

(1977) 01 KL CK 0010
In the High Court Of Kerala
Case No : Appeal Suit No. 74 of 1976

State of Kerala and Another

APPELLANT

Vs

V.K. Ramunni Panicker and Others

RESPONDENT

Date of Decision : 04-01-1977

Acts Referred:

Contract Act, 1872 — Section 72
Limitation Act, 1963 — Article 113, 24, 17

Citation : (1977) 1 ILR (Ker) 346

Hon'ble Judges : T. Chandrasekhara Menon, J;K. Bhaskaran, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; T.R.G. Warriar, for the Respondent

Judgement

Chandrasekhara Menon, J.—The State of Kerala which was the defendant in the suit, O.S. No. 197 of 1974 in the court of Subordinate Judge of Kozhikode, has come up with this appeal. The suit was one for money and arose on the following facts :

The plaintiff is the receiver appointed by the Sub-Court in O.S. No. 80 of 1964 for management of the Zamorin's Estate. Sri K.C. Sreemanavikraman alias Ettan Raja was the Zamorin Raja of Calicut and hence the stani-dar. He died on May 2, 1958. The Agricultural Income Tax Officer, Kozhi-kode, passed an order assessing the tax payable by the stanidar for the period from November 1, 1956, to March 31, 1958, as Rs. 84,788.78 and a demand notice in pursuance of the same was issued. Final assessment order was passed on October 12, 1960. The succeeding stanidar was Kunhamma-raan Raja. He was forced to pay a sum of Rs. 18,096.75 towards the assessment aforementioned under threat of legal and revenue proceedings.

2. Kunhammaman Raja also died on December 23, 1960, and he was succeeded by Sri P.C. Cheriya Kunhunni Raja. The agricultural Income Tax department proceeded against him and imposed further a penalty of Rs. 5,000 for non-

payment of the tax. This resulted in his paying a sum of Rs. 20,100 towards the tax and penalty. In the circumstances, the payment could only be taken to be under coercion. Sri P.C. Cheriya Kunhunni Raja passed away and he was succeeded by Sri K.C. Cheriya Kunhunni Raja. The department proceeded against him for the realisation of the balance tax amount and penalty. He, however, refused to pay the arrears of tax and penalty on the ground that under law he was not liable to pay the same. He contended that he had nothing to do with the stanam properties which had got divided u/s 7(3) of the Hindu Succession Act, 1956, on the death of Sri K.C. Sreemanavikraman alias Ettan Raja on May 2, 1958. The Hindu Succession Act had come into force on June 18, 1956.

3. This contention was not, however, accepted by the Agricultural Income Tax Officer who passed an order on March 25, 1963, making the successor liable to pay the arrears of tax to the Government. He also directed the Zamorin to pay the tax with penalty as mentioned above. Aggrieved by the order, Sri K.C. Cheriya Kunhunni Raja filed a writ petition, O.P. No. 768 of 1963, before the High Court challenging the validity of the order and seeking to set aside the same and to quash all proceedings taken for collection of the tax and penalty from him. The High Court passed an order dated August 13, 1964, quashing the order of the Agricultural Income Tax Officer demanding payment of the amount from Sri K.C. Cheriya Kunhunni Raja. The High Court also held that as the assessment was made on the deceased Zamorin Raja his share alone was liable to be proceeded against. It was further held by the High Court that the liability to pay the tax was on the personal heirs of Sreemanavikraman Raja and that too only to the extent they had come into possession of the assets of the said Raja.

4. After the High Court's decision, the Inspecting Assistant Commissioner, Kozhikode, passed an order making the 693 shares of the Kovilagam liable to pay the tax to the extent of 1/693 share each. This is said to be in violation of the directions of the High Court. In the meanwhile, a member of Zamorin's Kovilagam filed O. S. No. 80 of 1964 for partitioning the Zamorin's estate properties. In that suit two joint receivers were appointed to manage the estate properties. The agricultural Income Tax department threatened to proceed against the properties in the hands of the receivers for realisation of tax and penalty. The receivers consequently filed O.P. No. 2413 of 1965 before the High Court challenging the validity and legality of the levy of tax on the prior Zamorin Rajas and also the actions proposed to be taken against the receivers. The High Court held in that writ petition that the tax was not recoverable from the estate and that 1/693 of share of Sreemanavikraman Raja alone was liable to be taxed because, according to Section 7(3) of the Hindu Succession Act, the stanam properties had got divided at the time of the death of Sreemanavikraman Raja into 693 shares out of which 692 shares went to the other members of the Kovilagam. It was also held that the tax arrears due from Sreemanavikraman Raja could have been levied and collected only from his personal heirs. The order impugned was quashed by the High Court.

