

(1998) 09 BOM CK 0099

In the Bombay High Court

Case No : First Appeal No. 77 of 1990

Shri Modusudan Camatim Timblo, alias Modu Timblo (Since Deceased) through legal heirs and Others

APPELLANT

Vs

Shri Daya Bogvonta Mahale and Others

RESPONDENT

Date of Decision : 16-09-1998

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 30

Citation : (1999) 101 BOMLR 550

Hon'ble Judges : R.K. Batta, J;J.A. Patil, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.K. Batta, J.—The appellants are the legal heirs of Modusudan Camatim Timblo, who had filed suit before the Comarca Court at Quepem on 3.3.1965 which was equated to the Court of Civil Judge, Sr. Division by Goa, Daman and Diu Civil Courts Act, 1965 (hereinafter called as the "said Act"). After the coming into force of the said Act on 15.6.1966 the suit against the Government had to be filed before the District Court in terms of Section 26 of the said Act. The said Modusudan Timblo died during the pendency of this appeal. One of the parties to this suit as defendant, is State of Goa. The suit is for permanent injunction and recovery of damages. By Judgment dated 2.4.1990, after answering issues Nos. 1, 2 and 4 in favour of the plaintiff, the Civil Judge, Sr. Division held that the Court of Civil Judge, Sr. Division had no jurisdiction to try the suit and ordered the plaint to be returned to file the same in proper Court of law. The learned Civil Judge, Sr. Division was of the view that in view of Section 26 of the Civil Court Act, 1965, the jurisdiction to try the suit against Government vested with the District Judge and, as such, the entire proceedings were vitiated since the Court of Civil Judge, Sr. Division had no jurisdiction. In fact, an application had been filed on 30.1.1981 by the Government Advocate before the Civil Judge, Sr. Division contending that the Court of Civil Judge, Sr. Division had no jurisdiction to try the suit. The learned Civil Judge, Sr. Division passed an order to send the

proceedings to the District Court. This order was challenged in appeal before the District Court and the District Court passed an order that there was no provision authorising the Civil Judge to remit the suit pending in his file to the District Court to adjudicate any points raised before him including the point of jurisdiction.

2. Learned Senior Counsel Shri M.S. Usgaonkar, relying upon Section 34(2)(b) of the said Act, has submitted before us that this Section deals with repeal and savings and lays down that every proceeding pending before a Court of Comarca immediately before the commencement of this Act shall, on such commencement, stand transferred to the corresponding Court or Senior Civil Judge. Since this suit was filed on 3.3.1965 and was pending at the time of coming into force the said Act on 15.6.1966, the pending proceedings had to continue in the Court of Civil Judge, Sr. Division and only fresh suits against the Government were required to be filed before the District Court in terms of Section 26 of the said Act. He further drew analogy on the basis of amendment to Section 26, which came into force with effect from 27.4.1987. By Goa, Daman and Diu Civil Courts (Amendment) Act, 1987, the words "District Court" in Section 26 of the said Act were substituted by words "Courts of a Senior Civil Judge". Consequent to this change of jurisdiction, the issue was raised in a civil suit and the matter came up before this Court in Civil Revision in Union of India and Ors. v. K.S. Mamadapur and Bros 1991 (1) Goa L.T. 372. In this Judgment, it was held that the pending suits before the District Judge would continue with him, but only fresh suits will have to be filed before the Court of Civil Judge, Sr. Division. In addition, it is further submitted by learned Senior Counsel for Appellant that on the date of passing of the Judgment in the matter under consideration, the Court of Civil Judge, Senior Division, was in fact empowered to try the cases in which the Government is a party. Accordingly, the learned Senior Counsel Shri Usgaonkar submitted that the findings of the Lower Court on the question of jurisdiction cannot be sustained and the same are required to be set aside.

3. On the other hand, the learned Government Advocate Shri Bharne urged before us that Section 5 of the said Act confers original civil jurisdiction on the District Court and Section 26 lays down that no Court other than the District Court shall receive or register any suit in which the Central Government or the Administrator or the Government of Goa, Daman and Diu or any Officer of Government in his official capacity is a party. According to him, Section 34(2)(b) has to be read along with Section 26 of the said Act and if so read together, it is crystal clear that with effect from 15.6.66, that is to say coming into force of the said Act, the Court of Civil Judge, Sr. Division lost jurisdiction to try even pending cases before it and the pending cases were required to be tried by the District Court in terms of Section 26 of the said Act.

4. Section 34, in so far as it is relevant for the purpose of decision in this case, reads as under:

34. Repeal and savings. - (1) As from the commencement of this Act, any law in force in the Union Territory making provisions for the constitution and organisation of Civil Court, or any part of such law, shall stand repealed.

