

(2018) 09 MP CK 0039
In the Madhya Pradesh High Court
Case No : Civil Revision No. 29 Of 2009

Kishorilal Dubey

APPELLANT

Vs

Premchand Shrivastava (Deceased) Through L.Rs. Smt. Shail
Shrivastava & Others

RESPONDENT

Date of Decision : 18-09-2018

Acts Referred:

Limitation Act, 1963 — Section 9, 14, 14(1), 65
Code Of Civil Procedure, 1908 — Section 151
Limitation Act, 1963 — Article 65

Citation : (2018) 09 MP CK 0039

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : K.S. Jha, Sankalp Kochar

Final Decision : Allowed

Judgement

The applicant has filed this revision challenging the order dated 20.12.2008 passed by 2nd Additional Judge to the Court of Additional District Judge, Katni in Civil Suit No. 37-A/2008.

2. Brief facts of the case are that on or about 9. 01.1991 the plaintiff/non-applicant No. 1 has filed a suit against defendant No. 1/applicant for his eviction from the disputed premises as well as arrears of rent of Rs. 17,100/-on the allegation that he is the owner of the suit premises having purchased the same in an auction held by the Additional Tehsildar-cum-Sale Tax Officer, Katni on 28. 03.1979 and the auction sale was confirmed on 4. 06.1979 and sale certificate has been issued in his favour on 16.03.1982. He further alleged that defendant No. 1 took the suit premises from him on rent at Rs. 300/-per month and defendant No. 1 is in arrears of rent since 1. 04.1983 and despite the notice dated 13.09.1990 he has not paid the arrears and that the suit premises are bonafide required by the plaintiff for residence of his son Shishir Shrivastava. Defendant No. 1 has contested the plaintiff's claim by filing his written statement

on 20.09.1991 alleging that he is the owner of the suit premises which is his ancestral property and the plaintiff is not the owner of the suit property and he also denied the relationship of landlord and tenant between him and the plaintiff. He also denied that he has paid any rent to the plaintiff with respect to the suit premises. The trial Court vide judgment and decree dated 29.11.1995 dismissed the suit of the plaintiff on the ground that the plaintiff has failed to prove that he is the owner of the suit premises and also that their existence in relationship of landlord and tenant between him and defendant No. 1. Being aggrieved by the said judgment and decree, the plaintiff has preferred a F.A. No. 29/1996 before this Court. The said appeal was dismissed by this Court vide judgment and decree dated 10.11.2003 affirming the finding of the trial Court. While dismissing this appeal, this Court has observed that the plaintiff, if so advised, may file a suit for possession of the house in dispute based on his title, if it is permissible under the law. Thereafter on 26.12.2003, the plaintiff has filed a suit before the trial Court for directing the defendant to vacate and deliver the peaceful possession of the disputed house to him and also for damages.

3. In para 8 of the plaint, the plaintiff has alleged that the cause of action for filing the present suit for possession passed on title accrued to him on 10.11.2003 when the first appeal was dismissed and observation to file a suit on the basis of title was made. During the pendency of the said civil suit, the plaintiff amended the plaint and impleaded defendant No. 2 also as a party to the suit claiming relief of possession from him also. Defendant No. 1 has filed written statement denying the plaint allegations that the plaintiff is not the owner of the suit house and defendant No. 1 is the owner thereof. The auction proceedings conducted by the Sales Tax Department are illegal, null and void and sale certificate in plaintiff's favour did not confer any title upon him. The plaintiff never obtained the possession of the suit house and defendant No. 1 has always continued to be the owner thereof. He further alleged that the suit is barred by time. As per the plaint averments, cause of action for filing the present suit accrued to the plaintiff on 04.06.1979. Upon filing of the pleadings of the parties, issues were framed by the trial Court and issue No. 4 is whether the suit has been instituted within the period of limitation.