5. The Inspecting Assistant Commissioner of Agricultural Income Tax Department, Kozhikode, filed C.A. No. 1397 of 1969 [Inspg. Asst. Commr. of Agrl. I.T. v. Ramunni Panikkar--[1912] 84 ITR 370] before the Supreme Court of India challenging the decision of the High Court in O.P. No. 2413 of 1965, During the pendency of that appeal, the joint receivers were discharged and the plaintiff in the present suit was appointed as the receiver. This appointment was in the partition suit O.S. No. 80 of 1964. The plaintiff was impleaded as the respondent in the appeal before the Supreme Court. The Supreme Court dismissed the appeal as per its judgment dated October 5, 1971. The Supreme Court declared in its judgment that there was no stanam after the death of Sreemanavikraman Raja in view of Section 7 of the Hindu Succession Act and the assessment made on the stanam was a result of misunderstanding of the true legal position. There was no fresh assessment by the department. The estate had paid Rs. 38,196.75 towards illegal assessment which had been quashed as per the judgment of the High Court as well as the Supreme Court. The present suit is brought forward stating that the Government is liable to refund the same. It is urged in the suit that amounts were paid under a mistake to the department from the income of the stanam properties, which have now come into possession of the plaintiff as receiver. That amount really forms part of the estate which became divided among the members of the Zamorin Kovilagam. As the receiver the plaintiff is entitled to receive back the amount. It is alleged in the plaint that the final pronouncement in the matter which made it clear that the assessment was illegal was on October 5, 1971. The Government to whom the money was paid by mistake or under coercion, according to the plaintiff, has to refund the same and in spite of the notice issued by the plaintiff and reminders sent by him refund has not been given. The Inspecting Assistant Commissioner in his communication to the plaintiff on March 16, 1973, has pointed out that the claim is barred by limitation and no refund could be given. The plaintiff asserts that there is no limitation and that the starting point of limitation was from the date of the judgment of the Supreme Court on October 5, 1971. The plaintiff had sent a registered lawyer's notice u/s 80 of the CPC on December 19, 1973, which was delivered to the State, the defendant in the suit, on December 20, 1973. Copies were also sent to the concerned officers of the department. As the demand had not been complied with, the suit was filed after the receiver having obtained the sanction of the sub-court as per R.R. 8 of 1974 in O.S. No. 80 of 1964.

6. The main contention that was taken by the defendant was that the suit was barred by limitation, The court below after a detailed consideration of the question held in favour of the plaintiff and decreed the suit as prayed for. Therefore, the State has come up in appeal.

7. The main point before us also was on the point of limitation. The learned Government pleader strongly contended that whatever be the article that is applicable in the matter the suit is out of time. It is the date of the High Court judgment in the original petition quashing the assessment that has to be considered in the matter and on the question whether the suit is barred by

limitation that date is the starting point of the period of limitation and the suit brought well after three years from that date is clearly barred.

8. In considering the matter we find that in answering the question it is not altogether free of difficulties. Questions of equity may not arise here as pointed out as early as in *Luchmee Buksh Roy v. Ranjeet Ram Pandey* [1874] 20 WR 375. The Judicial Committee of the Privy Council observed:

"It has been said that this case ought to be decided upon an equitable construction and not upon the strict words of the statute ; but their Lordships think that the statutes of limitation, like all others, ought to receive such a construction as the language in its plain meaning imports. Statutes of limitation are in their nature strict and inflexible enactments. The object of legislature in passing them is to quiet long possession and to extinguish stale demands. Such legislation has been advisedly adopted in India as it has been in this country and their Lordships think that in construing these statutes the ordinary rules of interpretation must prevail."

The statute of limitation is a disabling Act and, therefore, the limitation has to be found within the four corners of the statute.