(2) Notwithstanding anything contained in the foregoing provisions;

(a) ...

(b) every proceedings pending before a Court of Comarca immediately before the commencement of this Act shall, on such commencement, stand transferred to the corresponding Court of Senior Civil Judge.

Section 26 of the said Act, in so far as it is relevant for the decision in this case, reads as under:

26. Suits in which Government is a party.-

(1) No Court other than the District Court shall receive or register any suit in which the Central Government or the Administrator or the Government of Goa, Daman and Diu or any officer of Government in his official capacity, is a party.

5. Prior to coming into force of the said Act, the jurisdiction to try civil suits having value of Rs. 10,000/- and upward was that of Comarca Court. The Comarca Courts were equated to the Courts of Civil Judge, Sr. Division. The jurisdiction to try the civil suits of the value less than Rs. 10,000/- was with the Julgado Courts which were equated to the Court of Civil Judge, Junior Division under the said Act. There was no Court equivalent to District Court in existence prior to coming into force of the said Act. The District Court was established in the territory of Goa, Daman and Diu with the coming into force of the said Act on 15.6.1966. Therefore, the jurisdiction to try all suits, in which the Government was a party, depending upon the valuation, was that of Comarca Court prior to the coming into force of the said Act. Section 5 of the said Act designates the District Court as principal Court of original civil jurisdiction in the district within the meaning of the Code of Civil Procedure, 1908 or any other law for the time being in force. Even, inspite of this, the jurisdiction of Civil Judge, Sr. Division extends to all original suits and proceedings of civil nature in terms of Section 20(2) of the said Act, which means that the jurisdiction to try all original suits of unlimited value was vested with the Civil Judge, Sr. Division, in practice, though in theory the District Court was designated as principal Court of original civil jurisdiction. This is the position in so far as original suits are concerned. However, it may be pointed out at this stage that the District Court remains to be the principal Court of original civil jurisdiction under the Land Acquisition Act for the purpose of entertaining references under Sections 18 and 30 of the Land Acquisition Act.

6. Section 26 provides that no Court other than the District Court shall receive or register any suit in which the Central Government or the Administrator or the Government of Goa, Daman and Diu or any Officer of Government in his official capacity is a party (Emphasis supplied) Here italicised. Nevertheless, Section

34(2)(b) which is a repeal and savings clause provides in categorical terms that every proceeding pending before a Court of Comarca immediately before the commencement of the said Act shall, on such commencement, stand transferred to the corresponding Court of Senior Civil Judge. This means that the jurisdiction to try pending proceedings, which were earlier pending before the Comarca Court was vested with the Civil Judge, Sr. Division. It was only in respect of the new suits which were to be filed after coming into force of the said Act, that the jurisdiction u/s 26 of the said Act was vested with the District Judge. Section 26 of the said Act is, therefore, prospective in operation. The suit, under consideration was, admittedly, filed on 3.3.1965, that is before coming into force of the said Act.

7. Secondly, as rightly pointed out by learned Senior Counsel, on the analogy of subsequent change of jurisdiction from the District Court to the Court of Civil Judge, Sr. Division Goa, Daman and Diu Civil Courts (Amendment) Act, 1987 all pending cases with the District Court as on the date of coming into force of the said amendment with effect from 27.4.1987 continued with the District Court and only new cases filed thereafter had to be instituted in the Court of Civil Judge, Sr. Division. The issue relating to the jurisdiction on account of the said amendment came up before this Court in the Civil Revision Application in Union of India and Ors. v. K.S. Mamadapur and Bros. (supra), wherein this Court had held that the amendment was prospective in nature and did not cover pending cases. The pending cases were to be continued and tried by the District Court and the said amendment was applicable only to filing of fresh suits. The same analogy would apply to the situation under consideration.

8. Thirdly, it may also be noted that with effect from 27.4.1987, in respect of fresh suits against the Government, jurisdiction was once again vested with the Civil Judge, Sr. Division and the Judgment in the case under consideration was passed on 2.4.1990 when technically speaking, the Civil Judge, Sr. Division had otherwise jurisdiction to try suits against the Government.

9. For the aforesaid reasons, the findings of the Trial Court that it had no jurisdiction to try the suit, cannot be sustained and said findings are liable to be set aside. The same are, hereby, set aside. The matter shall now go back to the Court of Civil Judge, Senior Division, Quepem for passing appropriate orders in the matter, as the issues on merits have already been answered. The appeal is, accordingly, allowed. In the facts and circumstances, we would leave the parties to bear their own costs.