
(1958) 01 OHC CK 0010
In the Orissa High Court
Case No : Second Appeal No. 276 of 1954

Natabar Mohanty	Vs	APPELLANT
State of Orissa		RESPONDENT

Date of Decision : 06-01-1958

Acts Referred:

Limitation Act, 1908 — Article 16

Citation : AIR 1958 Ori 148 : (1958) 24 CLT 317

Hon'ble Judges : S.P. Mohapatra, J

Bench : Single Bench

Advocate : R.N. Sinha and G.C. Jena, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Mohapatra, J.—This is an appeal against the decision of Sri B. Panda, Additional District Judge of Ganjam Nayagarh, dated 27-8-1954, reversing a decision of Sri M.N. Mukherji, Additional Subordinate Judge of Puri, arising out of a suit for recovery of a sum of Rs. 2668787-with a reasonable rate of interest on the said amount as against the State of Orissa. The plaintiff was a forest contractor under the Ex-Ruler of the Ex-State of Khandapara and he was authorised to exploit timbers in accordance with the terms of an agreement (Ext. A) entered into between him and the Ex-Ruler of Khandapara.

After the merger of the Khandapara State with the State of Orissa there started a proceeding against the present plaintiff for having illegally cut 57 Sal trees; the Administrator by his order dated 19-2-1948 in the Forest Case No. 160 of 1947-48 ordered the present plaintiff to pay a sum of Rs. 3043/8/- as royalty and compensation for the alleged unauthorised act. The plaintiff paid a sum of Rs. 400 in cash and the balance of the amount was collected from the security money deposited by the plaintiff in connection with his agreement Ext. A.

Thereafter the plaintiff filed an appeal against the said order of the Administrator

of 15-5-1948. The appeal terminated in favour of the plaintiff. The appellate authority passed order for refund of Rs. 2668-8- collected from the plaintiff. The plaintiff thereafter made several demands for refund of the said sum of Rs. 2668787- but the State of Orissa having failed to comply with the order of refund passed by the appellate authority on 17-9-1948, the present suit has been brought for the recovery of the said sum on 17-9-1951.

2. The State of Orissa had taken up various objections contesting the claim of the plaintiff, such as, there was no proper and valid service of notice u/s 80, Civil Procedure Code, the order of refund is without jurisdiction and that the suit is barred by limitation.

3. The learned trial Court negatived all the contentions raised on behalf of the State of Orissa and allowed a decree in favour of the plaintiff. The lower appellate Court, however, even though agreeing with the findings of the trial Court in all other respect, dismissed the plaintiff's suit on the ground of limitation only. According to the lower appellate Court, the case comes directly under the mischief of Article 16 of the Limitation Act.

4. The only point that was argued before me is whether the suit is barred by limitation or not. Mr. S. Acharya, the learned Standing Counsel, appearing on behalf of the State, did not contest the position that the order of refund passed by the appellate authority dated 17-9-1948 is a competent order passed by the appropriate authority who had jurisdiction to pass order. The findings of the courts below, therefore, remain unchallenged and accordingly are confirmed.

5. The only point to be examined by me is whether the suit is hit by the mischief of Article 16 of the Limitation Act. It runs as follows:

"16. Against government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands reco-verable as such arrears,

One year

When the payment is made.

There is no doubt over the position that before we can apply a particular Article of the Limitation Act to throw out a suit as barred by limitation, we shall have carefully to examine whether the materials on record are sufficient to comply with all the requirements provided for in the Article itself. The first ingredient, which is essential to bring the case under Article 16 is that "the money must have been paid under protest."

In my opinion, in the circumstances transpiring, in the case, out of the materials placed on record, there is nothing to suggest that "the money was paid under protest". Paragraph 3 of the plaint runs as follows:

"That before the plaintiff filed the said appeal a sum of Rs. 3043/8/- was collected from him as per orders dated 19-2-1948 of the Administrator,

Khandapara, Fiftyseven Sal logs had been also seized from the plaintiff in connection with Forest Case No. 160 of 1947-48 of Khandapara."

Thereafter the plaintiff recites that he filed an appeal against the said order and the appellate authority passed the final order for refund which serves as the cause of action for the present suit. On a fair reading of the plaint, it appears, the cause of action of the present suit is the order of refund passed by the appellate authority in appeal which is dated 17-9-1948. On referring to paragraph 5 of the written statement we get;

XX XX X

"After integration the Administrator of Khandapara with the consent of the plaintiff fixed the compensation to be paid in respect of the said 57 Sal trees at Rs. 3043/8/-. The plaintiff paid Rs. 400/- towards the compensation and filed an application on 3-2-1948 stating that the balance may be adjusted out of his security deposit of Rs. 6150/- and he might be allowed to work in the coup. Accordingly the Administrator passed an order on 19-2-1948 that the balance of the compensation be realised out of the plaintiffs security deposit.

x xx x x".