As B.B. Mitra points out in his interpretation of Limitation Act that, basically, the laws of limitation are founded on public policy. That public policy is that an unlimited and perpetual threat of litigation leads to disorder and confusion : It creates insecurity and uncertainty. No doubt, limitation may cause isolated cases of hardship, but, for the general good, security and certainty, some kind of limitation is essential for public order. The older views of Lord Justices Lindley and Cotton that the rules of limitation are infamous power created by positive law to decrease litigation and encourage dishonest defences are today not regarded as sound. (See *Jones v. Bellegrove Properties Ltd.* [1949] 2 KB 700 and *R. B. Policies at Lloyd's v. Butler* [1950] 1 KB 76. Miraglia in his *Comparative Legal Philosophy*, at page 399, summarises the object of the statutes of limitation to be, "all statutes of limitation have for their object the prevention of the rearing up of claims at great distances of time when evidences are lost and in all well-regulated countries the quieting of possession is held an important point of policy."

9. Limitation causes sometimes cases of hardship. But then some kind of limitation is essential for public order. We have to apply the Limitation Act (hereinafter called "the Act") in all its force in all cases regardless of difficulties that might arise in isolated cases. On this view, when we examine the question we find that the appeal will have to be allowed and the suit dismissed, for reasons which we are giving hereinbelow. Certainly, the dismissal of the suit should not and will not prevent the Government from considering the question at their discretion whether the amount they have wrongly taken from the Zamorin's estate by way of tax, the imposition of which had been held to be illegal by the highest court of the land, should be paid back to the estate.

Government is not an ordinary litigant and we are sure that the denial by the court of the plaintiff's claim on the technical point of limitation will not stand in the way of Government acting in equitable and proper manner. As the court below has held, the proper article that is applicable in the case is Article 113 read with Section 17 of the Act. Section 17 and Article 113 areas follows :

"17. Effect of fraud or mistake.--(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,--

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid ; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him;

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production :

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which-

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period, extend the period for execution of the decree or order:

Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be."

" Art. 113.

Any suit for which no period of limitation is provided elsewhere in this Schedule

Three years

When the right to sue accrues."

10. Article 113 is what is called the "omnibus" article of the Act, and corresponds to Article 120 of the previous Act, only with the addition of the word "Any" at the beginning of the first column of the present article and the period of limitation having been reduced from six to three years so that no special advantage would be gained by any one seeking to prove that the residuary article applies. This article is final and residuary. Section 17 of the Act is a re-cast of Section 18 of the previous Act. Under the Act of 1908 a claim for relief on the ground of mistake was governed by Article 96, and time commences to run from the date when the mistake became known to the plaintiff. See the State of Madhya Pradesh Vs. Bhailal Bhai and Others, and State of Kerala v. Aluminium Industries Ltd. [1965] 16 STC 689 (SC). In both of these cases it was held that Article 96 applied to a suit for recovery of money paid under a mistake of law. Article 96 has been omitted in the present Act. However, Section 17(1)(c) of the new Act provides that in the case of a suit for relief from the consequences of a mistake the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it.

11. In K.S. Venkataraman and Co. Vs. State of Madras, the Supreme Court pointed out:

"It is now settled by decisions of this court that a suit for refund of tax paid under a mistaken belief that in law tax was payable, was at the material date governed by Article 96 of the Indian Limitation Act, 1908, and the period prescribed by that article commenced to run from the date when the mistake became known."

12. It was further observed in the same ruling as follows :

"The appellants' suit was instituted within three years from the date on which the appellants claim that they came to know about the decision of the Madras High Court in Gannon Dunkerley and Company's case [1954] 5 STC 216 (Mad) and the claim was unquestionably within limitation."

13. Article 24 of the present Act which is the same as Article 62 of the old Act may not be the proper article applicable in the matter. Article 24 runs:

" 24. For money payable by the defendant to the plaintiff for money received by the defendant, for the plaintiff's use

Three years.

When the money is received."

14. The A. Venkata Subba Rao Vs. State of Andhra Pradesh, said :

"In order to attract Article 62, it is not necessary that at the moment of the receipt of money the defendant should have actually intended to receive it for the use of the plaintiff and that it is sufficient if the receipt is in such circumstances that the law would impute to him an obligation to retain it for the use of the plaintiff and refund to him when demanded Article 62 most nearly approaches the formula of money had and received by the defendant for the plaintiff's use, if read as a description and apart from the technical qualifications imported in English law and procedure. However, if the right to refund does not arise immediately on receipt by the defendant but arises by reason of facts transpiring subsequently, Article 62 cannot apply, for it proceeds on the basis that the plaintiff has a cause of action for instituting the suit at the very moment of the receipt."

