

(1946) 01 AHC CK 0032
In the Allahabad High Court
Case No : Second Appeal No. 1346 of 1940

Murlidhar and others

APPELLANT

Vs

Ram Saran Das and others

RESPONDENT

Date of Decision : 18-01-1946

Acts Referred:

Citation : (1946) 01 AHC CK 0032

Final Decision : Dismissed

Judgement

Wali Ullah, J.—This is an appeal by the defendants against the decree passed by the learned District Judge of Agra confirming the decree passed by the Court of first instance.

2. The plaintiffs-respondents brought the present suit for recovery of Rs. 8,000 principals and Rs. 990 interest, and Rs. 19-0 costs from the defendants and this claim has been decreed by both the Courts below.

3. The only question which requires consideration in this appeal is whether the suit was barred by limitation. The relevant facts may be briefly set out here. Admittedly a village called Chulhauili was purchased by the defendants Murlidhar, Joti Prasad and one Ganeshi Lal deceased who was father of Bishambhar Nath defendant, as well as by Lal Kishori Lal defendant 4. The share of Lal Kishori Lal in the property purchased was half. The property-purchased, along with some other property, was subject to various incumbrances. The incumbrances on village Chulhauili were paid off by Murlidhar, Joti Prasad and Ganeshi Lal. Later on Lala Kishori Lal paid his proportionate share of the money spent by Murlidhar and others in discharging the prior incumbrances. On 25 7-1925, Murlidhar, Joti Prasad and Ganeshi Lal deceased filed Suit NO. 266 of 1926 for contribution against Thakurain Singal Kuar and others in respect of the money spent in clearing, off the incumbrances. This suit was decreed for Rs. 6,000 on 16-8-1926. As mentioned above Lal Kishori Lal, defendant 4 in the present suit, held a moiety share and on 16-12-1928, it appears, a sale deed of the half share of Lal Kishori Lal in the decree was executed in favour of Lala Sheobans Rai,

father of the plaintiffs Ram Saran Das, Ishwar Saran and Bishambhar Dayal. On 15-4-1929, Joti Prasad, Murlidhar and Ganeshi Lal filed Suit No. 57 of 1929 against Lal Kishori Lal and Lala Sheobans Rai seeking specific performance of a contract of sale of the half share of Lal Kishori Lal. On 2-1-1930, the aforesaid Suit No. 57 of 1929 was decreed with the result that Joti Prasad, Murlidhar and Ganeshi Lal alone were declared to be entitled to the entire amount of the aforesaid decree against Thakurain Singar Kuer and others. In execution of the aforesaid decree in suit No. 266 of 1925 the property of the judgment-debtors was put to auction and sold on 26-1-1932. On 21-7-1932, Murlidhar, Joti Prasad and Ganeshi Lal realised Rs. 6,000 in full satisfaction of the decree. Meanwhile the decree in suit No. 57 of 1929 was under appeal in the High Court and on 2-10-1935, the High Court reversed the decree of the Court of first-instance and dismissed the suit for specific performance with the result that Lal Sheobans Rai, the father of the plaintiffs, was held to be a purchaser of the half share of Lala Kishori Lal in the aforementioned decree in suit No. 266 of 1925. Lala Sheobans Rai died on 19-11-1935. On 18-1-1938, the plaintiffs instituted the present suit for recovery of Rs. 3991-9-0. The suit was resisted only by defendants 1 to 3 on the grounds: (1) that Lal Kishori Lal had no interest in decree in Suit No. 266 of 1925; (2) that Lala Sheobans Rai was not a bona fide transferee for value of Lal Kishori Lal's share in this decree; (3) that the claim was barred by estoppel; and (4) the claim was barred by limitation. It was further contended that the plaintiffs were not, in any case, entitled to recover any interest. The Court of first instance found on all the issues in favour of the plaintiffs and decreed the claim in its entirety. As mentioned already all these findings recorded by the Court of first instance were affirmed on appeal.

4. The only point which calls for consideration in this appeal is whether the claim was barred by limitation. On this question both the Courts below were of the opinion that Art. 62, Limitation Act, was applicable to the facts of the present case. They were also of the opinion that S. 15, Limitation Act, was applicable and the suit was, therefore, within time.

