

(1993) 07 AHC CK 0013

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1735 of 1980

Ram Bharosey Lal Gupta

APPELLANT

Vs

Gaon Sabha Sareli Pukhta and Others

RESPONDENT

Date of Decision : 06-07-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 14, 14(1), 14(2)

Citation : (1994) 2 AWC 863

Hon'ble Judges : D.S. Sinha, J

Bench : Single Bench

Advocate : S.K. Verma, for the Appellant;

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—Heard Sri Siddhartha Verma, holding brief of Sri S.K. Verrna, learned Counsel for the Petitioner, and Sri S.K. Saxena, learned Standing Counsel representing the Respondents No. 22, 23 and 24, at length and in detail

2. By means of this petition, under Article 226 of the Constitution of India, the Petitioner seeks to assail the legality of the order and judgment dated 15th November, 1979, passed, by the U.P. Public Services Tribunal No. III, Lucknow (hereinafter called the Tribunal) in Claim Petition No. 449(T)/III/1977 Ram Bharosey Lal Gupta v. Gaon Sabha Sareli Pukhta and Ors..

3. The relevant facts, as they emerge from the impugned judgment and pleadings before this Court, are these:

4. The Petitioner was appointed Panchayat Secretary in August, 1949. He was placed under suspension by an order dated 4th January, 1963, which was followed by the departmental proceedings The departmental proceedings culminated into the dismissal of the Petitioner from service by an order dated 21st September, 1964.

5. The Petitioner challenged the order of dismissal in civil suit. This suit was decreed by the trial court and the order of dismissal was set aside. The matter was taken up in appeal by the Defendant in the suit. The appeal was allowed and the suit was dismissed on the ground that necessary parties had not been joined to the suit, and in absence of the necessary parties no relief could be granted to the Petitioner. The appellate judgment was challenged by the Petitioner in Second Appeal before this Court. This Court affirmed the decree and judgment of the first appellate court on 8th August, 1969.

6. Lateron, the Petitioner filed a fresh suit in December, 1969 challenging the order of dismissal dated 21st September, 1964, aforesaid. In view of the Constitution of the Tribunal, the suit of the Petitioner stood transferred before it. The second suit of the Petitioner was resisted by the opposite parties, inter alia, on the ground that it was barred by limitation. To meet the plea of limitation, the Petitioner invoked the provisions of Section 14 of the Limitation Act, 1963, hereafter called the Limitation Act.

7. The Tribunal was of the view that the necessary ingredients for grant of the benefit of the provisions of Section 14 of the Limitation Act were lacking and as such the Petitioner could not be granted the benefit of the said provisions. Consequently, the Tribunal found that the claim of the Petitioner was barred by time and no relief could be granted to him. The Tribunal, therefore, dismissed the Claim Petition by means of its order and judgment impugned herein.

8. The submission of the learned Counsel for the Petitioner is that the Tribunal erred in not granting the benefit of Section 14 of the Limitation Act to which the Petitioner was clearly entitled in view of the fact that he had been prosecuting his earlier suit with due diligence in good faith and the said suit had been dismissed for want of defect in jurisdiction. According to the learned Counsel the defect of non-joinder of the necessary parties which resulted in the dismissal of the earlier suit amounted to the defect of jurisdiction or other cause of a like nature.

9. In support of his contention learned Counsel places reliance on Clause (c) of the Explanation to Section 14 of the Limitation Act Reliance is also placed by the learned Counsel on two decisions of Hon"ble Supreme Court rendered in Zafar Khan and Others Vs. Board of Revenue, U.P. and Others, and India Electric Works Ltd. Vs. James Mantosh and Another, and one decision of Sind Judicial Commissioner"s Court given in Ibrahim v. Firm of Ghulam Hussain AIR 1921 Sind 13.

10. For coming to the conclusion that the benefit of Section 14 of the Limitation Act could not be granted to the Petitioner, the Tribunal has relied upon the decision of Hon"ble Supreme Court rendered in Gurdit Singh and Others Vs. Munsha Singh and Others, .

