
(1993) 07 GUJ CK 0005
In the Gujarat High Court

Medatia Indrasinghji (Decd.) Through His Heirs and Lrs.	APPELLANT
Vs	
Raval Narayan Kishoresinh and Another	RESPONDENT

Date of Decision : 30-07-1993

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 37(2), 37(2), 37(3)
Criminal Procedure Code, 1973 (CrPC) — Section 100

Citation : (1994) 2 GLR 1691

Hon'ble Judges : A.N. Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—The decision rendered by the learned Assistant Judge of Sabarkantha at Himatnagar on 22nd July, 1977 in Regular Civil Appeal No. 5 of 1973 is under challenge in this appeal at the instance of the appellant before this Court u/s 100 of the Civil Procedure Code, 1908 ("the Code" for brief). Thereby the learned lower appellate Judge dismissed the appeal and affirmed the judgment and the decree passed by the learned Civil Judge (S.D.) at Himatnagar on 12th January, 1973 in Regular Civil Suit No. 46 of 1967. It is needless to say that the trial Court decreed the suit instituted by the present respondents.

2. It may be mentioned that during the pendency of this appeal the original appellant has breathed his last and his heirs and legal representatives have been brought on record in his place by virtue of the Order passed by this Court on 17th October, 1984 in Civil Application No. 2518 of 1984. The appellant was the defendant and the respondents were the plaintiffs in Regular Civil Suit No. 46 of 1967. For the sake of convenience I shall refer to the parties to this appeal as they were arraigned in the trial Court, that is, the appellant as the defendant and the respondents as the plaintiffs.

3. The dispute centres round one piece of land admeasuring 12 ft. north-south and 36 ft. east-west situated in Himatnagar (the suit land for convenience). The plaintiffs claimed its ownership as its having been allotted to them on 9th March, 1923 under the Parvana issued on 22nd September, 1947. It appears that the

"defendant disputed the grant of land to the plaintiff in 1923. According to him, the suit land was of the ownership of the State and it had constructed some building over it and he was in occupation of that building as a servant of the State. According to him, it was in dilapidated condition and he, therefore, applied on 22nd April, 1940 for its reparation at the expenses of the State or in the alternative he offered to purchase it at a price fixed by the State authorities. This dispute resulted into institution of one suit in the Court of the Civil Judge (S.D.) at Himatnagar by the plaintiff for the relief of permanent injunction against the defendant. It came to be registered as Regular Civil Suit No. 34 of 1966. It appears that a Commissioner was got appointed by the plaintiff in that suit and it transpired from the Commissioner's report that the defendant was in possession of the suit land. The plaintiffs thought of amendment of the plaint. It appears that, however, on second thoughts they withdrew the suit with a permission to file a fresh suit on the same cause of action. That is how Civil Suit No. 46 of 1967 came to be filed by the plaintiffs against the defendant in the Court of the Civil Judge (S.D.) at Himatnagar for a declaration that the suit land is of their ownership and for claiming its possession from the defendant and for getting demolished the wall constructed by the defendant. The defendant filed his written statement at Exh. 10 on the record of the case and resisted the suit on various grounds. On the pleadings of the parties, the learned trial Judge raised the necessary issues at Exh. 15 on the record of the case. After recording evidence and hearing the parties, by his judgment and decree passed on 12th January, 1973 in Regular Civil Suit No. 46 of 1967, the learned Civil Judge (S.D.) Himatnagar decreed the suit instituted by the plaintiffs. That aggrieved the defendant. He, therefore, carried the matter in appeal before the District Court of Sabarkantha at Himatnagar. His appeal came to be registered as Regular Civil Appeal No. 5 of 1973. It appears to have been assigned to the learned Assistant Judge of Sabarkantha at Himatnagar for hearing and disposal. After hearing the parties, by his decision rendered on 22nd July, 1977 in Regular Civil Appeal No. 5 of 1973, the learned Assistant Judge of Sabarkantha at Himatnagar dismissed the appeal. The aggrieved defendant has thereupon invoked the further appellate jurisdiction of this Court u/s 100 of the Code for questioning the correctness of the aforesaid decision rendered by the lower appellate Court.

4. It may be mentioned that the defendant was a Government servant in the erstwhile State of Idar and was using one building erected by the State on the suit land. It appears that it was in a dilapidated condition. It appears that he applied on 22nd April, 1940 for its repairs at the expenses of the State or in the alternative to sell it to him on a reasonable price which may be fixed looking to his status and capacity. It appears that the alternative proposal found favour with the erstwhile authorities and its price was fixed at Rs. 2,000 some time in 1941. It appears that he paid Rs. 2,001 some time in 1948. Thereupon it was decided to issue a Parvana to him with respect to the property on the suit land. For some reasons which are not on record the Parvana could not be issued. In the meantime plaintiff No. 1 appears to have come to know about this