5. Learned counsel for the appellants has strongly contended that the benefit of s. 15, Limitation Act, could not be claimed in this case by the plaintiffs-respondents and therefore the suit was clearly barred by three years' limitation prescribed by Art. 62, Limitation Act. On the facts admitted and found by the Courts below it is quite clear that Art. 62 and not Art. 120, Limitation Act, as was family suggested by the other side, was applicable to the facts of the present case. Article 120, as observed by the Full Bench of the Calcutta High Court in ("99) 26 Cal. 564 (F.B.), *Sharoop Dass Mondal v. Joggessur Roy* can apply only when the case does not come under one of the many Articles dealing with specific cases. Reference in this connection might also be made to a decision of two learned Judges of the Calcutta High Court in ("05) 32 Cal. 527, *Mahomed Wahib v. Mahomed Ameer*, where the scope of Art. 62, is very fully explained. The only question, however, is whether the provisions of s. 15, are applicable in the circumstances of the present case. The amount of the decree was no doubt

realised by the defendants-respondents on 21-7-1932. The amount claimed in the present suit must, therefore, be considered to have been received on that day by the defendant for the plaintiffs' use. Normally, therefore, time will begin to run against the plaintiffs from the 21-7-1932, and unless the benefit of the provisions of s. 15(1), Limitation Act, be available to them, it is contended by the learned counsel for the appellants, the suit is clearly out of time. Section 15(1) of the Act runs thus:

In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

The scope of this section has been discussed in various cases of this Court as well as by their Lordships of the Privy Council to which reference has been made by the learned counsel for the parties in the course of their arguments before us. Learned counsel for the appellants has strongly relied upon a decision of two learned Judges of this Court reported in *Lakhmi Chand and Others Vs. Bibi Kalsumannisa*, In this case a person obtained a decree for possession of a temple in 1926. Before he could execute his decree by an application for execution a suit was brought by the pujari of the temple who obtained a decree in 1928 declaring the pujari to be the owner of the temple and restraining the decree-holder in the previous suit from taking possession of the temple. This decree was set aside by the High Court in 1931. The decree-holder of the previous suit made an application for execution in 1933. It was held that the decree of 1928 did not operate as an injunction or stay of execution within the meaning of S. 15 and hence the decree of 1926 was time barred in 1933 when the decree-holder made an application for execution. In the course of their judgment their Lordships observed:

The Courts in India are bound by the specific provisions of the Limitation Act and are not permitted to move outside the ambit of these provisions.

Again, their Lordships observed:

It is not permissible to the Court to discover in the provisions of the Limitation Act general principles and to apply those principles to cases which are not specifically provided for by the Act itself. Now it is abundantly clear that S. 15, Limitation Act, does not contemplate the case of one decree being tendered impossible of execution by a subsequent decree in another suit.

Their Lordships deprecated all references to "general principles of suspension of limitation," and expressed their dissent from the view of the law expressed by two other learned Judges of this Court in *Badrudin Khan and Others Vs. Munshi Mahyar Khan and Others*,

6. Next it was contended by the learned counsel for the appellants that the ruling

relied upon by the Courts below, namely ("27) 14 AIR 1927 Mad. 997 : 105 I.C. 304, Lakshminarayana v. Lakshmipati, did not lay down correct law. It was urged that this case was not followed in the later Vadlamannati Bala Tripura Sundaramma alias Suiadaramma Vs. Abdul Khadar, and that it was also expressly dissented from by the learned Judges of this Court in Lakhmi Chand and Others Vs. Bibi Kalsumannisa, Our attention was also invited to the case in AIR 1932 165 (Privy Council) In that case their Lordships had to consider the import of the expression "where there has been an appeal," in Art. 182. Their Lordships are reported to have observed as follows:

there is, in their Lordships' opinion, no warrant for reading into the words quoted any qualification either as to the character of the appeal or as to the parties to it; the words mean just what they say. The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is, their Lordships think, the only safe guide.

Again, reference was made to a decision of their Lordships of the Privy Council in AIR 1933 52 (Privy Council) In that case a receiver appointed in an administration suit was ordered to pay a decree-holder a certain amount half-yearly in respect of his judgment-debt obtained by him against the judgment-debtor in another suit, whose property was the subject-matter in the administration suit. The receiver paid nothing and the decree-holder put in an application in the administration suit asking the receiver either to pay the debt or that he might take an execution against the property in his hands. The Court ordered the decree-holder to wait for some time; but this order was set aside on appeal. Their Lordships had to consider whether the order of the Court directing the decree-holder "to wait for some time" amounted to an order of stay of execution with reference to the provisions of s. 15, Limitation Act. Their Lordships observed:

It was an order which did not stay execution at all, but simply said that so far as that application in that suit was concerned the appellants were to wait. That seems to their Lordships not to be in any sense within the meaning of the section a stay of the execution by injunction or order.

