

(2005) 05 KAR CK 0022

In the Karnataka High Court

Case No : Regular First Appeal No. 243 of 1996

State of Karnataka

APPELLANT

Vs

P.K. Timber Company and Others

RESPONDENT

Date of Decision : 27-05-2005

Acts Referred:

Coorg Land and Revenue Regulations, 1899 — Regulation 29, 39
Limitation Act, 1963 — Section 14

Citation : (2006) 2 KarLJ 559 : (2005) 3 KCCR 1868

Hon'ble Judges : S.R. Nayak, J; Anand Byrareddy, J

Bench : Division Bench

Advocate : K.P. Ashok Kumar, for the Appellant; S.R. Hegde Associates, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—This appeal by the defendant, the State of Karnataka, challenges the judgment and decree of the Trial Court on several grounds. However, at the time of hearing the learned Government Advocate appearing for the State, rested on two grounds only. Namely, that the suit was barred by limitation and that the relief of declaration claimed by the plaintiff could not have been granted by the Trial Court.

2. To appreciate the contentions on behalf of the appellant, it would be in order to narrate the facts of the case.

3. The suit was brought by the holder of an agreement of sale, in possession, of the lands described in the schedule to the suit, measuring about 265.74 acres situate in Karike Village, Kodagu District.

4. The defendants were the State of Karnataka arrayed as defendant 1 and the owners of the land arrayed as defendants 2 to 8. Since there was no Us in fact between the plaintiff and defendants 2 to 8, they were transposed as plaintiffs 2 to 8 by the Trial Court.

5. Under the agreement of sale, the plaintiff had the right to cut and remove the trees from the suit schedule property which was according to the plaintiffs "redeemed land". The plaintiffs had made an application to the Divisional Forest Officer, Mercara, on 25-8-1971 for permission to fell and transport the timber from the suit land without payment of seignior age or the value of timber. The Divisional Forest Officer, Mercara, had refused permission on the footing that the tenure of the suit lands v/as indicated as "unredeemed" in the Revenue Records and therefore, unless 50% of the timber value was paid, the permission sought for could not be granted. The owners, namely plaintiffs 2 to 8 had approached this Court, questioning the action of the Divisional Forest Officer, in its writ jurisdiction vide. Writ Petition Nos. 2754 to 2759 of 1971. This Court, by an order dated 19-11-1973, directed the petitioners therein to approach the appropriate revenue authorities for correction of entries regarding the land if it was their grievance that the entries were incorrectly reflected. For it was the case of the owners of the land that the suit properties were originally denoted as Survey No. 29 of 1958 in the Record of Rights up to the year 1912. Subsequently, as Survey No. 185 during the period 1913 to 1916 and as part of Survey No. 446 thereafter. The tenure of the lands was indicated as redeemed. This implied that the owners had the right to cut and remove the timber on the suit land without payment of seignior age or the timber value. It was only in the year 1971 that the owners of the land became aware of the entry in the Record of Rights indicate the tenure as unredeemed and it was then that it was found the Jam bandy Register (Record of Rights) described the land as Apiary till the year 1912. As "redeemed cardamom sagujaga" from 1913 to 1917. However, in 1918 the entry had been changed to "unredeemed coffee saguvali malai". This according to the owners was unauthorised and without notice to them or their predecessors in title.

6. Upon disposal of the writ petition filed by the owners as aforesaid, they made an application to the Deputy Commissioner, Kodagu District for a change of tenure from "unredeemed" to "redeemed" as the change made in 1918 was void. By an endorsement dated 23-6-1976 the application was rejected. An appeal was preferred against the same before the Karnataka Revenue Appellate Tribunal, which was dismissed by the Tribunal on 1-4-1977.

7. The Tribunal, however, observed that the facts of the case were similar to a case decided by this Court and reported in *State of Mysore v. Kainthaje Thimmanna Bhat and Ors.* 1968(2) Mys. L.J. 227 and therefore it was open to the owners to seek relief before the appropriate Court as was the case in the reported judgment.