15. As we have to consider the question on this basis, we have no doubt in concluding that the lower court was perfectly right in stating that the residuary Article 113 would apply in the case and not Article 24. As pointed out in the Supreme Court decision referred to above, Article 24 (corresponding to Article 62 of the old Act) is not to apply. What then is the article to apply ? There is no specific article available in the Act with respect to a claim to get back money paid under a mistake or coercion. Therefore, residuary Article 113 will apply.

16. The next point for consideration is as to when the estate can be said to have acquired knowledge of the fact that they had paid the tax under a mistake of law. The lower court said that though the mistake in the matter of payment was known when the High Court rendered its ruling in O.P. No. 2413 of 1965, that ruling did not become final as the agricultural Income Tax department took the matter in appeal before the Supreme Court, which rendered the final ruling in exhibit A1 judgment dated October 5, 1971. If the date of the High Court judgment is the date from which the limitation runs the suit would be barred. If exhibit A1 date is taken, the suit will be well within time.

17. Mr. John, the learned Government Pleader, strongly contended for, and which we think is the correct view, that the limitation will begin to run from the date of the High Court judgment. He placed before us the decision in *Hukum Chand Boid v. Pirthichand Lal Chowdhury* [1919] ILR 46 ; [1919] 50 IC 444. The facts of the case as stated by Sir Lawrence Jenkins on behalf of the Privy Council are as follows :

"On the 14th May, 1904, a patni taluq known as Lot Mirzapur was put up for sale for arrears of rent under the Bengal Patni Taluqs Regulation, 1819, at the instance of the Zamindar, Musammatt Bhagwanbati Chowdhraim. The defendant-respondent, Pirthichand Lal Chowdhury, as her successor in title, is the present zamindar. The defaulting patnidar was Chhatrapat Singh. Hukum Chand Boid, now represented on this appeal by his heirs the plaintiffs-appellants, was the highest bidder, and the tenure was knocked down to him.

The purchaser paid in the entire amount of the purchase money, and on the 23rd of May, 1904, he received from the officer conducting the sale a certificate of payment u/s 15 of the Regulation.

On the 28th May, 1904, the purchaser received the usual amaldustak or order for possession, but on the 30th of June following, a darpatnidar, being desirous of contesting the right of the zamindar to make the sale, sued her for its reversal. Three similar suits for the same purpose were instituted by other darpatnidars in July and August. A decree for reversal of the sale was passed in each of these suits. That in the first, Suit No. 248 of 1904, was passed in the court of first instance on the 24th August, 1905. An appeal to the High Court was dismissed on the 3rd of August, 1906. The decrees in the other suits, Nos. 262, 273 and 277 of 1904, were passed on the 28th of August, 1906.

By the present suit the purchaser seeks to recover from the zamindar the sum of Rs. 57,996-3-6, the aggregate of several sums of money being (a) the amount of rent arrears due and paid by the Collector to the zamindar out of the purchase money, (b) the expenses of the sale appropriated by the Collector out of the purchase money, (c) the patni rents paid to the zamindar subsequent to the sale, and (d) interest on these several sums and on the balance of purchase money left in the hands of the Collector.

In the court of first instance this suit was dismissed as barred by limitation, and this decree was affirmed by the High Court on appeal. From this decision the present appeal has been preferred.

The principal point discussed has been the plea of limitation, and in the argument as well as throughout the earlier stages of the suit it has been assumed that this question is governed by Article 97 in the Second Schedule to the Limitation Act. That article prescribes the period of limitation for a suit there described as one "for money paid upon an existing consideration which afterwards fails". On these facts it was held :

"Both courts have held that the failure of consideration was at the date of the first court's decree. Their Lordships feel no doubt that as between these two decrees this is the correct view, for whatever may be the theory under other systems of law, under the Indian law and procedure an original decree is not suspended by presentation of an appeal nor is its operation interrupted where the decree on appeal is one of dismissal."

18. This view had been followed in *Martand v. Dhondo* AIR 1921 Bom 184, wherein it was said :

"Where in a partition a mortgage supposed by mistake by the parties to be alive and valid was assigned to the plaintiff: and the plaintiff sued on the mortgage but both the trial court and the appellate court held that the money had already been paid off : Held that Article 96 applied to the plaintiff's suit for recovering the loss, and time began to run from the date of the decree of the trial court and

not that of the appellate court."