Learned counsel has also relied upon the case in Narayan Jivaji Patil Vs. Gurunathgouda Khandappagouda Patil, where, with reference to s. 15, Limitation Act, two learned Judges of the Bombay High Court held:

The question whether in a particular case, the plaintiff has been restrained by an injunction or whether there has been any order against his instituting any proceedings, must be a question which must depend upon the actual order or decree made in the case. An order or decree restraining a person from instituting a suit need not be express. It may be either express or implied. So also merely putting a claim and asserting a right, as distinct from receipt of rents or moneys,

is not a violation of an order restraining a party from recovering rents or recovering or receiving debts.

On appeal from that decision of the Bombay High Court in the above-mentioned case, their Lordships of the Privy Council in ("45) 32 AIR 1946 P.C. 5 : ILR (1945) Kar. P.C. 43 (P.C.), Narayan Jivangouda v. Puttabai at p. 7 have observed :

The question whether in a particular case a party has been restrained by an injunction or order from instituting a suit must always depend for its decision upon the order, or the decree, made in the case. It appears to the Lordships there is nothing in the injunction or in the decree to support the contention that the appellant was prevented from instituting a suit for possession in 1920, or at any time before the expiry of the period of limitation. The various restraints imposed on the appellant by the decree cannot be made to mean by any process of interpretation that he is thereby prevented from instituting a suit for possession for the suit properties.

With reference to the argument advanced on behalf of the appellant before their Lordships that since the title of the contending parties was involved in this suit it would have been quite futile to institute a suit, their Lordships observed:

Their Lordships are unable to appreciate this point for the institution of a suit can never be said to be futile, if it would thereby prevent the running of limitation.

7. Bearing in mind the facts established in the present case and in view of the authorities mentioned above it must be held that the plaintiffs have failed to bring their case within the terms of s. 15, Limitation Act. It would, therefore, follow that the suit would be barred by limitation unless the plaintiffs are able to invoke to their aid some principle or provision of law which may save them from the bar of limitation.

8. Learned counsel for the respondents, however, contends that there are "general principles of suspension of limitation" which are applicable to cases where a party is prevented under certain circumstances from taking action in pursuance of his rights. His contention is that Courts do recognize and act on these principles. It must, however, be stated at the very outset that there is a good deal of conflict of judicial opinion. As mentioned already, in Lakhmi Chand and Others Vs. Bibi Kalsumannisa, a Bench of two learned Judges of this Court, Thorn C.J., and Ganga Nath J., at p. 83 observed as follows:

We are unable to agree that there is any place in the law of limitation in India for a "general principle of limitation".

Again, at p. 84 they have observed:

In view of what must be regarded as settled law that the Courts in India are bound by the specific provisions of the Limitation Act and are not permitted to move outside the ambit of these provisions, references to "general principles of suspension of limitation are to be deprecated".

On the other hand, two other learned Judges of this Court, Harris and Misra JJ., in *Badrudin Khan and Others Vs. Munshi Mahyar Khan and Others*, observed as follows:

It is on the general principles of suspension of limitation which are applied in cases where a party is prevented under certain circumstances from taking action in pursuance of his rights, that the applicants in this case are entitled to exclude the time from 14-2-1921 to 6-2-1935. Courts do recognize and act upon these principles.

It must be observed that in the last mentioned case their Lordships definitely held that s. 15, Limitation Act, was not applicable. Again, two other learned Judges of this Court, Ismail and Mulla JJ., in *Chanda Devi Vs. Natthu Singh and Others*, observed with reference to s. 15, Limitation Act, that this section in terms did not apply to the facts of the case before them. At p. 89, they, however, went on to observe:

This section, however, assumes the existence of a decree which is capable of execution. The decrees in the suits in question were declared null and void by Suit No. 90 of 1931 which rendered the two decrees entirely inoperative....It is inconceivable that the Legislature ever intended that in these circumstances the decree-holders would be forced to make the applications only to have them dismissed. The law of Limitation would apply only if an operative decree were in existence. If by the order of a competent Court the decree has been rendered a nullity, the period during which that order is in force must be excluded otherwise the period of limitation allowed to the decree-holder would be reduced to less than three years. In our opinion, there is no justification for such a reduction of time for the execution of a decree either in law or equity.

