however, to the High Court of Allahabad, it was held that the claim was barred as the creditor was not able to establish that a contract binding on the debtor was entered into. They held in substance that the case was governed by Article 64 and as none of the statutory provisions by which the time for suing was enlarged could be applied to that case excepting acknowledgment, the suit must be held to be barred by limitation. Lord Hobhouse, however, who spoke for the Judicial Committee, held that the decree of the High Court brought about a new state of things and imposed a new obligation on the debtor. When the suit was brought, the debtor Dhum Singh was not in a position to allege that the debt owed by him to the creditor Baru Mal was wiped out by the contract and Baru was entitled to the villages. That being the position, he was bound to pay that which he had retained in payment for his land. It might be viewed either according to the terms of the Contract Act, 1872 or according to the terms of the Limitation Act. In their Lordships'' opinion, further, Section 65 of the Contract Act would be applicable to such a case as the contract that was made between the parties was

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discovered to be void and any advantage received under such agreement or contract by the other party must be restored to the party rendering the benefit or compensation to be paid for it. The case was also governed by Article 97 of the Limitation Act which provides that if an existing consideration fails afterwards, the suit for money paid on contract under which the consideration has passed, is not barred till three years after the date of the failure. It was further observed that-"A debt retained in part payment" of the purchase money is in effect, and as between vendor and purchaser, a payment of that part, and if that were "Doubtful on the first retention while there was yet undecided "dispute, it could no longer be doubtful when a decree of a Court of Justice authorized the retention, and in effect "substituted the land for the debt". Mr. Lalnarain Sinha has urged that the principle of this case entirely governs the position in the present case also because so long as the suit of Sidheshwar Prasad Singh was not decided and since it was held therein that there was a valid sale deed in favour of Sdheshwar Prasad Singh, the plaintiff could not bring any suit for the recovery of the purchase money from the present defendants. It was only when the High Court took a contrary view and a Letters Patent appeal by the plaintiff also failed that a cause of action arose and, calculating from that date, the suit would be within time. Reference is also made to the decision in the case of Hem Chandra Chowdhry v. Kali Prosanna Bhaduri ILR 30 Cal 1033 for the proposition that so long as the proceedings in the earlier suit were going on, the operation of the law of limitation was stayed and hence the plaintiff was entitled to the benefit of the decree of enhancement and to recover the arrears at the enhanced rate. The facts of that case, however, were different although it was held that in certain circumstances the running of the period of limitation may be stayed by factors beyond the control of the plaintiff or for other such equitable considerations. The same principle has been reaffirmed in the case of Midnapore Zemindary Co. Ltd. Vs. Naba Kumar Singh Dudhoria and Others, . There also a suit was instituted by the plaintiff to recover rent for accreted land but the High Court of Calcutta held that the landlord had no right to recover the rent, but he succeeded in the Privy Council. After that declaration, he was entitled to the extension of the period of limitation for bringing a suit for recovery of arrears of rent. Reference was also made to the principle laid down in Section 9 of the Limitation Act, 1908, holding that such period can be extended in three classes of cases, viz., (1) where injustice has been caused by an act of Court; (2) where the cause of action was satisfied and (3) where the cause of action was cancelled. The defendant was successful in the plea of his non-liability to pay rent in the High Court. The plaintiff was thus compelled to appeal to the Privy Council and hence the defendant could not be allowed to turn round and plead the bar of limitation and evade the liability to pay rent. Mr. Raghunath Jha for the respondents has, however, contended that the suit was governed by Article 111 of the Limitation Act which is a suit by vendor of immovable property for personal payment of unpaid purchase money. The period is three years and the terminus a quo is the time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance. Since

