
(1964) 01 RAJ CK 0003
In the Rajasthan High Court
Case No : Second Appeal No. 712 of 1959

Smt. Kalawati Bai

APPELLANT

Vs

Shitaldas and Another

RESPONDENT

Date of Decision : 06-01-1964

Acts Referred:

Ajmer Courts Regulation, 1926 — Section 15
Limitation Act, 1908 — Article 152

Citation : AIR 1964 Raj 220

Hon'ble Judges : C.B. Bhargava, J

Bench : Single Bench

Advocate : R.K. Rastogi and J.S. Rastogi, for the Appellant; B.K. Mohanani and P.N. Mohanani for Respondent No. I, for the Respondent

Final Decision : Allowed

Judgement

C.B. Bhargava, J.—This is a second appeal by the plaintiff in a suit for ejectment and recovery of damages. The subject matter of the suit is a shop situated in a house in Ajmer which the plaintiff purchased at an auction sale on 27th April, 1954.

2. Plaintiff's case was that the defendants were mere trespassers and were liable to be evicted from the premises.

3. The defence of both the defendants was that they were in occupation of the premises as tenants.

4. The suit was decreed by the trial court but on appeal the learned Senior Civil Judge reversed that decree and dismissed the plaintiff's suit.

5. Learned counsel for the appellant assails the decree of the first appellate court on the ground that the appeal in that court was preferred after the expiry of the prescribed period of limitation. It is urged that the trial court decided the suit on 8th August, 1957. The defendants applied for copy of the judgment and decree on 13th August, 1957 which were ready for delivery on 27th August, 1957 but

were actually delivered to them on 4th September, 1957. Thereafter the defendants preferred an appeal on 9th September, 1957 in the court of the Senior Civil Judge, Ajmer. As the Senior Civil Judge Ajmer had no jurisdiction to entertain and hear the appeal, he ordered it to be returned for presentation to the proper court on 25th September, 1957. The memorandum of appeal was actually taken back by the defendants on 27th September, 1957. Without conceding that period from 27th August to 4th September can be excluded, learned counsel urges that even if full period from 13th August, 1957 to 4th September, 1957 for obtaining the requisite copies of judgment and decree is allowed to the defendants the period of limitation for filing the appeal expired on 30th September, 1957. But the appeal was filed in the court of the District Judge, Ajmer on 4th October, 1957 and was prima facie barred by limitation. The learned District Judge transferred this appeal to the court of Senior Civil Judge, Ajmer by whom it was heard and decided on 29th July, 1959. Objection has also been taken as regards the competency of the Senior Civil Judge to hear the appeal against the decree passed by the Sub Judge, First Class, Ajmer i.e., a Civil Judge. It is pointed out that no application for condonation of delay was submitted on behalf of the appellant in the court below. It is further pointed out that Section 15 of the Ajmer Courts Regulation, 1926 (Regulation No. IX of 1926) which provided sixty days period of limitation for filing of appeals to the District Judge, was repealed by the Rajasthan Civil Courts Laws (Extension) Act, 1956 (Act. No. 2 of 1957) and thus the appeal to the court of a District Judge had to be filed within thirty days as provided under Article 152 of the Indian Limitation Act. Reliance is placed on *Kanhya Lal v. Bhanwar Lal* ILR (1960)Raj 1678 where it was held upon a construction of Section 12 of the Regulation that:

"Once a different provision in the matter of appeals came to be made by the Act of 1957 read with the Ordinance of 1950, as applicable to the Ajmer area, then Section 12 could no longer remain in force with reference to this area and the provisions of the Ordinance of 1950 together with those of the Act of 1957 only would alone govern the matter. Likewise section 15, cannot be pressed into service to determine the period of limitation for an appeal from the inferior court to that next higher in rank. " " The language of Section 15 specifically lays down that the period of limitation prescribed thereunder is for an appeal u/s 12 or u/s 13 or u/s 14 of the Regulation. If, therefore, an appeal happens to be filed not under any of these sections but under the provisions of some other enactment, such as the Ordinance of 1950, then I do not think it can be postulated with any legal justification that such an appeal has been filed under any one of these sections; and, therefore, it must follow that the period of limitation prescribed under this section would no longer be available in the case of an appeal, arising from the Ajmer area, which came to be filed after the 1st December, 1956.