4. During the pendency of the aforesaid proceedings the plaintiff filed an application on 28.02.2007 under Section 14 of the Limitation Act read with Section 151 of the C.P.C. for excluding the period of 12 years, 10 months and 2 days being the period during which his earlier suit remained pending for the purposes of calculation of the period of limitation for filing the present suit. The plaintiff submits that he had prosecuted his earlier suit diligently and bonafide which could not be entertained by the Court due to defect of jurisdiction and other reasons, hence, the time spent in prosecuting the earlier suit deserves to be excluded. Defendant No. 1 has filed reply and submitted that the subject matter of the earlier as well as the present suit is the same. The cause of action for filing both the suits are also the same and, therefore, the delay in filing the present suit cannot be condoned. The trial Court vide order dated 20.12.2008

thereby allowing the application preferred by the plaintiff filed under Section 14 of the Limitation Act observing that excluding the time spent by the plaintiff in the earlier suit, the present suit having been filed within 12 years is within time that in both the suits basis of plaintiff's contention is accrual of title in auction proceedings, hence, the earlier proceedings appears to have been bonafide conducted by the plaintiff and, therefore, the time spent is liable to be excluded under Section 14 of the Limitation Act. Being aggrieved by the said order, the applicant has filed the present revision.

5. Learned counsel for the applicant argues that the order passed by the trial Court is illegal and arbitrary. He submits that the benefit of Section 14(1) of the Limitation Act can be given when the Court of first instance has decided the earlier suit on merits and there was no defect in jurisdiction in the Court trying it as well as when the cause of action of the previous suit is different from the one in the later suit. He submits that in the present case, the cause of action for filing the present suit as well as the earlier suit was the same, which according to the applicant has occurred on 04.06.1979 when the defendant has denied the title of the plaintiff in earlier suit or at least on 20.09.1991, when he filed his written statement in earlier suit denying the plaintiff's title. For the said purpose, learned counsel for the applicant relied on the judgment passed by the Apex Court in the case of Deena (dead) through LRs. Vs. Bharat Singh (dead) through LRs. And Others, reported in (2002) 6 SCC 336 also the judgment passed by the Apex Court in the case of Zafar Khan & Others Vs. Board of Revenue, U.P. & Others, reported in 1984 (Supp) SCC 505 and the judgment passed by this Court in the case of Kashiram Vs. Santokhbai, reported in 1957 SCC Online MP 182. On the basis of these judgments, learned counsel for the applicant argues that the benefit of Section 14 would not be available to the plaintiff in the present case. He further submits that the cause of action in the present case arose to the plaintiff on 20.09.1991 when the defendant denied the title of the plaintiff. He further submits that the cause of action for plaintiff for possession based on title commences from the defendant's possession becomes adverse to the plaintiff. For the said purpose he relied on the judgment passed by the Apex Court in the case of Ramiah Vs. N. Narayana Reddy (dead) by LRs, reported in (2004) 7 SCC 541 as well as the judgment passed by this Court in the case of Pramod Kumar Vs. Saiyad Rajiy Sultan, reported in (2015) 3 MPLJ 222. He further argues that as per Section 9 of the Limitation Act, once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it. Thus, according to him in the present case, the time limit to institute a suit for possession based on title begun to run from 20.09.1991, when the defendant denied the title of the plaintiff's for first time. For the said purpose, he relied on the judgment passed by this Court in the case of Khemchand Motilal Jain Vs. State of M.P. and another, reported in 2007 (2) MPLJ 257. Lastly he submits that the question of limitation is mixed question of law and fact and it is to be considered after recording the evidence. In the present case, the Court below has decided the question of limitation without recording any evidence which is

premature and illegal in eyes of law. He relied on the judgment passed by this Court in the case of Ramvilas Vs. Smt. Shantabai, reported in 2013 SCC Online MP 8269. He further argues that while disposing of the first appeal vide order dated 10.11.2003, this Court had only permitted filing of the suit for possession by the plaintiff, if permissible under the law. It has nowhere been observed that the time spent in prosecuting the earlier proceedings shall be excluded for the purpose of calculation of period of limitation for the fresh suit. The Section 14 of the Limitation Act would apply when the plaintiff was prosecuting the earlier suit in a Court which from the defect of jurisdiction or other cause of a like nature was unable to entertain it. In the present case, the Court in which the earlier proceedings was fully competent to entertain and decide the plaintiff's claim for eviction and had decided the same and, therefore, the time spent in those proceedings cannot be excluded for the purpose of calculation of the period of limitation for filing the present suit.