19. Similarly, in *N. Pakuran v. K. Kandan Kutty* AIR 1923 Mad 23 in a suit under Article 120 of the Limitation Act of 1908, a Division Bench of the Madras High Court held that the starting point of limitation is the date of the first decree declaring that the defendants in the suit had no saleable interest in the land and not the date of the appellate decree confirming the same.

20. *Nagayya v. Penukonda Co-op. Town Bank Ltd.* AIR 1947 Mad 90 is another case in point. The facts of the case were as follows:

"A member of a co-operative society, by name Narasimha Sastri, borrowed a sum of money from the society and purported to mortgage to it the house in which he was living. In fact, he was a tenant of that house and had no right whatsoever; but the fraud he played on the society was not detected and his mortgage was accepted. When he did not pay the debt, an application was filed before the Deputy Registrar of Co-operative Societies in Claim No. 7 of 1933-34 for the amount due. An award was passed and in due course E.P. No. 693 of 1933-34 was filed by the co-operative society and the property brought to sale. The reversioner of the last male owner of the house during the course of these proceedings put in a claim petition. His petition was dismissed ; but he filed a claim suit, O.S. No. 41 of 1937, in the Court of the District Munsiff of Penukonda and succeeded on March 31, 1938. An appeal was preferred to the District Court which was dismissed on April 4, 1941. The widow of the last male holder on March 22, 1943, issued a notice to the plaintiff to give her possession ; and, in accordance with that request, possession was given to her by the plaintiff on April 7, 1943. Nine months later, on January 23, 1944, the plaintiff filed S.C. No. 25 of 1944, out of which this petition arises, for the return of the purchase money. The suit was dismissed on the ground that it was barred by time, being more than three years from the date on which he knew that a mistake had been made in selling him the house that he had purchased in court auction."

21. There also it had been held that time would begin to run from the date of the decree of the trial court and not from the date of the appellate court's decree in the matter of limitation for filing the suit because when the trial court passed its decree the plaintiff was informed and had knowledge that a mistake had been made although there was still the possibility that the appellate court might reverse that decree, yet the plaintiff continued to have knowledge and since the appeal was dismissed, the plaintiff's knowledge continued uninterrupted from the date of the decree of the trial court.

22. The position might be different when the appellate court reverses the decree of the lower court, which decision of the appellate court gives the party the cause of action for instance as in the case of *Bassu Kuar v. Dhum Singh* [1889] ILR 11. That is why we find the following passage in *Municipal Committee v. State of Haryana* [1971] 73 PLR 756:

"How can it possibly be said that at any time before the law was declared by

their Lordships of the Supreme Court, the petitioner could have, with reasonable diligence, discovered the mistake when we find that the High Court had taken a different view and it was only the Supreme Court which for the first time declared Section 3(2) of the Aided Schools Act and the amendments u/s 6 of the same Act in respect of Sections 52(1) and 59 of the Municipal Act to be void and unconstitutional. When discovery of the mistake is a sine qua non for computing the period of limitation, reference to the time of payment of amount becomes wholly immaterial, and what is to be seen is when the mistake was discovered or could have with reasonable diligence been discovered.

23. No doubt, as Mr. T.R.G. Warriar, the learned counsel for the plaintiff-respondent, contended where it is once established that the payment, even though it be of a tax, has been made by the party labouring under a mistake of law, the party is entitled to recover the same and the party receiving the same is bound to repay or return it. No distinction can be made in respect of a tax liability and any other liability on a plain reading of the terms of Section 72 of the Contract Act. The term "mistake", used in that section, has been so used without any qualification or limitation whatever and comprises within its scope a mistake of law as well as a mistake of fact. And also to hold that the tax paid by mistake of law cannot be recovered u/s 72 will be not to interpret the law but to make a law by some such words as "otherwise than by way of taxes" after the word paid. See *Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf*, . As also said in that decision merely because the State has not retained the monies paid as tax by the assessee but has spent them away in the ordinary course of business of the State will not make any difference to the position and under the plain terms of Section 72 of the Contract Act the assessee will be entitled to recover back the monies paid by him to the State under mistake of law. But for a civil court to give a decree for such return, law of limitation requires that the party concerned should come, within the time prescribed by law, for seeking the relief.