6. The argument of the learned counsel for the respondents however, is that the appeal filed in the court of the District Judge, Ajmer would be governed by that law of limitation which was in force at the time of the institution of the suit. It is urged that the subsequent legislation which has the effect of shortening the

period of limitation for filing appeals cannot have retrospective effect so as to take away their right of preferring appeal within sixty days. It is urged that the right of appeal is a vested right and any subsequent legislation which restricts or impairs that right cannot be given retrospective effect unless it expressly so provided. Thus despite the repeal of Section, 15 by the Rajasthan Civil Courts Laws (Extension) Act, 1956, the right of the defendants in the matter of the period of limitation for filing appeal would remain unaltered.

7. The question for determination therefore is whether the appeal preferred in the Court of the District Judge Ajmer was to be governed by the law of limitation which was in force at the date of the institution of the suit or the one in force on the date of filing the appeal.

8. As a rule, statutes of limitation being procedural laws must be given retrospective effect in the sense that they must be applied to all suits and appeals filed after they came into force. But as pointed out by the Full Bench in Government of Rajasthan and Another Vs. Sangram Singh and Others, this rule is subject to an important qualification viz., that:

"The new law of limitation cannot be construed retrospectively so as to destroy altogether the remedy of a litigant to enforce his right in a Court of law. In case the remedy to enforce a vested right is altogether barred on the date when the new law comes into force, without providing any breathing time to the litigant, that remedy must continue to be governed by the old law of limitation."

9. Therefore, if the statute of limitation, if given a retrospective effect, destroys the cause of action which was vested in a party or makes it impossible for that party to exercise his vested right of action, then the Courts would not give retrospective effect to that statute of limitation. The case of the defendants however, does not come within this qualification because the Rajasthan Civil Courts Laws (Extension) Act, 1956, had come into force on 5th January, 1957 and the suit was decided by the trial Court on 5th August, 1957. The defendants had sufficient notice of the change in law. It is also not a case where by the subsequent legislation the right of appeal was destroyed or any injustice was caused to the appellant. The effect of Act No. 2 of 1957 was to repeal the Regulation Including Section 15 which provided a period of sixty days for filing appeals to the Court of the District Judge, and thus making applicable Article 152 of the Limitation Act which provides a period of 30 days only. It did not affect the defendants' right of filing an appeal. That right stood unimpaired and it cannot be said that by shortening the period of limitation any restriction or onerous burden was imposed on the defendants' right of filing appeal. Reference in this connection may be made to a few decisions. In Khondkar Mahomed Saleh and Others Vs. Chandra Kumar Mukerji and Others, where a right to apply under Civil P. C. O. 34, R. 6 accrued to a minor in September 1908. The mortgagee was under a disability of minority till 23rd September, 1923. Under the old Act the minor could make application within three years of the cessation of the disability. The new Act substituted for this, three years from the date right to apply

accrued. On the date of the coming into force of the new Limitation Act the minor had two years and nine months" time under the new Act within which to apply. It was held that

"Inasmuch as the effect of the change was to cut the period within which to apply and not take away the right, the new Act should be given retrospective operation."

10. In *Ram Karan Singh and Another Vs. Ram Das Singh and Others* Sulaiman Ag. C.J. as he then was, observed:

"A substantial right is not assumed to be taken away by a new Act unless it expressly says so. But a right to sue in one Court rather than another or a right to wait for a particular period of time before suing is not a substantive right. The selection of forum and the period of limitation are ordinarily matters of procedure only. The selection of a Court in no way affects the right of suit itself. The Limitation Act does not necessarily extinguish the right, though it certainly places a bar against the remedy by suit."