6. On the other hand, learned counsel for the respondents supports the order passed by the trial Court. He submits that the trial Court has not committed any error in passing the impugned order. He further submits that the respondents were prosecuting the earlier suit bonafide and, therefore, the time spent in the earlier proceedings was rightly condoned by the trial Court. He relied on the judgment passed by the Apex Court in the case of Commissioner, Madhya Pradesh Housing Board and Others Vs. Mohanlal and Company, reported in (2016) 14 SCC 199.

7. Heard learned counsel for the parties and perused the record as well as the order passed by the trial Court.

8. In the present case, the plaintiff has filed a suit for eviction against defendant No. 1 on the ground of arrears of rent as well as the suit premises required by him bonafide for the purpose of residential need of his son. The said civil suit was dismissed vide judgment and decree dated 29.11.1995, against which, a F.A. No. 29/1996 was preferred before this Court. The said appeal was dismissed by this Court by judgment and decree dated 10.11.2003 by making the following observations:-

"3. The plaintiff, if so advised, may file a suit for possession of the house in dispute based on his title, if it is permissible under the law. It is made clear that any observation or finding recorded by the trial Court in the impugned judgment and decree regarding the title of the plaintiff will not debar him from establishing his title in an independent suit."

9. While dismissing the appeal, the Court has granted a liberty to the plaintiff to file a fresh suit for possession of the house in dispute based on his title, if it is permissible under the law. Accordingly, the plaintiff has filed the present suit for possession based on his title as well as for mesne profits. During the pendency of the said civil suit, the plaintiff has filed an application under Section 14 of the Limitation Act for excluding the period which was spent by the plaintiff in

prosecuting the earlier suit. The trial Court thereafter framed the issues and the issue No. 4 is relates to whether the suit is filed within limitation. The trial Court vide order dated 20.12.2008 allowed the application preferred by the plaintiff under Section 14 of the Limitation Act. Against the said order, the applicant has filed the present revision.

10. Section 14(1) of the Limitation Act 1963 reads as under:-

"14- Exclusion of time of proceeding bona fide in court without jurisdiction-

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue 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."

As per the said section the benefit of Section 14(1) of the Limitation Act would be provided only when the Court of first instance has decided the earlier suit on merits and there was no defect in jurisdiction in Court trying it and when the cause of action of the previous suit is different from the one in the later suit.

11. In the present case, the trial Court while allowing the application under Section 14 of the Limitation Act in para 13 has observed that the cause of action for previous suit and the subsequent suit is common. The previous suit was filed by the plaintiff claiming himself to be owner of the property on the ground that he had purchased the property in auction. Although the cause of action has been mentioned by the plaintiff in both the suit was common, however, the earlier suit was filed by the plaintiff for eviction on the ground of bonafide requirement claiming himself to be the owner of the property. However, both the Courts i.e. Civil Court as well as the First Appellate Court have held that the plaintiff has failed to prove his title on the suit property. However, while disposing of the first appeal, this Court has granted a liberty to the plaintiff to file afresh suit for possession based on the title, if permissible under the law. This Court while disposing of the first appeal has not excluded the period which is spent by the plaintiff in prosecuting the earlier suit. The Section 14 of the Limitation Act have no application in a case where the suit is dismissed after adjudication on its merits and not because the Court was unable to entertain it, in the present case, before which the earlier proceedings were pending have a jurisdiction to decide the suit. It is not a case that the earlier suit was pending before a Court which lack of jurisdiction.

