

(2005) 07 MP CK 0059

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 895 of 2002

Mrityunjay Prasad

APPELLANT

Vs

Santosh Kumar Mishra and Others

RESPONDENT

Date of Decision : 15-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 80
Limitation Act, 1963 — Article 113, 120
Registration of Births and Deaths Act, 1969 — Section 15, 16, 16(1), 8

Citation : (2005) 3 MPHT 492 : (2006) 1 MPLJ 38

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : Pranay Verma, for the Appellant; R.P. Agrawal and Lalit Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

Short facts giving rise to the present appeal are that the plaintiff/appellant has instituted a suit for declaration about the date of death of Sudarshan Prasad. The plaintiff pleaded his pedigree in para-1 of the plaint. The plaintiff has stated that his predecessor Sudarshan Prasad died on 28-11-1992 at 11.00 P.M. However, the office of District Registrar, Births and Deaths, Rewa, issued a death certificate wherein Sudarshan Prasad is shown to have died on 29-11 -1992. The plaintiff on coming to know of the aforesaid error, issued a notice dated 17-9-1996 u/s 80, CPC, with a request that the death certificate issued with 29-11-1992 as date of death of sudarshan Prasad may be withdrawn. The notice was not acceded to and consequently, the cause of action is stated to have arisen on 16-11-1996, i.e., on the expiry of the statutory period of notice u/s 80, CPC. The aforesaid incorrect death certificate is stated to have been issued on 8-8-1993 by the office of respondent No. 3. The plaintiff also prayed for relief that the death certificate with 29-11 -1992 as date of death of Sudarshan Prasad may be declared

ineffective.

The defendant/appellant raised an objection about the date of birth in his written statement and stated that the correct date of death of Sudarshan Prasad was 29-11-1992. The defendant/appellant further raised an objection in the written statement that the suit of the plaintiff is barred by limitation. The defendant also submitted an application u/s 151, CPC with a prayer that the issue pertaining to limitation may be decided as a preliminary issue and the suit may be dismissed as barred by limitation. The plaintiff submitted his reply stating thereby that the question of limitation being a mixed question of facts and law, is required to be decided only after recording the evidence.

The learned Trial Judge held that no oral evidence was required and the issue pertaining to limitation will be decided on the basis of documents on record. The learned Trial Judge, ultimately vide order dated 16-11-1998, dismissed the suit of the plaintiff as barred by limitation.

Aggrieved by the aforesaid, the defendant/respondent No. 1 preferred Civil Appeal No. 39-A/98 against the aforesaid order of dismissal of Civil Suit No. 6-A/97. The learned First Additional District Judge, Rewa, allowed the appeal vide judgment dated 11-2-2002. It has been held by the Lower Appellate Court that the issue in the present case pertaining to limitation could not have been decided without recording the evidence. In view of this finding, the dismissal of the suit by the learned Trial Judge on the ground of limitation was set aside and the matter was remitted back to the learned Trial Judge to decide all the issues on merits after recording the evidence of the parties.

The defendant appellant has preferred this present appeal against the aforesaid order. The learned Counsel for the defendant/appellant submits that the death certificate was issued on 7-5-1993 whereas the suit was instituted on 13-12-1996. He contended that the suit having been instituted after expiry of 3 years, is barred by limitation and the same was rightly dismissed by the learned Trial Judge. He further contended that no oral evidence was required to be recorded and thus, remand by the Lower Appellate Court is totally unwarranted and hence illegal.

The learned Sr. Counsel Shri R.P. Agrawal supported the impugned order.

After considering the submissions made by the respective Counsels, I am of the opinion that the appeal has no merits and is liable to be dismissed for the following reasons :?

(i) It may be seen that the suit is for declaration and is governed by Article 113 of the Indian Limitation Act. The period prescribed for a suit under this Article is 3 years commencing from the date

when cause of action accrues in favour of the plaintiff. The accrual of cause of action is dependent of assertion and denial. It is not every assertion or denial which necessarily gives rise to cause of action or institute a suit for declaration.

In the present case the plaintiff has stated that the date of death of Sudarshan Prasad was wrongly entered as 29-11-1992 in the death certificate. The plaintiff issued a notice u/s 80, CPC, for withdrawal of the death certificate with incorrect date of death. The suit has been instituted after the expiry of the period of 2 months prescribed u/s 80, CPC.

(ii) The Hon'ble Supreme Court of India in the case of Mst. Rukhmabai Vs. Lala Laxminarayan and Others, , has categorically laid down :?

"... The right to sue under Article 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, can not be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right."

Keeping the aforesaid principle into consideration, this Court is of the opinion that the accrual of cause of action in the present case would depend on the facts mentioned in the pleadings of the respective parties. It was admitted by both the Counsels appearing for the parties that the death certificate issued on 7- 5-2003 by the Office of Registrar, Births and Deaths, was not issued to the plaintiff. In this situation the prescribed period of limitation of 3 years will not necessarily commence (Venn the date of issuance of the death certificate. The plaintiff was within his right to issue a notice containing a request to withdraw the death certificate containing incorrect date of birth of Sudarshan Prasad. It is only after the refusal to accede to this request, the plaintiff is obliged to sue for declaration.

(iii) Provisions of registration of Births and Deaths Act, 1969 are also liable to be taken into consideration in this regard. Section 8 of the said Act lays down that it shall be the duty of the persons specified below to give or cause to be given, either orally or in writing, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars required to be entered in the forms prescribed by the State Government under sub-section (1) of Section 16. Section 16 of the Act, makes it mandatory for every Registrar to keep in the prescribed form a register of births and deaths for the registration area of his jurisdiction. The registration made by the Registrar in respect of birth and death is not conclusive with immediate effect because Section 15 of the said Act further provides for correction or cancellation of entry in the register of births and deaths. Thus, a person aggrieved from the entries in the register of births and deaths, may approach the Registrar and satisfy him that the entry of a birth or death in any register kept by him under this Act, is erroneous in form or substance or has been fraudulently or improperly made. No limitation is prescribed to approach the Registrar in this regard. Thus, the notice u/s 80, CPC, may be treated as a representation by the plaintiff to the Registrar of births and deaths to cancel the entry containing the date of death of Sudarshan Prasad. It is only after the refusal of the Registrar to

cancel the entry or make a correction in the said death certificate, a cause of action accrues to the plaintiff to sue for declaration that the date of death of Sudarshan Prasad in the death certificate is incorrect. Thus, the facts enabling the plaintiff to sue for a declaration about the incorrect date of death of Sudarshan Prasad are liable to be established only by recording the evidence unless the parties to the suit agree otherwise. The question of limitation is normally a mixed question of facts and law and can not be decided except by recording evidence as held by the Full Bench of this Court in the case of Santosh Chandra and Ors. v. Gyan Sunder Bai and Ors., reported as 1970 JLJ 290.

Considering the aforesaid, especially, when the parties to the suit did not consent for deciding the aforesaid issue without recording any evidence, the plaintiff has a right to establish the date when the right to sue accrued in his favour. The learned Lower Appellate Court has thus not committed any illegality and the impugned order passed by the learned Additional District Judge is, therefore, maintained. The appeal has no force and is dismissed without any order as to cost.