(1955) 11 MP CK 0014

In the Madhya Pradesh High Court

Case No : First Appeal No. 48 of 1955

Pannalal Sukh Nandan Prasad APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 25-11-1955

Acts Referred:

Contract Act, 1872 — Section 72
Evidence Act, 1872 — Section 145

Citation : (1955) 11 MP CK 0014

Hon'ble Judges : Jagat Narayan, J.C.

Bench : Single Bench

Advocate : Babu Ram Awasthi, Janki Prasad and Moti Lal Verma, for the Appellant; Maheshwari Prasad Govt. Advocate and N.P. Chaturvedi Govt. Pleader, for the Respondent

Judgement

Jagat Narayan, J.C.

1. This appeal arises out of a suit for recovery of money brought under S. 72, Contract Act on the ground that it was paid under mistake between 31-12-48 and 30-9-49 which was dismissed by the Additional District Judge, Rewa, on the ground that it was barred by limitation. I have heard the Learned Counsel for the parties and am satisfied that the appeal must be allowed.

2. The plaintiff was the owner of several motor vehicles which he was running as stage carriages in 1948 under permits which were due to expire on 30-5-1949. These permits had been granted under the Motor Vehicles Act, 1939 and tax was payable on the motor vehicles under the Central Provinces and Berar Motor Vehicles Taxation Act, 1942 which was in force in the United State of Vindhya Pradesh at the relevant period.

Tax is leviable u/s 3 and the rate at which it is leviable is specified in the first schedule. Under Article 9 of the Covenant (Ex. D13) entered into by the Rulers of different States constituting Vindhya Pradesh the legislative authority of the

United States vested in the Raj Pramukh who was authorised to make laws by promulgating ordinances.

The then Prime Minister, Capt. Avadesh Pratap Singh, issued a notice Ex. D1 on 4-12-48 increasing tax on stage carriages without lawful authority with effect from 1-1-49 to annas two a mile. The tax was subsequently increased by successive orders to -/2/6, -/3/- and -/4/- per mile. Applications for permits were invited afresh by 10-12-48 showing willingness to pay tax at the new rate. The plaintiff did not submit an application in response to the above notice.

The result was that his existing permits were cancelled by order Ex. P21 dated 16-12-48. He then agreed to pay tax at the rates prescribed by the Prime Minister and permits for various routes were issued to him. Between 31-12-48 and 30-9-49 he paid a sum of Rs. 21,376/9/- as tax out of which a sum of Rs. 249/15/- was refunded to him. Tax could not be levied at a rate higher than that provided in the first schedule of the Central provinces and Berar Motor Vehicles Taxation Act 1942 which was in force.

The first schedule was not amended by any ordinance issued by the Raj Pramukh. The rate of tax could not be altered except by amending the law. Under the Central Provinces and Berar Motor Vehicles Taxation Act, 1942 only a sum of Rs. 4017/10/8 was recoverable from the plaintiff as tax on the stage carriages for the period in suit. An illegal recovery to the extent of Rs. 17,108/15/4 had thus been made from him.

The case of the plaintiff is that he made this excess payment by mistake as he thought that the money paid was due when in fact it was not due. He alleged that he discovered the mistake on 17-3-53 when the Deputy Commissioner Rewa held in his judgment Ex. D2 which he had delivered on the same day in appeal No. 2 of 1951-52, - ''Dr. Bhagwant Kishore Tandon v. Provincial Transport Authority'', that the order of the Prime minister levying a higher rate of tax on stage carriages than provided in the Central Provinces and Berar Motor Vehicles Taxation Act, 1942 was illegal.

3. There was a conflict of judicial opinion whether the mistake referred to under S. 72, Contract Act included a mistake of law. This conflict was set at rest by the Privy Council decision in - ''Shiba Prasad Singh v. Srish Chandra'', 1949 PC 297 (AIR V 36) (A), in which it was held that payment "by mistake" in section 72 must refer to a payment which was not legally due and it could not have been enforced; the ''mistake'' in thinking that the money paid was due when in fact it was not due. Their Lordships agreed that the judgment given by Sen J. in - ''Jagdish Prosad Pannalal v. Produce Exchange Corporation'' Ltd'', 1946 Cal 245 (AIR V 33) (B), in which it was, observed:

I think that a certain amount of confusion has been caused by reason of the importation of the English common law rule regarding recovery of payments under a mistake. The English common law rule that a payment made under mistake of law is not recoverable can have no application here, where there is a statute governing the question.

In view of the Privy Council decision the rulings relied upon by the defendants are no longer good law. 1949 PC 297 (AIR V 36) (A), has been followed in - ''Lakshmana Prasada v. Achuthan Nair'', 1952 Mad 779 (AIR V 39) (C), and Joint Family Business of ''Ramchandra Srinivas v. Shahdara Sharanpur Light Rly.'', 1953 Hyd 274 (AIR V 40) (D). It will thus be seen that the plaintiff is entitled to maintain the present suit under S. 72, Contract Act.