development. He thereupon applied presumably to the Mamlatdar on 30th April, 1952 with a case that the suit land was given to his father on 9th March," 1923 with the condition that it shall be kept open and it should not be amalgamated with his house and its open use shall be made. He annexed with his application a copy of Parvana No. 61 issued in the name of his father on 22nd September, 1947. Since plaintiff No. 1 made a claim with respect to the property apparently belonging to the State, the inquiry was undertaken u/s 37(2) of the Bombay Land Revenue Code, 1879 ("the BLR Code" for brief). The necessary notice was thereupon issued to him on 23rd December, 1954. The inquiry was held on 7th and 10th February, 1955. It is not necessary to examine the details of the inquiry at this stage. On conclusion of the inquiry, the Mamlatdar of Himatnagar passed one Order on 23rd February, 1955 holding that the father of the plaintiff was not in possession of the suit land and suit land was of the ownership of the erstwhile State and was in possession of the defendant on its behalf. It was also declared that the land had to be treated as the part of the premises sold by the State obviously to the defendant and the necessary Parvana should be issued. A copy of this Order is at Exh. 83 on the record of the case. Both the Courts below have found this Order to be without jurisdiction. According to the Courts below, the dispute was essentially between two private parties and the Mamlatdar had no authority to undertake any inquiry u/s 37(2) of the BLR Code.

5. With respect, the aforesaid conclusion reached by the Courts below is patently erroneous and unsustainable in law. As pointed out hereinabove, the dispute was never between two private parties. The suit land was found to be of the ownership of the erstwhile State at the relevant time. A building was raised thereon by the State and it was in occupation of the defendant as a servant of the State. As aforesaid, the defendant wanted to purchase it. At that stage plaintiff No. 1 entered the fray and claimed its ownership on the basis of some Parvana issued in the name of his father some time in 1947. Even under the Parvana, the father of the plaintiffs was not given the suit land absolutely or in outright ownership but he was permitted to use it by keeping it open and he was prohibited from amalgamating it with his house. It was found by the Mamlatdar that this Parvana to use the suit land was given to the father of the plaintiffs on 9th March, 1923. In the inquiry u/s 37(2) of the BLR Code culminating into the Order at Exh. 83 on the record of the case, the Mamlatdar has found that the father of the plaintiffs did not know about this grant in his favour till he received the Parvana in 1947. It has been found by the Mamlatdar as transpiring from the Order at Exh. 83 on the record of the case that in the meantime the erstwhile State had raised one building on the suit land and it was in occupation of the defendant in his capacity as an Officer of the Court of Wards. As pointed out hereinabove, the defendant wanted that building to be repaired by the State or in the alternative he offered to purchase the building standing on the suit land. At that stage, as pointed out herein-above, plaintiff No. 1 made an application on 30th April, 1952 putting his claim on the basis of one Parvana issued in his father's name on 22nd September, 1947. Only in that context the Mamlatdar

undertook the necessary inquiry u/s 37(2) of the BLR Code. With respect, this aspect of the matter appears to have been lost sight of by the Courts below. It was certainly a claim on the Government land made by and on behalf of the plaintiffs and it would certainly fall within the purview of Section 37(2) of the BLR Code.

6. In this connection a reference deserves to be made to the ruling of this Court in the case of *Shah Rayshi Hansraj Vs. Shah Khimji Mulji and Others*, . In that case a person was allotted a plot in exchange of his surrendering his Varandi for construction of one public road. Some part of the Varandi was utilised for construction of the public road and some part of it remained open. The original owner of the Varandi made encroachment on its open part. It resulted in reduction of the width of the road from 25 ft. to 4 ft. That created difficulties for the owner of the neighbouring land. He thereupon moved the Revenue authority for removal of encroachment. The original owner of the Varandi thereupon contended that he was the owner of the land and he never surrendered it to be exchanged with any other plot. According to him, the other plot was given to him unconditionally. That necessitated an inquiry u/s 37(2) of the BLR Code. In that context this Court has held:

The Collector or Survey Officer has undoubted jurisdiction u/s 37(2) of the Bombay Land Revenue Code to initiate an inquiry for the purpose of deciding a claim which may be made by or on behalf of the Government, in respect of any property or any right in or over any property or any claim which may be made by any person as against the Government in respect of any property or any right in or over any property. There is nothing in the language of Section 37(2) of the Bombay Land Revenue Code which would justify the interpretation that an inquiry can be held u/s 37(2) only where the property in respect of which the inquiry is made prima facie vests in the Government u/s 37(1). There are no words in Section 37(2) limiting the applicability of that provision to a case where the claim is made in respect of any property prima facie vesting in the Government. The claim which is contemplated by Section 37(2) is a claim "to any property or any right, in or over any property" made by or on behalf of the Government or by any person as against the Government. The property or right in or over property in respect of which the claim is made need not be property or right in or over prima facie vesting in the Government.

