

(1997) 12 MP CK 0026

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 259 of 1993

Rupabai and Others

APPELLANT

Vs

Sushilabai and Others

RESPONDENT

Date of Decision : 18-12-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1
Limitation Act, 1963 — Article 113, 22, 72

Citation : (1998) 1 JLJ 305

Hon'ble Judges : Subhash Balwant Sakrikar, J

Bench : Single Bench

Advocate : S.S. Samvatsar, for the Appellant;

Final Decision : Allowed

Judgement

S.B. Sakrikar, J.—The Appellant-Plaintiffs have directed this appeal against the order dated 2.3.1993 rendered by Addl. District Judge, Barwah in civil miscellaneous case No. 7/92, thereby rejecting Appellants prayer to institute the suit in forma pauperis on the ground that the application-cum-suit filed under Order 33 Rule 1 of the CPC is barred by limitation.

2. Briefly stated the facts of the case are that the Defendant No. 1. owned agricultural lands situated in village Rupkheda and Respondent No. 2 is in occupation of the house constructed on the aforesaid lands. It is stated that the disputed lands are surrounded by wire fencing and the Respondents circulated the electric current in the wire fencing. On 24.8.87, as a result of the wrongful act of the Respondents, Gajrajsingh, husband of the Appellant Rupabai got the electric shock, resulting into his death. The present Appellants, LR's of the deceased filed suit for compensation against the Respondents seeking permission to file the aforesaid suit in forma pauperis. The said prayer of the Plaintiff-Appellants was opposed by the Respondent-Defendants. The learned trial Court on consideration, rejected the prayer of the Appellants to institute the suit as an indigent person, mainly on the ground that the said application-cum-suit is time

barred. Aggrieved, the Appellants have filed this appeal against the impugned order of the trial Court.

3. I have heard Shri S.S. Samvatsar, learned Counsel for Appellants. None appeared for the Respondents, though served.

4. Learned Counsel for Appellants contended that the trial Court has committed an error in applying Article 72 of the Limitation Act 1963 for the purpose of calculating the limitation to the case on hand. The learned Counsel submitted that in view of the facts and circumstances of the present case, Article 72 of the Limitation shall not apply to the instant case, but, the limitation will be governed by the Residuary Article 113 of the Limitation Act, 1963.

5. I have considered the submissions of the learned Counsel for Appellants and perused the record, as also the Impugned Order. On perusal, it is found that the application cum suit under the provisions of Order 33 CPC has been filed on behalf of the Appellant-Plaintiffs, claiming damages for the death of deceased Gajrajsingh as a result of the wrongful act of the Defendant under Law of Torts. The alleged act of passing electric current in the wire fencing of the disputed field cannot be considered to be an act done in pursuance of any enactment in force at the time of the incident. Article 72 of the Limitation Act shall apply in cases where the compensation is claimed for doing or for omitting to do an act alleged to be in pursuance of any enactment in force. In view of the facts on hand as stated above, the act of the Respondent-Defendants cannot be held to be an act done in pursuance of any enactment in force at the time of the incident. As such, the trial Court has committed an error in applying Article 72 of the Limitation Act, holding the application cum suit filed on behalf of the Appellants to be barred by the limitation.

6. During the course of the arguments, the learned Counsel for the Appellants also contended that in the Repealed Act, for claiming compensation for any injury to the person, a specific Article 22 was there. But the aforesaid Article is deleted from the New Act of 1963 and there is no other Article included in the Limitation Act of 1963 corresponding to Article 22 of the Repealed Act. He, therefore, submitted that as the case of the Appellant-Petitioners is not covered by any of the Articles of the Limitation Act of 1963, the case will be governed by Residuary Article 113 of the New Act.

7. On perusal of Article 22 of the Repealed Act and the Residuary Article 113 of the Limitation Act of 1963, the contention of the learned Counsel for Appellants deserves to be accepted, in view of the facts and circumstances of the case at hand, the case is not covered by any specific Article of the Limitation Act of 1963. Therefore, the case will be governed by Residuary Article 113 of the Limitation Act 1963. The limitation prescribed under the aforesaid Residuary Article is 3 years, "when the right to sue accrues".

8. In view of the facts and circumstances of the case on hand and the law applicable, in my considered opinion, the Trial Court has committed an error in

applying Article 72 of the Limitation Act to the present case and holding it to be time barred.

9. In the result, this appeal succeeds and is accordingly allowed. The Impugned order of the trial Court holding the application-cum-suit filed by the Appellant-Petitioners, as barred by limitation, is set aside and the case is remanded to the trial Court for re-consideration and passing fresh order in conformity with the law applicable to the instant case. No orders as to cost of this appeal. The parties through their counsel are directed to remain present before the trial Court on 12th January 1998 for further proceedings in civil miscellaneous case No. 7/92.