(1999) 07 GAU CK 0003

In the Gauhati High Court

Case No : Misc Appeal (First) No. 17 (K) of 1998

Nrithung Humtsoe APPELLANT

Vs

Enibemo Ezung RESPONDENT

Date of Decision : 02-07-1999

Acts Referred:
Limitation Act, 1963 — Section 17, 17

Citation : (2000) 1 GLJ 56

Hon'ble Judges : H.K.Sema, J and P.C.Phukan, J

Bench : Division Bench

Advocate : K.R.Murry , B.N.Sharma, Apok Pongener , Advocates appearing for Parties

Judgement

H. K. Sema, J.—This appeal is directed against the judgment and order dated 29.10.98 passed by the learned Additional Deputy Commissioner (Judicial) Wokha in Title Suit No.22 of 1997 whereby the learned Court below, had held that the suit was within time and the prayer of the defendant that the suit is barred by limitation has been rejected.

2. This appeal has been filed by the defendant No.6. It will be pertinent to mention herein that in Title Suit No.22 of 1997, the plaintiff impleaded as many as 6 (six) defendants. The defendant Nos 1 to 5 have not file any appeal against the judgment and order dated 29.1.93 impugned in this appeal, and therefore, the impugned order dated 29.10.98 in so far with regard to the defendant Nos 1 to 5 has become final.

3. We have heard Mr. BN Sarma, learned counsel for the appellant/defendant No.6 as well as Mr. KR Murry, learned counsel for the respondents/plaintiffs at length.

4. Basic facts may be noted. Plaintiff filed Title Suit No.22 of 1997 alleging that the plaintiffs are the actual land owners at 17 to 31 KMs Wokha to Bokajan Road in Pongiton village and properties were destroyed during the new formation of

cutting of Wokha to Bokajan Road, but they were deprived of their rightful claims of land and crops damaged compensation paid by the Border Road Organisation through the Deputy Commissioner, Wokha due to fraudulent drawal of the amount against their lands by the defendant No. 6, as the defendant No.6 has drawn the amount by, preparing false bills in the name of his alleged sons and brothers and by submitting fake ''No claim certificates'' far their lands.

5. Prior to the filing of the present MA (F), several writ petitions have also been filed before this Court. The first civil rule registered as Civil Rule No. 133 (K) 95 filed by the appellant was disposed of by this Court on 13.5.96 inter alia in terms of the following order:

"In the facts and circumstances that have been narrated and discussed above, the impugned order dated 18.8.1995 issued by the learned Deputy Commissioner, Wokha is set aside. It is open to any person who is aggrieved in the present transactions of payment of compensation in respect of the land/crops to initiate legal action before a competent Court for redressal."

6. Thereafter, another civil rule was filed registered as Civil Rule No.79 (K) 97. This Court disposed of the aforesaid civil rule inter alia, in para 4 of the judgment:

"4. From the observation made by this Court while disposing of the Civil Rule 133 (K) 95 it is abundantly clear that .this Court directed the parties aggrieved to approach the competent Court for redressal of their grievances. This would meant the aggrieved party would file a civil suit in the Court of competent jurisdiction to recover the amount if they succeeded or for passing necessary order as deem fit and proper. Admittedly, this direction has not been exhausted by the petitioner?. 7. This Court also observed that the delay should be waived if the petitioner filed title suit within six weeks. This observation was however modified by the appellate Court in Writ Appeal No. 618 of 1997.

8. Admittedly, the title suit was filed on 3.7.97 after this Court disposed of the batches of civil rules as referred to above. It is the contention of the defendant that since the last instalment of the compensation was drawn on 16.3.93, therefore the title suit filed on 3.7.97 is barred by limitation under Article 24 of the Limitation Act. This plea was rejected by the learned Court below, and being aggrieved, the present, appeal has been preferred by the defendant No.6.

9. The sole question to be determined in this appeal is, whether the suit was barred by limitation, and if so, which Articles of Limitation Act would apply in the facts and circumstances of the case.

10. Plaintiff categorically averred in para 2 of the plaint that the plaintiffs

were deprived of their rightful claim of land compensation of their land due to

fraudulent drawal of the compensation amount by the defendant No.6 by preparing false bills in the name of his alleged sons and brothers, and subsequently submitting no claim certificate'' for the their lands belonging to the plaintiffs.

11. It is also averred in para 5 of the plaint that the Deputy Commissioner,

Wokha issued notice to the Chairman/GBs of Pongitong village directing the individual claimants to file their applications for destruction of paddy fields and Orchard fields etc before March, 1992 and be present on the spot for spot verification. However, the present appellant at the relevant time was acting Chairman of the village and he never informed the GBs nor the affected land owners of the Deputy Commissioner''s notice and had hidden the notice by himself with intention to do mischief and prepared a false bills in the name of his sons and brothers against the lands belonging to the plaintiffs. It is further averred that on 20.3.92, the appellant/defendant has taken some officials of Deputy Commissioner''s office and shown the spots as belonging to him, his sons and brothers and then managed to obtain false land ownership certificate in their

favour and prepared false bills.