24. In support of his contention that the time for asking the refund begins to run only from the date of the Supreme Court's judgment and not from the High Court's judgment, Mr. Warriar laid considerable stress on the following passage in the judgment of the Supreme Court in *Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf*, :

"If this is the true position the fact that both the parties, viz., the respondent and the appellants were labouring under a mistake of law and the respondent made the payments voluntarily would not disentitle it from receiving the said amounts. The amounts paid by the respondent under the U.P. Sales Tax Act in respect of the forward transactions in silver, had already been deposited by the respondent in advance in accordance with the U.P. Sales Tax Rules and were appropriated by the State of U.P. towards the discharge of the liability for the sales tax on the respective assessment orders having been passed. Both the parties were then labouring under a mistake of law, the legal position as established later on by the

decision of the Allahabad High Court in Budh Prakash Jai Prakash and Another Vs. The Sales Tax Officer and Others, subsequently confirmed by this court in The Sales Tax Officer, Pilibhit Vs. Budh Prakash Jai Prakash, not having been known to the parties at the relevant dates. This mistake of law became apparent only on May 3, 1954, when this court confirmed the said decision of the Allahabad High Court and on that position being established the respondent became entitled to recover back the said amounts which had been paid by mistake of law."

25. As respects this passage we need only state that in the relevant context where these observations appear the Supreme Court was not considering the question of limitation in the matter of filing the proceedings. The court was dealing with the question whether in the nature of the voluntary payment of the tax by the concerned assessee he can ask for refund. That would be clear from the immediate succeeding lines in the said judgment Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf, :

"The state of mind of the respondent would be the only thing relevant to consider in this context and once the respondent established that the payments were made by it under a mistake of law (and it may be noted here that the whole matter proceeded before the High Court on the basis that the respondent had committed a mistake of law in making the said payments), it was entitled to recover back the said amounts and the State of U.P. was bound to repay or return the same to the respondent irrespective of any other consideration. There was nothing in the circumstances of the case to raise any estoppel against the respondent nor would the fact that the payments were made in discharge of a tax liability come within the dictum of the Privy Council above referred to. Voluntary payment of such tax liability was not by itself enough to preclude the respondent from recovering the said amounts, once it was established that the payments were made under a mistake of law. On a true interpretation of Section 72 of the Indian Contract Act, the only two circumstances there indicated as entitling the party to recover the money back are that the monies must have been paid by mistake or under coercion. If mistake either of law or of fact is established, he is entitled to recover the monies and the party receiving the same is bound to repay or return them irrespective of any consideration whether the monies had been paid voluntarily, subject however to questions of estoppel, waiver, limitation or the like. If once that circumstance is established the party is entitled to the relief claimed. If, on the other hand, neither mistake of law nor of fact is established, the party may rely upon the fact of the monies having been paid under coercion in order to entitle him to the relief claimed and it is in that position that it becomes relevant to consider whether the payment has been a voluntary payment or a payment under coercion."

26. On the facts of the case it might be noted no question of limitation as such arose. The levy of tax concerned in the case--sales tax on forward transactions--was held to be ultra vires by the High Court of Allahabad by its judgment

delivered on February 27, 1952, in *Budh Prakhsh Jai Prakash v. Sales Tax Officer* [1952] 3 STC 185 (All) and the respondent before the Supreme Court, *Kanhaiya Lal*, a firm, by its letter dated July 8, 1952, asked for a refund of the amounts of sales tax paid on forward transactions. The sales tax authorities refused to refund the same. Therefore, the firm filed a writ petition in the Allahabad High Court for quashing the assessment orders and for refund of the tax in 1952 itself. Pending disposal of the writ petition, the Supreme Court in *The Sales Tax Officer, Pilibhit Vs. Budh Prakash Jai Prakash*, confirmed the judgment of the Allahabad High Court in *Jai Prakash's* case [1952] 3 STC 185 (All). From these facts it is clear that no question of limitation or as to whether time for the period of limitation begins to run from the High Court's judgment or from the judgment of the Supreme Court in appeal arose in that case.