Their Lordships have further referred to the case in ("21) 19 A.L.J. 26 : 8 AIR 1921 P.C. 31 : 6 Pat. L.J. 132 : 48 I.A. 17 : 59 I.C. 636 (P.C.), *Rameshwar Singh v. Homeshwar Singh*, decided by their Lordships of the Privy Council in which their Lordships are reported to have observed at p. 30.:

They are of opinion that, in order to make the provisions of the Limitation Act apply, the decree sought to be enforced must have been in such a form as to render it capable in the circumstances of being enforced.....They are of opinion that when the Limitation Act of 1908 prescribes three years from the date of a decree or order as the period within which it must be enforced, the language, read with its context, refers only, as they have already indicated, to an order or decree made in such a form as to render it capable in the circumstances of being enforced. This interpretation appears to them not only a reasonable one in itself, but to be in accordance with the previously expressed opinion of this Board in ("05) 32 I.A. 102 : 27 All. 334 : 8 Sar. 810 (P.C.), *Shaik Kamar-uddin Ahmad v. Jawahir Lal*.

Reference was also made to the case in *Ramgulam Singh and Others Vs. Raj Kumar Rai and Others*, where two learned Judges of the Patna High Court held:

Where a decree-holder is restrained by injunction from executing the decree or where his decree has ceased to exist having been set aside in a separate suit, the time of injunction or the period for which the decree ceased to exist should be excluded.

In Chanda Devi Vs. Natthu Singh and Others, their Lordships further observed:

We, however, find no adequate reason to hold that the period of limitation will keep on running while the decree not even in existence having been declared null and void by a competent Court. We are aware of the general principle that once the period of limitation has begun to run against a particular right to sue, appeal or apply there is no suspension of that period except as provided by the Limitation Act itself. This principle, however, is subject to modification in special circumstances and has been recognized in ("20) 7 AIR 1920 Mad. 663 : 43 Mad. 845 : 59 I.C. 472, Muttmveerappa Chetty v. Adaikappa Chetty.

Finally, their Lordships observed at p. 91:

We have given our serious consideration to the authorities that have been cited before us by the parties and we have no hesitation in holding that the plea of limitation should be repelled in this case. It appears to us wholly unreasonable to hold that the right to execute the decrees became barred because the decrees were rendered incapable of execution by the subsequent decree of a competent Court.

It may be observed here that the case in Lakhmi Chand and Others Vs. Bibi Kalsumannisa, was cited before the Bench which decided, the case in Chanda Devi Vs. Natthu Singh and Others, and their Lordships with reference to that case observed:

In that case, it will be noticed that the suit was by a third party and not by the judgment debtor. There was absolutely no declaration with regard to the decree which was obtained by the respondent. The decree, therefore, remained operative and could have been executed by the decree-holder.

Again, in ("08) 35 Cal. 209 (F.B.), Lakhan Chunder Sen v. Madhusudan Sen a Full Bench of the Calcutta High Court affirmed the principle of the suspension of limitation or of right of action. In that case a Hindu, Guru Charan Sen died, intestate in 1872 leaving a widow and three sons. On 18th January 1892 two of his sons were dispossessed of their share in certain property. In 1896 one of these sons instituted a suit against the other two sons for possession and account and in 1897, on the death of the two defendants, their sons were brought on the record. The sons of one of the original defendants supported the claim of the plaintiff. A decree dated 20th April 1903 was passed in favour of the plaintiff and it was further declared that the defendants who supported the claim of the plaintiff were entitled to the share they claimed. On appeal, however, on 22nd February 1904, the decree in favour of the plaintiff was confirmed but so far as it related to the sons of the defendant who supported the claim of the

plaintiff, it was set aside. Thereupon on 14th November 1904 these persons instituted a suit for a one third share in the property which had devolved on their father on the death of Guru Charan Sen. It was held by the Full Bench that the right of the plaintiffs to bring an action to recover the property was suspended between 20th April 1903 and 22nd February 1904 and that in consequence the suit was not barred by limitation. At page 218 their Lordships observed:

We think, therefore, in these circumstances that the right of the plaintiffs to bring an action to recover the property was suspended between 20th April 1903 and 22nd February 1904 and that the case falls within the principle laid down by the Judicial Committee of the Privy Council in the case in ("68) 12 M.I.A. 244 : 2 Suther 173 : 2 Sar 424 (P.C.), Rane Surnomoyee v. Shooshee Mokhee Burmonia and in ("59) 7 M.I.A. 323 (P.C.), Prannath Roy v. Rookea Begum at page 357. It is conceded that at the time of the institution of the first suit, the plaintiff's claim was not barred.