8. The owners had thereafter chosen to deposit the timber value demanded by the authorities, under protest, and proceeded to cut and remove timber from the suit land. A total sum of Rs. 7,60,000/- was deposited during 1974-1976, as and when the timber was cut and removed from time to time. The last of such deposits was made on 23-1-1976. The suit was filed as on 26-5-1980. The reliefs

sought for were for a declaration that the suit lands were "redeemed" lands. And consequently for a direction to the defendant to refund the cash deposit of Rs. 7,60,000/- with interest at 10% per annum from date of suit.

9. The State Government had contended before the Trial Court that the owners, or their predecessors in title, had never paid the timber value to the Government. It was for this reason that the Commissioner had, by an order dated 11-4-1918, directed the change in tenure. That the suit was not maintainable. That the deposit towards timber value was made voluntarily and hence the same could not be refunded. And that the suit was barred by limitation.

10. The Trial Court, by its judgment, found that there was no dispute about the identity of the land. The Trial Court also found that there is no dispute about changes made in the Jam bandy Register in respect of the tenure of the subject lands from time to time. However, the order passed by the Commissioner of Coorg under the provisions of the Coorg Land and Revenue Regulation, 1899, dated 13-1-1918, directing a change in the entries regarding the tenure of the subject lands from "redeemed" land to "unredeemed" land which was set up by the State in defence was considered for its validity and binding force, in respect of the subject land. The Trial Court found that under Regulation 29 it was the Chief Commissioner who was competent to issue a notification directing any revision in the Record of Rights. And that the Commissioner therefore did not have jurisdiction to pass any order in this regard. The Trial Court, relying upon a decision of the Apex Court in State of Karnataka and others Vs. K.V. Khader, as well as a decision of this Court in Kainthaje Thimmanna's case, concluded that the change in entries in the Record of Rights were void and hence there could not be a valid demand for seignior age from the plaintiffs. The Trial Court also found that the amount of Rs. 7,60,000/- was deposited under compulsion and not out of their own volition and held that they were entitled to a refund of the same.

11. The Trial Court has negated contentions as regards the maintainability of the suit and as being barred by time. In this regard the Trial Court has relied on K.V. Khader's case.

12. The Trial Court has held that the plaintiffs are entitled to interest at 6% per annum on the deposit amount from the date of suit till realisation. And has decreed the suit with costs.

13. Sri K.P. Ashok Kumar, learned Government Advocate vehemently contends that the suit was hopelessly barred by limitation. He contends that even if the alleged date of knowledge of the changed entry in the Record of Rights is presumed to be in the year 1971, the institution of a suit in the year 1980, notwithstanding the prosecution of proceedings before the revenue authorities, is barred by time. He would further contend that the deposits made towards seignior age from time to time, even if made under protest, could be recovered at best within a period of three years of such deposit and the last of such deposits having been made on 23-1-1976 the institution of the suit on 26-5-1980

is clearly barred by time.

14. Next, the learned Government Advocate contends that the change of entries in the Record of Rights could not be overcome by recourse to the suit and therefore, the suit was not maintainable.

15. The learned Government Advocate relied on the decision in *Ranendra Narayan Sinha and Others Vs. State of West Bengal*, in support of the proposition that recovery of seignior age which was collected, though the plaintiffs were not obliged to deposit the same, could be claimed and recovered before the expiry of three years from date of deposit and not later. He has also relied on the judgment in *Seth Ganga Dhar Vs. Shankar Lal and Others*, in support of the proposition that the plaintiff ought to have discharged the burden of establishing that the suit was not barred by limitation on the ground that the plaintiff was prosecuting the matter in issue with due diligence, in other civil proceedings, in terms of Section 14 of the Limitation Act, 1963.

16. In this background the first question that we would consider namely, whether the suit seeking the relief of declaration was maintainable, would not detain us for long?