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the order of compulsory registration was passed on the 11th of May, 1946, and the suit by Sidheshwar Prasad Singh was instituted on the 2nd August, 1949, the claim was barred by limitation as even before the suit which is alleged to have suspended or cancelled the first cause of action itself was instituted, the first cause of action was already time barred, Mr. Jha has urged that the question of Article 132 can not arise in this case as was conceded rightly before the learned Subordinate Judge as well, as the subject matter of the suit had already vested in the State of Bihar under the Bihar Land Reforms Act, so that there was no property left on which the recovery of this amount might be made a charge. The Court below, therefore, took the view that if the case was governed by Article 111 and the cause of action must be taken to begin with the compulsory registration of the sale deed on the 11th of May, 1946, it will be barred under Article 111 and even under Article 120 which is a residuary article. Mr. Lalnarain Sinha has contended, however, that the commencement of the period of limitation could not be pinned down to the 11th of May, 1946, as, in the meantime, the appellant had already executed a sale deed in favour of Sidheshwar Prasad Singh and others on the 11th of November, 1945. In my opinion, however, the contention urged on behalf of the respondents is well founded. Even if the principle laid down in the case of Bassu Kuar ILR 11 All 47 were to be acted upon as urged by Mr. Lalnarain Sinha, it would nevertheless be misconceived, because the second set of sale deeds were executed by the plaintiff voluntarily and, according to the respondents, he did so deliberately to resile from the contract to execute sale deeds in favour of these defendants who were the first purchasers. There is no authority which supports such conduct on the part of a transfer or who after having entered into a solemn agreement to convey the same property, subsequently creates complication in effectuating the terms of the contract by entering into another agreement with another person or persons in respect of the self-same property. The argument of Mr. Raghunath Jha, as I have already indicated, is well founded; and if the conduct of the plaintiff had been bona fide and if it had been upheld by the Court of law, the point urged on the authority of might have required more serious consideration. Since, however, the second set of sale deeds executed in favour of Sidheshwar Prasad Singh and others have been held by the High Court to be invalid, the plaintiff can not even lay . claim to any bona fide litigation and as such he can not take advantage of the period taken in the litigation started by ''Sidheshwar Prasad Singh and others, the second set of purchasers. Even in that view of the matter, it must be held that the appeals are without substance and they must be dismissed. It appears, however, that the above decision of the Judicial Committee has been considered in a subsequent decision of the Privy Council itself in the case of AIR 1945 5 (Privy Council) affirming the principle of law laid down in Narayan Jivaji Patil Vs. Gurunathgouda Khandappagouda Patil, . In that case it was held that, no doubt, where a claim is satisfied either by agreement of parties or by a decree of the Court, and if the satisfaction of the decree is set aside subsequently in a judicial proceeding, then a new cause of action will arise, in respect of which the claimant will get a fresh period of limitation provided for

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in the Act, or the cause of action will be revived and he will be entitled to deduction of the time occupied in the proceeding resulting in the annulment of the satisfaction or the setting aside of the prior decree; but the matter must be governed entirely by the provisions of the Limitation Act where the claim for deduction of time is based on Sections 14 and 15 of the Act. These actions must be construed strictly to ascertain whether the matter comes within the provisions of these sections or not and on the fact''s of that case, it was held that these sections were of no avail and the plaintiff''s suit was barred. This judgment was the subject matter of appeal before the Privy Council and it was upheld. It was laid down that where there was no prohibition either express or implied in the injunction or the decree which restrained the defendant from instituting a suit for possession, the suit must be brought within the period allowed in law. Special reference was made in this connection to the case of Mt. Ranee Surno Moyee v. Shooshee Mokhee Burmonia 12 MIA 244. In the case of Sirajul Haq Khan and Others Vs. The Sunni Central Board of Waqf, U.P. and Others, their Lordships had occasion to consider the above decision in and they have laid down that unless the facts and circumstances of a particular case are governed entirely by the various provisions of the Limitation Act, the running of time can not be stopped for any equitable consideration and the decision of the Privy Council was explained on the ground that it was covered by Section 65 of the Indian Contract Act. The same view was expressed in another Supreme Court decision in A.S. Krishnappa Chettiar and Others Vs. Nachiappa Chettiar and Others, . That being the position, the suit of the plaintiff must be held to be barred, because there was no reason for him not to institute the suit within a period of three years from the date of the accrual of the cause of action which was the date of compulsory registration of the document or, at any rate, within a period of six years under Article 120 of the Limitation Act. This case is not covered either by Section 14 or 15, or Article 111, and as such not within the purview of the above decisions of their Lordships of the Supreme Court, and the suits must be held to be time barred.

6. In the result, therefore, it is clear that these appeals have no merit and they must be dismissed with costs.

P.K. Banerji, J.

7. I agree.

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