It is clear even from the case set up by the defence that the money, which was sought to be recovered in the present suit, was never paid under protest. It is to be mentioned, there has been no oral evidence in this case and the parties argued the matter only after filing a few documents which were admitted by both parties.

6. It is strongly contended on behalf of the State that the fact that the appeal was filed is sufficient proof that the money was paid under protest. But as it appears from the written statement, the plaintiff filed the application, stating that the balance might be adjusted from out of the security deposit, on 3-2-1948 and that the appeal was filed only on 15-5-1948, that is nearly 3 1/2 months after the application.

It is to be noted, what is contemplated under the provisions of Article 16 is that the protest must be simultaneous with the payment. Indeed subsequent conduct may be taken into consideration to come to the conclusion whether as a matter of fact there was a protest at the time of payment; but in view of the categorical statements made by the State in their written statement, as quoted above, and in view of the position that the appeal was filed three months and twelve days after the application, it can never be found that the payment was made under protest.

7. Mr. Acharya, however, cited two authorities in support of his contention that Article 16 would apply. In the case reported in The Secretary of State for India in Council Vs. Nagaraja Aiyar and Another, , Spencer and Krishnan JJ., decided, the period of limitation for a suit to recover a sum of money alleged to have been illegally levied and collected by government from the plaintiff as water cess on

his land is one year from the date of payment under Article 16 of the Limitation Act and not six months from the date of distraint of the plaintiff's crops u/s 59 of the Madras Revenue Recovery Act (II of 1864).

They further found that the plaintiff's crops were distrained in order to enforce payment of the demand and it does not operate to introduce Section 59 of Madras Act II of 1864 by reason of Section 29 (b) of the Limitation Act so as to shorten the period of limitation. In this case the only question for determination by their Lordships was whether the case would come under Article 16 of the Limitation Act or u/s 59 of Madras Act II of 1864 which is apparent from the very first paragraph of their Lordships' judgment:

"The question for our determination is whether the period of limitation applicable to these suits, which have been brought to recover amounts alleged to have been illegally collected by government from the plaintiffs as water cess on their lands, is one year from the date of payment under Article 16 of the First Schedule of the Limitation Act or six months from the date of distraint of the plaintiff's paddy crop u/s 59 of the Madras Revenue Recovery Act (II of 1864)".

The position that the payment was made under protest was accepted by both parties and by their Lordships in deciding the case. The present case, therefore, cannot at all be covered by this decision inasmuch as the only pertinent question in the present case is whether the payment was made under protest or not. Exactly to the same effect is another case of the Madras High Court of a Single Judge reported in Venkata Sivaram Dass v. Secy. of State 52 Mad LJ 132: (AIR 1927 Mad 350) (B).

Gurgenven J., decided that where water cess was paid under protest and without the issue of coercive process, the period of limitation applicable is prescribed by ordinary law and not by Section 59 of the Madras Revenue Recovery Act. Here also his Lordship observed:

"I am informed on behalf of the plaintiff (appellant) that the payment was in fact made under protest and without the issue of coercive process, and if this be so I would follow the authority of the case just cited and hold that the period of limitation would be not as laid down in Section 59 but as prescribed by the ordinary law."

I It is clearly indicated in the last case that the fact that payment was made on protest was an accepted fact. In the result, therefore, the present case is completely out of the mischief of Article 16 of the Limitation Act.

3. The question then remains if it is barred under any other article of the Limitation Act. I may note here that I had given the learned advocates, appearing on both sides, two adjournments in the midst of argument to place before me if it is hit by any other article. The learned Standing Counsel did not put forth any other article under which the suit would be barred by limitation. As I have construed the plaint, it is a pure and simple suit for recovery of amount

on the basis of the appellate order made on 17-9-1948 for refund of the amount. In the above consideration, therefore, the suit is well within time.

9. As no other point was taken to contest the findings of the Courts below, I allow the appeal and decree the plaintiff's suit for recovery of a sum of Rs. 2668/8/-. Mr. Sinha, appearing on behalf of the appellant, does not press his claim regarding interest. The plaintiff will, however, be entitled to full costs throughout as against the State of Orissa. The judgment of the lower appellate Court is set aside and the judgment of the trial Court is slightly modified only in the matter of future interest.