12. It is also averred in para 8 of the plaint that the defendant No.6 (appellant herein) was acting Chairman of Pongitong Village Interim Council and he was doing mischief in preparing false land/crops damaged compensation bills in the name of fake land owners, fraudulently drawn the compensation amount against the lands actually belonging to the plaintiffs at the costs of the real land owners.

13. In para 9 of the plaint, plaintiff has categorically stated that one Shri Hakao Ngully an Office Assistant in the Deputy Commissioner''s office, Wokha disclosed before the Investigating Officer of the Vigilance that the defendant No. 6 was handling the official file of the land compensation of Wokha to Bokajan Road and keeping the file in his possession at home during this period he had removed all the applications for payment of land compensation submitted by the affected land owners to the Deputy Commissioner, Wokha with sole intention for preparing false bills and drawing compensation fraudulently. It is further averred that the defendant No. 6 had removed other important documents of the file to destroy the evidence.

14. Averments made in para 10 of the plaint is very important and it runs :

"10. That during interrogation of the defendant No. 6, he admitted that he

received both the amount of Rs. 92,600/ and Rs. 2,93,260/ respectively as land/ crops compensation on behalf of the 9 (nine) beneficiaries and that the signatures on the APRs, were his own signatures and that the beneficiaries for whom he drew Rs. 3,85,860 were his own sons and brothers. He admitted that his full name is Nrithung Humtsoe and RH Lotha is he himself. He also admitted that ''No claim certificates'' submitted in the names of the 9 (nine) beneficiaries to the Deputy Commissioner''s office were signed by him"

15. Having said so, the plaintiff averred, in para 26 of the plaint that he came to

know the fraud played by the defendant No.6 on 5.5.96 when the appellant/ defendant No.6 had filed writ petition against the Deputy Commissioner in Civil Rule 133(K)95 and when he received a certified true copy of the judgment on 22.5.96 and in May, 1997 when the plaintiff obtained a copy of the vigilance report while plaintiffs were preparing to file writ petition of Civil Rule No. 79 (K) 97. In other words, the plaintiff assert that the cause of action of fraudulent practice by the defendant No. 6 arose for the first time on 22.5.96 when they received a certified true copy of the judgment and order dated 13.5.96 passed by this Court in Civil Rule No . 133 (K) 95.

16. No written statement has been filed by the appellant/defendant No.6 in Title Suit No. 22 of 1997 controverting the averments made in paras 2,5,8,9,10 and 26 of the plaint as referred to above. We are clearly of the view that taking into considerations of the averments made in paras 2, 5, 8, 9, 10 and 26 of the plaint that the proper section applicable in such circumstances is section 17 of the Limitation Act, 1963 (Act No 36 of 1963 hereinafter the Act.)

17. Section 17 of the Act enjoins that in the case of any suit or application for which the period of limitation has been prescribed by the Act, such period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud.

18. In the instant case, plaintiff categorically averred in para 26 of the plaint that for the first time he discovered the fraud played by the defendant No. 6 when he received a copy of the High Court judgment dated 13.5.96 passed in Civil Rule No. 133 (K) 95 on 22.5.96. As already said, defendant has not filed any written statement controverting the averments made in the plaint. At the same time, considering the averments made in paras 2, 5, 8, 9 and 10 of the plaint, we are clearly of the view that it is adequately enough to constitute a fraudulent practice by the defendant No.6. It is however, contended by Mr. BN Sarma that assuming the defendant No.6 practised fraud such fraud has come to the knowledge of plaintiff on 16.12.93 when the Vigilante Commission made a spot enquiry/ According to the counsel, even if the practice of fraud is accepted, the limitation should run from 16.12.93 the date on which the Vigilance Commission made spot enquiry with regard to the fraudulent drawal of Rs. 3,85,860. In this connection, learned counsel has referred to the Annexure I, Spot Verification Report. According to the counsel, the spot verification has been conducted on 16.12.93 and the verification report bears the ''signature of the plaintiff and therefore, even if fraudulent practice is accepted the limitation should ran from 16.12.93 and counting limitation from 16.12.93 if the suit is filed on 3.7.97 it is still a barred by limitation under Article 24 of the Act. We are unable to accept this contention of counsel for the appellant, because the practice of fraud not only ''with regard to the fraudulent drawal of Rs. 3,85,860/ but it with regard to the fraudulent practice of obtaining fake land ownership certificate and No Claim Certificate submitted by the defendant No.6 and the plaintiff also prayed to restore the land in between 17 to 31 KMs point and the land ownership

certificate obtained by the defendant No.6 fraudulently. In this connection, it will be pertinent to refer to the relief prayed for by the plaintiff.