In the instant case, the suit land was claimed by the first respondent-the owner of the land-as against the Government or even if the matter be looked at from another point of view, the impugned land was claimed by Government or by the petitioner on behalf of the Government and the Mamlatdar-a Survey Officer-had, therefore, clearly jurisdiction u/s 37(2) to initiate an inquiry for the purpose of deciding such claim.

This ruling of this Court in the case of *Rayshi Hansraj* (supra) is on all fours applicable in the present case. At the instance of plaintiff No. 1 making an application on 30th April, 1952 laying his claim on the suit land belonging to the

erstwhile State at the relevant time, the Mamlatdar was required to undertake the inquiry u/s 37(2) the BLR Code. In that view of the matter, the inquiry undertaken by the Mamlatdar could not be said to be without jurisdiction. The contrary conclusion reached by the Courts below cannot be upheld in law.

7. The aforesaid ruling of this Court was cited before the lower appellate Court. It has been distinguished, with respect, without properly examining the contents of the Mamlatdar's order at Exh. 83 on the record of the case.

8. It appears that the Mamlatdar's order at Exh. 83 on the record of the case was not carried in appeal by or on behalf of the plaintiffs. There is on record at Exh. 99 a copy of the judgment of the Gujarat Revenue Tribunal with respect to a matter arising from the proceedings u/s 37(2) of the BLR Code. It does not become clear from the record whether or not the order at Exh. 83 on the record of the case was the subject-matter of the proceedings before the Gujarat Revenue Tribunal culminating into its judgment at Exh. 99 on the record of the case. It is dated 2nd April, 1965.

9. At this stage it will be quite proper to look at the provisions contained in Section 37(3) of the BLR Code. It reads:

Any suit instituted in any Civil Court after the expiration of one year from the date of any order passed under Sub-section (1) or Sub-section (2), or of one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority, as determined according to Section 204, shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that in the case of an order under Sub-section (2) the plaintiff has had due notice of such order.

It has been provided therein that the order passed u/s 37(2) has to be challenged within one year from its making. If any appeal is preferred there against then the time limit of one year would start from the date of the appellate order. It has further been provided therein that if the order is not challenged but a suit is filed for the relief inconsistent with such order beyond the prescribed period the suit will have to be dismissed.

10. As pointed out herein above, the order of the Mamlatdar at Exh, 83 was passed on 23rd February, 1955. The present suit has admittedly been filed on 12th March, 1967, that is, more than 12 years after the date of the order at Exh. 83. It is certainly hit by the relevant provisions contained in Section 37(3) of the BLR Code. Even if it is assumed for the sake of argument that the judgment of the Gujarat Revenue Tribunal at Exh. 99 on the record of the case was in answer to the challenge to the order at Exh. 83 on the record of the case, that judgment is pronounced on 2nd April, 1965. The suit is filed nearly two years thereafter. In that case also it will be hit by Section 37(3) of the BLR Code. The Courts below were not right in not holding it to be time-barred in view of the aforesaid statutory provision.

11. The Courts below have proceeded on the footing that the Mamlatdar had no jurisdiction to undertake the inquiry u/s 37(2) of the BLR Code, and as such the order at Exh. 83 on the record of the case is without jurisdiction. The Courts below have held that an order without jurisdiction is void and it can be challenged irrespective of the Law of Limitation.

12. In this connection a reference deserves to be made to the ruling of the Supreme Court in the case of State of Punjab and Others Vs. Gurdev Singh, . It has been held therein:

A suit for declaration that an order of dismissal or termination from service passed against the plaintiff is wrongful, illegal or ultra vires is governed by Article 113 of the Limitation Act. To say that the suit is not governed by the law of limitation runs afoul of our Limitation Act. The statute of limitation was intended to provide time limit for all suits conceivable.

13. In view of the aforesaid ruling of the Supreme Court in the case of Gurdev Singh (supra), the order at Exh. 83 was required to be challenged within the time limit prescribed u/s 37(3) of the BLR Code even if it is found to be a void order on account of want of jurisdiction. In any case, the suit ought to have been filed within the period prescribed thereunder from the date of the judgment at Exh. 99 on the record of the case. I think the Courts below were clearly in error in not considering this aspect of the matter and coming to the conclusion that the suit was not time-barred.

14. In view of my aforesaid discussion, the suit instituted by the respondents herein as the plaintiffs was clearly hit by Section 37(3) of the BLR Code. The contrary view taken by the Courts below cannot be upheld in law. The decision rendered by the lower appellate Court affirming the judgment and the decree of the trial Court deserves to be quashed and set aside.

15. In the result, this appeal is accepted. The judgment and the decree passed by the learned Extra Assistant Judge of Sabarkantha at Himatnagar in Regular Civil Appeal No. 5 of 1973 affirming the judgment and the decree passed by the learned Civil Judge (S.D.) at Himatnagar on 12th January, 1973 in Regular Civil Suit No. 46 of 1967 are quashed and set aside. As a consequence thereof, the suit instituted by the respondents as the plaintiffs will stand dismissed. There shall be no order as to costs on the facts and in the circumstances of the case.