27. Mr. Warriar very strongly pleaded that it would have been wrong on the part of the receiver of the estate to have launched the proceedings for refund when the matter was pending in the Supreme Court and the right to refund depended upon the Supreme Court's decision finally. He places reliance on the Privy Council's statement in *Bassu Kuar's* case ILR [1889] All 47: "It would be an inconvenient state of the law if it were found necessary for a man to institute a perfectly vain litigation under peril of losing his property if he does not." To understand this statement we have to go into the facts of the case:

"In 1879, Dhum Singh owing money to Baru Mal, they entered upon an arrangement that Baru Mal, buying villages of Dhum Singh, for Rs. 55,000, should give credit for and write off so much as was equal to the debt, receiving only the balance in cash ; it appearing from the accounts down to 1st September, 1879, that the debt was Rs. 33,359. The conveyance was to be made to Bassu Kuar, the wife. But, disputes afterwards arising, completion was refused by Baru Mal. On 3rd September, 1880, Dhum Singh sued him for specific performance ; but his suit, although decreed by the court of first instance, was dismissed by the High Court on the 14th March, 1884 ; that court holding that there had been no unqualified acceptance of the terms by Baru Mal, and that no binding contract, enforceable by law, had been made between the parties."

28. Then Baru Mal filed the suit stating that the defendant, Dhum Singh, refused to refund the amount, for which an allowance in the "sale consideration" had been made, although in consequence of his own acts, the contract of sale had been declared by the High Court not to be enforceable and inferring that the cause of action had arisen on the date of the High Court's judgment. The Subordinate Court decreed the suit but on appeal the High Court upheld the plea of limitation. The Privy Council said ILR[1889] All 47:

"The High Court hold that this defence is sound in law, and their decree dismisses the suit as being barred by limitation. They do not state under which article of Act XV of 1877 the case falls; but they consider Baru Mal's claim to be for nothing but the old balance due from Dhum Singh. Probably they would hold it to fall, as was argued at their Lordships' bar, under Article 64 (in the second

schedule); therefore, as none of the statutory provisions by which the time for suing is enlarged can be applied to this case, except that which relates to acknowledgment, and as no written acknowledgment can be found later than the plaint filed by Dhum Singh in the specific performance suit, Baru Mal's right to sue would be barred at latest long before he sued.

Their Lordships find themselves unable to agree with the High Court as to the nature of the claim. They think that it is substantially put upon the right ground in the plaint. It must be remembered that it has throughout been common ground to both disputants, that there was a contract made between them, and that among its terms were the sale of the villages for Rs. 55,000, the retention by Dhum Singh of his debt of Rs. 33,359-3-6 as part payment, and the payment by Baru Mal of the balance. Their quarrel was about other matters. Dhum Singh alleged that the terms just mentioned were all the terms of the contract, and he claimed its completion on that footing. Baru Mal alleged that there were other terms, accused Dhum Singh of dishonesty, and after a time claimed the right of receding from the bargain altogether. But the Subordinate Judge took the view of Dhum Singh, and decreed completion of the contract according to that view. Up to the date of the Subordinate Judge's decree in 1881, Dhum Singh retained the amount of his debt as of right, and in accordance with the contract alleged by him. After the decree of 1881 he still retained it as of right, and with a title which could not be disputed in any court of justice, except by the one mode of appeal from the decree of 1881. Baru Mal might have sued for his debt, but the utmost benefit that could have come to him from such a suit would have been to have it suspended or retained in court till after decision of the appeal in the specific performance suit. Dhum Singh's defence would have been that the debt was paid by virtue of the contract, and that defence must have prevailed if the suit were heard while the decree of 1881 still stood unreversed. It would be an inconvenient state of the law if it were found necessary for a man to institute a perfectly vain litigation under peril of losing his property if he does not. And it would be a lamentable state of the law if it were found that a debtor who for years has been insisting that his creditor shall take payment in a particular mode, can, when it is decided that he cannot enforce that mode, turn round and say that the lapse of time has relieved him from paying at all.

In their Lordships' view, the decree of the High Court in 1884 brought about a new state of things, and imposed a new obligation on Dhum Singh. He was now no longer in the position of being able to allege that his debt to Baru Mal had been wiped out by the contract, and that instead thereof Baru Mal was entitled to the villages. He became bound to pay that which he had retained in payment for his land. And the matter may be viewed in either of two ways, according to the terms of the Contract Act, IX of 1872, or according to the terms of the Limitation Act, XV of 1877."

29. We do not think this decision in any way helps the plaintiff to get over the bar of limitation. As we pointed out earlier, it was really the High Court's decision

which gave Baru Mal a cause of action.

30. In this view we allow the appeal and set aside the judgment and decree of the court below. The suit will stand dismissed but, in the circumstances of the case, the parties will bear their costs throughout.