In this connection the language of Lord Eldon in (1801) 6 Ves. 73, Pulteney v. Warren at page 92, has some application: "If there be a principle, upon which Courts of justice ought to act without scruple, it is this: to relieve parties against that injustice occasioned by its own acts or oversights at the instance of the party, against whom the relief is sought. That proposition is broadly laid down in some of the cases." This view was approved of by the House of Lords in (1837) 11 Bli (N.S.) 158, East India Co. v. Campion.

On appeal their Lordships of the Privy Council affirmed, on the question of limitation, the decision of the Full Bench of the Calcutta High Court: vide ("16) 43 Cal. 660 : 3 AIR 1916 P.C. 96 : 33 I.C. 452 (P.C.) Nrityamoni Dassi v. Lakhan Chandra Sen. At page 663 their Lordships of the Privy Council observed :

Limitation would no doubt run against them from that time (i.e. 1892). But it would equally without doubt remain in suspense whilst the plaintiffs were bona fide litigating for their rights in a Court of Justice.

Reference may also be made to the case in Akshoy Kumar Roy Choudhry Vs. Abdul Kader Khan and Another, where a Bench of two learned Judges of the Calcutta High Court while considering the question of limitation which would govern an, application for execution, are reported to have observed at page 331 :

There is no provision in the Limitation Act which would extend the period of limitation in such a case. The general principles of suspension of limitation might be applied in cases where a plaintiff or a decree-holder is prevented under the circumstances from taking action in pursuance of his rights. The principal case as regards suspension of limitation or rather of the cause of action arising after certain previous proceedings had terminated is that in ("68) 12 M.I.A. 244 : 2 Suther 173 : 2 Sar 424 (P.C.), Rane Surnomoyee v. Shooshee Mokhee Burmonia.

9. In view of the authorities referred to above, it must be held that law Courts do

recognize "general principles of suspension of limitation or right of action" in cases where a party is prevented under certain circumstances from taking action in pursuance of his rights. In the present case the amount of the decree, was received by the defendants on 21st July 1932. Prior to that, however, that is, on 2nd January 1930, the defendants had managed to obtain a decree in suit No. 57 of 1929 wherein they alone had become entitled to the entire amount of the decree in question. Till 2nd October 1935 when the High Court reversed the decision of the learned Civil Judge in Suit No. 57 of 1929, the plaintiffs could not possibly institute the suit for recovery of their share in the decretal amount as the decree of the Court of first instance in Suit No. 57 of 1929 stood in their way. Undoubtedly it is true that there was no specific order of the civil Court debarring them from bringing their action but till the decision of the High Court in appeal given on 2nd October 1935 the position was that the very basis on which they could claim a moiety share in the decree, that is their right by purchase of half the decretal amount of the decree in Suit No. 266 of 1925 had been declared to be non-existent at the instance of the defendants themselves. It is not the case here that by reason of a decree obtained by a third party the impediment in the way of the present plaintiffs was created and in this respect this case is distinguishable from the cases reported in *Vadlamannati Bala Tripura Sundaramma alias Suiadaramma Vs. Abdul Khadar, and Lakhmi Chand and Others Vs. Bibi Kalsumannisa*, It must, therefore, be held that the suit as instituted was not barred by time and thus the main contention of the learned counsel for the appellants fails.

10. Learned counsel for the appellants has next contended that the Courts below were in error in allowing the plaintiffs interest from 21st July 1932 when the money was realised by the defendants. It was contended that interest could be claimed only with effect from the date of the notice of demand, that is, from 18th March 1937. It was also contended by the learned counsel that the defendants appellants were entitled to recover from the plaintiffs respondents a portion of the costs incurred in Suit No. 266 of 1925.

11. After hearing learned counsel for the parties, I am satisfied that the view taken by the lower appellate Court in regard to both these matters was quite correct.

12. The result, therefore, is that the appeal fails and I would dismiss it.

Sinha J.

13. I agree.

14. The appeal is dismissed with costs.