11. In the case of Gurdit Singh v. Munsha Singh (supra), relied upon by the Tribunal, in paragraph 16 of the Judgment it has been pointed out that three conditions have to be satisfied before Section 14 of the Limitation Act can be

pressed into service. These three conditions are:

- (i) that the Plaintiff must have prosecuted the earlier civil proceeding with due diligence;
- (ii) the former proceeding must have been prosecuted in good faith in a court which from defect of jurisdiction or other cause of a like nature was unable to entertain it; and
- (iii) the earlier proceeding and the later proceeding must be based on the same cause of action.

There is no controversy with regard to the conditions (i) and (iii). The controversy is only with regard to the existence and satisfaction of the condition No. (H) To be precise, the question for consideration is whether the court in which the earlier suit of the Petitioner was filed and prosecuted was unable to entertain the suit for the defect of jurisdiction or any other cause of a like nature.

12. The earlier suit of the Petitioner was dismissed for want of nonjoinder of necessary parties as in their absence no relief could be granted to him.

13. The question as to whether non-joinder of necessary parties amounts to defect of jurisdiction or other cause of a like nature rendering the court unable to entertain the former suit has to be examined with reference to the provisions contained in Sub-section (i) of Section 14 and Clause (c) of the Explanation added thereto.

14. Sub-section (1) of Section 14 does not say that the defect of nonjoinder of necessary parties will either be a defect of jurisdiction or will be a cause of a like nature. Significantly, Clause (c) of the Explanation to Section 14 declares only mis-joinder of parties to be a cause of a like nature with defect of jurisdiction. It does not talk of non-joinder of necessary parties.

15. Even if by stretching the language of the provisions of Section 14 and the Explanation thereof, the non-joinder of necessary parties is taken to be covered by the expression "other cause of a like nature" with defect of jurisdiction, another question will arise as to whether the defect of non-joinder of necessary parties was a defect of such a nature as to render the court unable to entertain the former suit of the Petitioner. For the purpose of Section 14 the defect of jurisdiction or other cause of a like nature, necessarily, has to be of such a nature as to render the court unable to entertain the suit or proceedings. Inability to entertain suit or proceeding means inability to try the suit or proceeding, and not inability to grant relief. Inability to try the suit or proceeding and inability to grant relief are two different and distinct situations. In the context of Section 14 of the Limitation Act what is relevant is inability to try the suit, and not inability to grant the relief.

16. The former suit of the Petitioner was not dismissed on the ground of any inability to try the suit. It was dismissed for inability to grant relief in the

absence of the necessary parties. The Tribunal, therefore, did not commit any error of law, much less apparent, in coming to the conclusion that the second condition pointed out by Hon"ble Supreme Court in its decision given in the case of Gurdit Singh v. Munsha Singh (supra), namely that the former proceeding must have been prosecuted in good faith in a court which for defect of jurisdiction or other cause of a like nature was unable to entertain it, was not satisfied, and as such the Petitioner was not entitled to the benefit of Section 14 of the Limitation Act.

17. Now a look at the decisions relied on behalf of the Petitioner. The decision of Hon"ble Supreme Court In Zafar Khan v. Board of Revenue (supra) has been relied upon by the learned Counsel to support his contention that the defect of non joinder of necessary parties would be covered by the expression "defect of jurisdiction or other cause of a like nature". The court is afraid that the reliance upon this case by the learned Counsel is misplaced inasmuch as in this case Hon"ble Supreme Court was considering the question of mis-joinder of parties, and not non-joinder of necessary parties. In paragraph 14 of the judgment Hon"ble Supreme Court has observed thus:

...It is true that where the expression as a whole reads "from defect of jurisdiction or other cause of a like nature" is unable to entertain it, the expression "cause of a like nature" will have to be read ejusdem generis with the expression "defect of jurisdiction" So construed the expression "other cause of a like nature" must be so interpreted as to convey something analogous to the preceding words "from defect of jurisdiction." The defect of jurisdiction goes to the root of the matter as the court is incompetent to entertain the proceeding. The proceeding may as well fail for some other defect. Not all such defects can be said to be analagous to defect of jurisdiction. Therefore, the expression "other cause of a like nature" on which some light is shed by the. Explanation (c) to Section 14 which provides "misjoinder of parties or causes of action shall be deemed to be a cause of like nature with defect of jurisdiction," must take its colour and content from the just preceding expression, "defect of jurisdiction". Prima facie it appears that there must be some preliminary objection which if it succeds the court would be incompetent to entertain the proceeding on merits such defect could be said to be of the nice nature as direct or jurisdiction. Conversely if the party seeking benefit of the provision of Section 14 failed to gel the relies in earlier proceeding not with regard to anything conceited with the jurisdiction of the court or some other detect of a like nature, it "would" not be" entitled to the benefit of Section 14. where, therefore, the party failed in the earlier proceeding no mentis and not on defect of jurisdiction or other cause of a like nature, it would not be entitled to the benefit of Section 14 of the Limitation Act.