12. The Apex Court in the case of Deena (dead) through LRs (supra) in para 15 has held as under:-

"15. The other expressions relevant to be construed in this regard are 'defect of jurisdiction' and 'or other cause of a like nature'. The expression "defect of jurisdiction" on a plain reading means the Court must lack jurisdiction to

entertain the suit or proceeding. The circumstances in which or the grounds on which, lack of jurisdiction of the Court may be found are not enumerated in the Section. It is to be kept in mind that there is a distinction between granting permission to the plaintiff to withdraw the suit with leave to file a fresh suit for the same relief under O. 23 R. 1 and exclusion of the period of pendency of that suit for the purpose of computation of limitation in the subsequent suit under S. 14 of the Limitation Act. The words "or other cause of a like nature" are to be construed ejusdem generis with the words 'defect of jurisdiction', that is to say, the defect must be of such a character as to make it impossible for the Court to entertain the suit or application and to decide it on merits. Obviously S. 14 will have no application in a case where the suit is dismissed after adjudication on its merits and not because the Court was unable to entertain it."

13. In order to attract the application of Section 14(1) of the Limitation Act, the parties seeking its benefit must satisfy the Court (i) that the parties as the plaintiff was prosecuting another civil proceedings with due diligence and (ii) that earlier proceedings and the later proceedings relates to same matter in issue (iii) the formal proceeding was being prosecuted in good faith in a Court which from defect of jurisdiction or other cause of like nature is unable to entertain it.

14. In the present case, the formal proceeding was prosecuted by the plaintiff in a Court below which has the jurisdiction to entertain it. It is not the case of the plaintiff that the earlier Court has lack of jurisdiction to entertain the same. The earlier proceedings relates to the suit for eviction on the ground of bonafide requirement as well as arrears of rent and subsequent suit was filed for possession based on title.

15. The Apex Court in the case of Zafar Khan & Others (supra) in para 15 has held as under:-

"15. The question however is whether the third condition for attracting Section 14(1) is satisfied. The appellants must further satisfy the court that the earlier proceeding failed on account of defect of jurisdiction or other cause of a like nature. Now at no stage it was contended that the authority to whom the application was made for restitution had no jurisdiction to entertain the application, nor through the course of the proceedings upto the High Court anyone, anywhere, questioned the jurisdiction of the authority to grant restitution. Therefore, it can be safely said that the previous proceeding did not fail on account of defect of jurisdiction."

16. The Division Bench of this Court in the case of Kashiram (supra) in paragraphs 4, 5, 6, 7 and 8 has held as under:-

"4. In this appeal the main contention of Mr. Chitale, learned counsel for the appellant, is that Section 14 of the Limitation Act could not be invoked in this case as the plaintiff's prior suit was dismissed; not on account of defect of jurisdiction or other cause of a like nature, but that it was entertained and then

dismissed because the relief of the rendition of accounts was not available against the son of a deceased agent. Learned counsel relied on *V.C. Thani Chettiar v. Dakshinamurthy Mudaliar*, (S) AIR 1955 Mad 288 (A); *Nakul Chandra Ghose v. Shyamapada Ghose*, AIR 1945 Cal 381 (B); and *Ramanand Prasad v. Gaya Prasad Ram*, AIR 1949 Pat 362 (C).

5. In our opinion, the contention advanced on behalf of the appellant must be given effect to. We have no doubt that Section 14 of the Limitation Act has no application to the facts of this case and the plaintiff is not entitled to the benefit of that section. Before that section can apply, the prior proceeding must have been founded upon the same cause of action as that on which the later suit is founded and the Court in which the prior proceeding was prosecuted must have been unable to entertain it for the reasons specified, namely, defect of jurisdiction or other cause of a like nature. Now the words 'which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it' which occur in Section 14(1) of the Limitation Act are very significant.