17. It is not in dispute that the suit lands were governed by the Coorg Land and Revenue Regulation, 1899 (hereinafter referred to as "Coorg Regulation" for short). The said Coorg Regulation was enacted in order to amend and declare the law in force in Coorg in respect of land and land revenue. Under Regulation 29 of the Regulation any preparation of Record of Rights or revision thereof can be done only if the Chief Commissioner directs by means of a Notification that such Record of Rights be made or specially revised as the case may be. There is no such Notification brought on record. It is also not disputed that the Commissioner was an authority different from the Chief Commissioner at the relevant point of time namely in the year 1918. Under Regulation 39 of the Regulation presumption as regards the truth of the entries could be raised only when the entries in the Record of Rights have been made in accordance with law for the time being in force. As regards the procedure to be followed in making entries in the Record of Rights, Chapter IX of the Regulation contemplates, among other things, notice to the person interested.

18. In the absence of a Notification issued by the Chief Commissioner on the basis of which the entries in question have been made, it is not possible to presume that the procedure prescribed under the Regulation has been followed at the time of effecting the changes as regards the nature of tenure in the Record of Rights. It was also not apparent that the interested parties had been heard as regards the proposed changes. In these circumstances the Trial Court has held that the order of the Commissioner passed in the year 1918 was a nullity. We see no reason to differ from this view.

19. In our considered view, if the plaintiff is entitled to a declaration that the suit schedule lands are "redeemed" the further reliefs sought in the suit are merely

consequential.

20. However, the contentions on behalf of the appellant as regards maintainability of the suit and the bar of limitation are briefly dealt with hereunder.

21. The argument on behalf of the State is that the suit is in effect a challenge to the correctness of the entries made in the Record of Rights and the liability of the owner to pay the revenue under the Coorg Regulation. This contention cannot be accepted for the plain reason that neither the right of the State to levy timber value by way of seignior age is questioned nor the liability of the plaintiffs to pay the same. It is, however, the claim of the plaintiffs that the timber value has already been levied and paid. The suit was hence maintainable as rightly held by the Trial Court.

22. On the issue of limitation the Trial Court has answered the same by relying on the judgment in K.V. Khader's case, wherein the Apex Court had held that Article 14 of the Indian Limitation Act, 1908 would not be applicable to a suit where no relief was prayed for in the nature of setting aside of an order of a Government Officer. (The corresponding Article in the Limitation Act, 1963 is Article 100). However, the learned Government Advocate would contend that it is not Article 14 (now Article 100) which is relevant but Section 14 of the Act. It is his contention that any sum of money which was not due to the Government but which has been paid could be claimed only within a period of three years. The learned Government Advocate did not however point out the Article, under the Schedule to the Act, under which the deposit made by the plaintiffs, under protest, was covered. Be that as it may, the thrust of his argument was that as held by the Supreme Court in the case of Ranendra Narayan Sinha, that if the plaintiff had been compelled to pay sums of money which he was not liable to pay, the claim for recovery could be made within three years from the date on which the payment was made. Having regard to the relevant date of deposit last made, the learned Government Advocate contends, that the suit was clearly barred by time. He further reinforces this argument while contending that in terms of Section 14 the plaintiffs ought to have discharged the burden of establishing that from the year 1971 to the date of institution of suit the plaintiffs were diligently prosecuting the very matters in issue in appropriate civil proceedings before some other forum, which according to the Government Advocate the plaintiffs have failed to do.

23. We are not persuaded by the forceful arguments of the learned Government Advocate. In our opinion, the order passed by the Commissioner, Coorg, in the year 1918 was nullity. There was no obligation cast on the plaintiffs to pay any amount by way of timber value. In the result, when it is decreed that the suit lands are "redeemed" lands, the obligation to pay revenue abates. There can be no bar of limitation in respect of such a claim for declaration of the right to abatement. This is not a case of amounts paid in excess of any amount lawfully due. There was no amount due. The relief of refund is purely consequential to

the relief of declaration. The payment and recovery of the amount in question is not subject to the law of limitation independently or in isolation.

24. In the result, the appeal is dismissed. Parties shall bear their own costs.