(Emphasis added)

18. It is to be noticed that the instance of misjoinder of parties and not of non-joinder of necessary parties is covered by Clause (c) of the Explanation to

Section 14 of the Limitation Act.

19. Thus, even if the decision of Hon''ble Supreme Court in Zafar Khan's case is taken to be an authority for the proposition that defect of jurisdiction or other cause of a like nature would include a case of nonjoinder of necessary parties, the other condition that the defect of non-joinder of necessary parties rendered the court incompetent to entertain the former suit of the Petitioner for trying it on merits would be lacking. The suit of the Plaintiff was not dismissed on the ground that the defect of non-joinder of the necessary parties rendered the court incompetent to try it on merits. The suit was dismissed as on account of non-joinder of necessary parties no effective relief could be granted to the Petitioner.

20. Likewise, no support can be drawn by the Petitioner from the decision of the Hon''ble Supreme Court in *India Electric Works Ltd. v. James Mantosh* (supra). The ratio of this decision is to be found in paragraph 6 which reads thus:

It is well settled that although all questions of limitation must be decided by the provisions of the Act and the courts cannot travel beyond them the words "Or other cause of a like nature" must be construed liberally. Some clue is furnished with regard to the intention of the legislature by the Explanation III in Section 14(2). Before the enactment of the Act in 1908 there was a conflict amongst the High Courts on the question whether misjoinder and non-joinder were defects which were covered by the words "or other cause of a like nature". It was to set at rest this conflict that Explanation III was added. An extended meaning was thus given to these words. Strictly speaking misjoinder or non joinder of parties could hardly be regarded as a defect of jurisdiction or something similar or analogous to it.

(Emphasis Supplied)

21. From the above ratio it is clear that Hon''ble Supreme Court itself was of the view that misjoinder or non-joinder of parties could hardly be regarded as a defect of jurisdiction or something similar or analogous to it but in view of the Explanation III to Section 14(2) of the Indian Limitation Act, 1908, which appears to correspond to Clause (c) of the Explanation to Section 14 of the Limitation Act, 1963, an extended meaning had to be given and thereby the case of misjoinder had to be treated as a defect of jurisdiction or something analogous to it. Hon''ble Supreme Court has nowhere laid down that nonjoinder of necessary parties is either defect of jurisdiction or other cause of a like nature.

22. In view of specific mention of the instance of misjoinder of parties and clear omission of words "non-joinder of necessary parties", it cannot be argued that Clause (c) of the Explanation can be extended in the case of nonjoinder of necessary parties also.

23. So far as the case of *Ibrahim v. Firm of Ghulam Hussain* (supra) is concerned, reliance has been placed on the following passage occurring in the judgment.

...Misjoinder and non-joinder are only variations of the same defect, namely, the omission to have the proper parties as causes of action included in a suit or application.

24. Casual observations in Ibrahim's case may have some relevance where court is confronted with non-joinder of proper parties. Instant case relates to the non-joinder of necessary parties, in whose absence no relief could be granted. The proper parties and necessary parties stand on two different footings. In any case, in view of the inclusion of expression "misjoinder of parties" in Clause (c) of the Explanation to Section 14 of the Limitation Act and clear omission to include "non-joinder of necessary parties" there is hardly any scope for concluding that non-joinder of necessary parties will be a cause of a like nature with the defect of jurisdiction envisaged in Sub-section (1) of Section 14 of the Limitation Act.

25. In view of the foregoing discussion, the court is clearly of the opinion that impugned order and judgment does not suffer from any such infirmity which may warrant interference by it in exercise of extraordinary and special jurisdiction under Article 226 of the Constitution of India. The petition lacks merit and is, therefore, dismissed. There will be no order as to costs.