6. As pointed out by Mukherjee, J. (as he then was), in AIR 1945 Cal 381 (B), the word 'entertain' means to admit for consideration. It does not mean giving relief, and that when a suit or proceeding is not thrown out in limine but the Court receives it for consideration and disposal according to law, it must be regarded as entertaining the suit or proceeding, no matter whatever the ultimate decision may be; and that a suit is to be regarded as not entertained by the Court only if it is thrown out at its inception and the Court does not decide it on its merits."

7. The learned Judge further observed that Section 14 of the Limitation Act speaks of the inability of the Court to entertain a suit or proceeding on certain specific grounds, which are of a formal nature and that inability to entertain a suit means not inability to grant relief to the plaintiff but inability to give him a trial at all. In our opinion when a suit is dismissed not because the Court had no jurisdiction to entertain it, or for any other cause of a like nature, but because it was misconceived or because the proceeding or the suit was not one recognised by law as legal in its initiation, then clearly Section 14 of the Act is not attracted to such a suit.

8. This view is amply supported by the cases cited by the learned counsel for the appellant and numerous other cases. Now, here, the plaintiff's prior suit was dismissed not because of any defect of jurisdiction or any other ground similar to it but it was entertained and dismissed because it was wholly misconceived and the relief of rendition of accounts could not be granted against the son of a deceased agent. The suit was dismissed because the proceedings according to the trial Court were not recognised by law as legal in their initiation. If then Section 14 of the Limitation Act has no applicability to this case and the plaintiff's suit is governed by Article 89, then it is clearly barred by time and must be dismissed."

17. It is to be noted that this decision was under Section 14 of the Limitation Act 1908 which is similar to Section 14 of the Limitation Act, 1963.

18. Thus, in light of the aforesaid judgment, as the earlier suit which is filed by the plaintiff was before the Court competent to entertain it and decide the same on merits, therefore, the plaintiff is not entitled to get the benefit of Section 14 of the Limitation Act. The cause of action for filing the said civil suit was arose for the plaintiff for the first time when the defendant has filed the written statement on 20.09.1991 denying the title of the plaintiff.

19. This Court in the case of Pramod Kumar (supra) in para 10 has held as under:-

"10. The present suit was filed for possession of immovable property on the basis of title and not merely possessory title. Thus, admittedly the suit is governed by Article 65 of Limitation Act. Section 65 of Limitation Act provides 12 years of limitation and limitation starts when the possession of the defendant becomes adverse to the plaintiff. Thus, the question before this Court, what is the starting point of limitation for calculating the limitation of 12 years? As per the learned Senior Counsel for the appellant, limitation starts on 9/10-4-1985 when the sale-deed of the suit property executed in favour of respondent No. 1 and in alternative, the limitation starts on 15.02.1994 when in earlier litigation between the parties, while dismissing the appeal of respondent No. 1, First Appellate Court granted a liberty to file appropriate proceedings for taking possession of the suit property. I am unable to convince with the arguments of learned Senior Counsel for the appellant. The limitation commences from the date when defendant's possession become adverse as held by this Court in the cases of Pataria and others (supra) and Basanti Ben Prahladi Naik (supra). Thus, it is clear that starting point of limitation commences from the date appellant's (defendant's) possession become adverse to the respondent No. 1 (plaintiff)."

As per the judgment of this Court the limitation commenced from the date when the defendant's possession become adverse to the plaintiff.

20. In the present case, the period of limitation commences against the defendant on the date when the defendant denies the title of the plaintiff in filing the written statement i.e. from 20.09.1991. The judgment which is relied on by the learned counsel for the respondents i.e. in the case of Commissioner, Madhya Pradesh Housing Board and Others (supra) in that case, the earlier proceedings were prosecuted in Court which has no jurisdiction to entertain the same and, therefore, the said judgment would not be applicable in the present case.

Accordingly, the civil revision is allowed and the impugned order dated 20.12.2008 passed by the trial Court is hereby set aside. Consequently, the application filed by the plaintiff under Section 14 of the Limitation Act is also dismissed.