19. Plaintiffs prayed for 4 (four) main reliefs, they are :

"(1) To declare the land ownership certificate issued to the fake land owners and No Claim Certificate submitted by the defendant No.6 on behalf of the fake land owners null and void.

(2) To restore the land ownership to the plaintiffs at the areas and locations between 17 and 31 KMs point and direct the defendant Nos 3 and 4 toissue land ownership certificates to the plaintiffs.

(3) To order the defendant Nos 1 to 5 to pay a fresh compensation of Rs. 28,39,8327 (Rs twenty eight lakhs thirty nine thousand eight hundred thirty two) being the cost of actual destruction of land/crops during the formation cutting between 17 and 31 KM point as the assessment shown in the Annexures U(2) to U(20).

(4) To order for recovery of the entire amount of Rs. 3,85,860/ from the defendant No.6 with interest as the Hon''ble Court may deem fit and proper."

20. As would appear from the relief sought for by the plaintiffs, relief No. 1 and 2 are solely against the defendant No.6 and relief No.3 and 4 are against the e other defendants. Unless the relief No.l and 2 are declared in favour of the plaintiffs and the fake land ownership obtained by the defendant No.6 fraudulently is cancelled by a competent civil Court, the fraudulent practice still subsist and does not terminate, and therefore, counting from the knowledge of fraudulent practice of obtaining fake land ownership certificate and No Claim Certificate by the defendant No.6 from 22.5.96 as averred by the plaintiff in para 26 of the plaint, the suit filed on 3.7.97 was well within time and the learned Court below has justly decided the issue and there is no infirmity in the judgment and order dated. 29.10.98 passed by the learned Addl Deputy Commissioner (J) Wokha in Title Suit No.22 of 1997 warranting our interference.

21. Before we part with the record, we may also dispose of one argument of Mr. BN Sarma. It is contended by Mr. BN Sarma that there is no specific pleading of the fraudulent'' practice by the defendant No.6 in the plaint. In our view, it is farfetched. The averments made in paras 2,5,8,9 and 10 of the plaint as referred to above is adequately enough to constitute the pleading of fraud. Plaintiffs being mere villagers and unexposed to the technicality of the Code and Rules are not expected to know the elaborate procedure provided in the Code of Civil Procedure: In Nagaland, only the spirit of Civil Procedure Code is made applicable and not the letter. How the spirit of the Code of Civil Procedure and not its letter is applied has been considered by the Supreme Court in Gurumayum Sakhigopal Sarma vs. K. Onghi Anisija Devi, Civil Appeal No. 659 of 1957 decided on 9th February 1961 (SC).

22. In the aforesaid decision, it was held by the Supreme Court that the

technicalities of the Code should not trammel litigation embarked upon by a people unused to them. In that case, although a suit was ordered to be dismissed for default of appearance, the order was passed on merit. There the question raised whether it was dismissed under Order 9 Rule 8 or Order 17 Rule 3 of the Code of Civil Procedure, the Supreme Court held that it did not matter under which Order it was dismissed but that no second suit could be brought on the same cause of action without getting rid of the order dismissing the suit. In this way the Supreme Court applied the spirit of the Code and put aside the technicalities by attempting to find out whether the dismissal was referable to Order 9, Rule 8 or Order 17, Rule 3 of the Code.

23. In the instant case, although there is no specific pleading in the plaint, the averments made in paras 2, 5, 8, 9 and 10 of the fraudulent practice by the defendant No.6 is adequately enough to frame an issue on the practice of fraud and taking consideration of the averments made, the plaint filed on 7.3.97 was well within time. On the face of such grave averments made in the plaint as d referred to above, the plaintiffs case cannot be thrown away on the threshold on the technical point of limitation, that too a plaint filed by simple villagers unexposed to the technicality of the Code. We must give a chance to the plaintiff to establish its case and let the trial Court find out the truth after examining the evidence and documents on record.

24. In the result, there is no merit in this appeal and the same is dismissed with costs.

25. There was considerable debate at the Bar whether Article 24 is applicable, or not. In view of our findings as recorded above, it is not necessary for us to advert to this point.

26. Registry is directed to transmit lower Court records forthwith. Since the parties are litigating for quite some time, the learned Court below shall fix the date of appearance of the parties immediately after the receipt of the record and the trial shall proceed day to day till it is completed subject to compelling reasons to be recorded by the trial Court.

Interim order, if any, stands vacated.