

(2023) 03 UK CK 0053

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 827 Of 2023

Kuldeep (Since Deceased) & Others

APPELLANT

Vs

Mahendra Singh (Since Deceased) & Others

RESPONDENT

Date of Decision : 22-03-2023

Acts Referred:

Limitation Act, 1963 & mdash; Section 17
Constitution Of India, 1950 — Article 227

Citation : (2023) 03 UK CK 0053

Hon'ble Judges : Vipin Sanghi, CJ

Bench : Single Bench

Advocate : Siddhartha Singh

Final Decision : Disposed Of

Judgement

Vipin Sanghi, J

1) The present petition, under Article 227 of the Constitution of India, is directed against the order dated 01.02.2023, in Civil Revision No. 82 of 2015, passed by the court of the II Additional District Judge, Roorkee, District Haridwar, allowing the said revision and setting aside the order dated 04.08.2015, passed by the trial court, dismissing the application under Section 17 of the Limitation Act, filed by the respondents / plaintiffs.

2) The petitioner / plaintiff has instituted a civil suit which has not been numbered yet. The plaintiff moved an application under Section 17 of the Limitation Act to claim that the suit was filed within limitation upon application under Section 17 of the Limitation Act. The trial court dismissed the said application on 04.08.2015, against which the aforesaid revision was preferred. As aforesaid, the said revision has been allowed by the learned Additional District Judge.

3) The issue, whether the suit is barred by limitation, or not, is a mixed question of fact and law, which has to be determined upon the reading of the pleadings,

and upon appreciation of evidence, that may be led by the parties on the issue of limitation, if framed.

4) The trial court, it appears, dealt with the misconceived application under Section 17, rather than registering the suit. The trial court ought to have registered the suit, and, upon receiving the defence in the suit / written statement of the defendant(s) - if such an issue were to arise, frame the issue on limitation; hold the trial on the said issue, and; thereafter determine the issue of limitation. That was not done and the misconceived application under Section 17 of the Limitation Act was decided without calling for the written statement and without conducting a trial.

5) The revisional court has, while disposing of the revision petition, observed as follows:

"The aforesaid all the facts on being looked in the light of the contentions raised by the revisionists/applicants in the application under Section 17 of the Limitation Act, this court is of the view that with regard to the contention raised in the application under Section 17 of the Limitation Act by the revisionists/applicants the conclusion and appropriation investigation can be arrived on the basis of the evidence provided by the respective parties even otherwise also it is the well established principle of law the question of limitation is mixed question of law and facts in which the conclusion can only be given on the basis of the evidence.

On the basis of the above discussion and analysis, this court is of the view that the application submitted by the revisionists/applicants under Section 17 of the Limitation At is hereby allowed. Accordingly the civil revision instituted by the revisionists/applicants deserves to be allowed.

Order

The Civil Revision No. 82/2015 Mahendra Singh (deceased) and others Vs Kuldeep (deceased) and others, instituted by the revisionists is hereby allowed.

The application under Section 17 of the Limitation Act filed by the revisionists/applicants is allowed and the order dated 04.08.2015 passed by the court below is hereby set aside.

The learned court below is directed to ensure the disposal of the original suit filed by the revisionists/applicants as earliest.

The parties are directed that they will ensure to appear before the learned court on 15.02.2023.

The record of the learned court below along with this decision may be sent immediately."

6) The submission of learned counsel for the petitioners is that, by allowing the revision, the learned Additional District Judge has, in effect, decided the issue of

limitation in favour of the respondent / plaintiff.

7) I do not agree with this submission. From the aforesaid extract of the impugned order, it is clear that the learned Additional District Judge has taken the view that the issue of limitation is a mixed question of fact and law, and the said issue can be determined only upon the conclusion of trial, on the basis of the evidence led by the parties. In fact, the trial court was not justified in concluding that the suit was barred by limitation, without framing such an issue in the suit, if raised, or arising, and recording evidence on the said issue. The purport of the impugned order is merely to relegate the parties before the trial court, with a clear message to the trial court, to decide the issue of limitation on the basis of evidence. I, therefore, make it clear that the issue of limitation has not been determined, one way or another, by the revisional court, and the said issue would have to be framed and decided by the trial court on the basis of the pleadings and evidence led by the parties.

8) Learned counsel has further submitted that the direction issued by the revisional court to expeditiously dispose of the original suit tantamounts to deciding the issue of limitation in favour of the respondent / plaintiff. As aforesaid, this submission is not correct, as there is no determination of the issue on limitation by the revisional court.

9) The present petition is disposed of in the aforesaid light. Considering the fact that the suit is pending since the year 2006, the trial court is directed to proceed in the matter expeditiously. Neither party shall seek, nor be granted any undue adjournments.