4. Two Articles of the Limitation Act namely Article 62 and Article 96 are to be considered in connection with the present case. A suit for money paid under a mistake is a suit for money received by the defendant for the use of the plaintiff. As such the present suit is covered by Article 62. Article 96 is more specifically applicable to the present case. It is one for relief on the ground of mistake. Moreover, Article 96 will keep alive the cause of action for a longer time than Article 62 and it is a general principle that where a suit can come within two or more provisions of limitation and neither of them can be said to be more specific than the other that which keeps alive rather than that which bars the right to sue will as a general rule be applied (See - ''Tofa Laldas v. Moinuddin Mirza'', 1925 Pat 765 (AIR V 12) (E). I accordingly hold that Article 96 is applicable.

5. The limitation under the above Article is 3 years and time begins to run when the mistake become known to the plaintiff. In para 10 of the plaint it was mentioned that the mistake was discovered on 17-3-53 when the Deputy Commissioner Rewa gave his judgment in the case referred to above. The plaintiff appeared in the witness box and supported this allegation on oath. It was not put to him in cross-examination that he discovered the mistake on any earlier date. In fact he was not cross-examined on the point at all. On behalf of the defence reliance was sought to be placed in letter Ex. D7 dated 17-12-48 sent by the plaintiff to the Regional Transport Authority which runs as follows:

Reference your letter No. 273/M dated 16th inst. notifying the validity of our permits to cease to effect from 1-1-49 without any fault we beg to submit as under:

Our existing Bus permits have been issued under existing Motor Vehicles Act and Rules adopted by Vindhya Pradesh Government and the validity of our permits already sent by you is effective till 30-9-49 whose fee has already been paid and deposited in your office. The duration of our existing permits under Vindhya Pradesh M. V. Act 39 has been specified to be enforced till 30-9-49 and as such the validity is effective.

The existing M. V. Act and Rules as adopted by the present Government are still in existence and it has not so far been notified that the existing Act has been repealed in any way. In Indian Union U. P. or C. P. wherever Nationalisation scheme was introduced, the Bus owners who have invested lacs and lacs of rupees were notified for remaining period of 6 months.

Under the circumstances we request that our present permits may be treated as valid and effective till 30-9-49.

This letter is in English. It is signed by the plaintiff in Hindi.

It has come in evidence that the plaintiff does not know English. He was asked in cross-examination whether this letter bears his signature and he admitted that it did so. Even if this letter had contained any admission it could not have been used against the plaintiff in the present case be causae that admission was not put to him in cross examination when he entered the witness box & made a contrary statement. It was held in firm Malik Desraj Fakirchand v. Firm Piarelal Aya Ram'', 1946 Lah 65 (AIR V 33) (F), a Full Bench following ''Bal Gangadhar Tilak v. Shrinivas Pandit'', 1915 PC 7 (AIR V 2) (G) that when a party in the witness box makes a statement inconsistent with his previous admission it cannot be used against him unless his attention is drawn to it in accordance with the procedure laid down in S. 145, Evidence Act.

A reading of the above letter however goes to show that no reference to the rate at which a tax was being demanded was made in it. Nor was any reference made to the Central Provinces and Berar Motor Vehicles Taxation Act, 1942 in the letter. It cannot be inferred from this letter that the plaintiff had knowledge on 17-12-48 that the Prime Minister''s order dated 4-12-48 enhancing the tax was invalid and unenforceable. I accordingly find that the plaintiff discovered the mistake for the first time on 17-3-53 when the Deputy Commissioner held that the order of the Prime Minister enhancing the tax was illegal. The learned Additional District Judge committed a grievous error in thinking that this judgment was delivered on 17-3-54. He should have referred to the pleadings and to the judgment Ex. P. 2 when he was writing his judgment.

The present suit which was instituted on 16-3-. 1954 was therefore not barred by limitation.

6. Section 19, Central Provinces and Berar Motor Vehicles Taxation Act provides for an appeal by a person aggrieved by an order relating to the payment or to the refund of a tax. Section 18 of the Act lays down that no suit or other proceeding shall lie in a civil court in regard to any matter for which provision is made in the Act or the Rules made thereunder. The order of the Prime Minister was however not made within the framework of the Act and the jurisdiction of the civil Court is consequently not barred. The order was wholly illegal and the Civil Court can grant the relief asked for (see - ''District Board Farrukhabad v. Prag Dutt'', 1948 All 382 (AIR V 35, (FB) (H); ''Karanja Municipality v. New East India Press Co. Ltd.'', 1949 Nag 215 (AIR V 36) (I), and ''State of Vindhya Pradesh v. Raghunath Maunulal'', 1952 Vind. P. 32 (AIR V 39) (J).

7. I accordingly allow the appeal with costs, set aside the decree passed by the Court below and decree the suit of the plaintiff with costs.