11. Full Bench of Travancore-Cochin High Court in *Pappathi Ammal v. Sivagannam Pillai* AIR 1954 TC. 526 held by majority that:

"The effect of the introduction of the Indian Code in Travancore is only to shorten the period of limitation for applying for restoration of a suit dismissed for default. The new Code does not take away the right of the plaintiff to apply for restoration of the suit. No person can be said to have a vested right to bring an action or to prefer an appeal or to make an application within a particular time. These are only matters of procedure and the rule is that enactments affecting mere procedure will have retrospective effect so as to apply even to proceedings which are pending when the enactment comes into force unless it is expressed otherwise in the enactment itself."

In that case the suit was filed in the Travancore area of the State before 1st April, 1951, when Travancore CPC was in force. Order IX Rule 9 of that Code contained a provision to the effect that Section 5 of the Travancore Limitation Act would apply to an application under that rule. This Code was replaced by the Indian Code on 1-4-1951 which did not contain a provision similar to that contained in the Travancore Code making Section 5 of the Limitation Act applicable to an application under O. IX, Rule 9. The High Court amended the above rule and made Section 5 of the Limitation Act applicable. This amendment came into force on 14-5-52. An application for restoration of the suit was made before 14th May, 1952 when Section 5 of the Limitation Act was not applicable to such applications. It was held that:

"The result is that that it is O. 9, Rule 9 of the Indian CPC which was in force in the State when the restoration application was filed by the plaintiff and not the corresponding provision of the Travancore Code which was in force when the suit was instituted that would apply to the case."

Their Lordships quoted the following passage from Maxwell on Interpretation of Statutes at page 216 nth Edition that:

"If the time for pleading were shortened, or new powers of amending were given, it would not be open to parties to gainsay such a change, the only right thus interfered with being that of delaying or defeating justice, a right little worthy of respect.""

12. This case directly decides the question which is involved in the present appeal. Therefore, the shortening of period of limitation for filing appeals as a result of the repeal of the Regulation must be regarded as a mere alteration in procedure or an alteration regulating the exercise of right of appeal and not affecting or in a way restricting the right of appeal itself and as such the appeal preferred in the Court of the District Judge, Ajmer must be governed by Article 152 of the Indian Limitation Act according to which it had become barred on 4th October, 1957.

13. Mr. Rastogi learned counsel for the appellant also invited attention to Section 5 of the Act No. 2 of 1957 and contended that its provisions have been given retrospective effect inasmuch as it is provided that despite the repeal anything done or any action taken under any such law shall be deemed to have been done or taken under the corresponding provision of the relevant Rajasthan Ordinance specified in the Schedule. It is urged that by virtue of this provision the suit which was instituted must be deemed to have been instituted under the provisions of the Rajasthan Ordinance and in that view of the matter also the appeal would not be governed by Section 15 of the Regulation but by the provisions of the Ordinance and thus Article 153 would be applied.

14. It is not necessary to decide this question as I have already held that after the repeal of the Regulation by Act No. 2 of 1957, period of thirty days as provided in Article 152 of the Indian Limitation Act was to apply to all the appeals preferred in the Court of the District Judge and the appeal filed by the defendants in the- Court of the District Judge, Ajmer was barred by limitation on the date it was filed as no application for condonation of delay was made either before the learned District Judge or before this Court. The decree passed by the learned Senior Civil Judge in that appeal cannot, therefore, be sustained.

15. The result, therefore, is that this appeal is allowed, judgment and decree of the Senior Civil Judge, Ajmer are set aside and that of the trial Court is restored. The appellant will get costs of all the Courts from the defendants.

16. Learned counsel prays that the respondents may be given sometime to vacate the premises so that they may search out other suitable accommodation for shifting the flour mill which is established in the suit premises. The request appears to be reasonable and two months time is allowed to the respondents to hand over vacant possession of the shop to the appellant failing which the decree shall be executed. This period of two months is allowed to the respondents on this condition that within fifteen days from today they deposit all amounts due as

compensation from them together with the amount of compensation for use and occupation of the shop for the period of two months allowed to them by this Court. If the said arrears and amount of compensation for two months are not so deposited, the decree shall become executable after that period.

17. Learned counsel for the respondents prays for leave to appeal to a Division Bench which is refused.