
(1981) 12 KL CK 0015
In the High Court Of Kerala
Case No : A.S. No. 155 of 1976

State of Kerala and Others

APPELLANT

Vs

Thalayar Tea Co. Ltd.

RESPONDENT

Date of Decision : 09-12-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Limitation Act, 1963 — Article 113, 24

Citation : AIR 1982 Ker 105

Hon'ble Judges : P. Subramonian Poti, Acting C.J.; T. Kochu Thommen, J; G. Viswanatha Iyer, J

Bench : Full Bench

Advocate : Advocate General, for the Appellant; T.S. Venkiteswara Iyer and P.K. Balasubramonian, for the Respondent

Final Decision : Allowed

Judgement

P. Subramonian Poti, Ag. C.J.

1. My learned brothers Viswanatha Iyer and Kochu Thommen, JJ. differed on a point of law namely whether the suit is barred by limitation. Accordingly the case was adjourned for further hearing and decision as provided u/s 92(2) proviso of the Code of Civil Procedure. The matter thus came up before me.

2. The respondent-plaintiff, the Talayar Tea Company succeeded to the interests of the Talliar Coffee Estates Limited on account of a scheme of amalgamation entered into between the two companies. The Talliar Coffee Estates Limited had instituted a suit O. S. 70 of 1966 in the Sub Court, Kottayam on 1-7-1976. That suit arose on account of the claim made by the State of Kerala for seigniorage in respect of silver oak trees in the Estate of the plaintiff in that suit. The case of the company was that no fee, duty or tax was payable in respect of timber of silver oak trees, that they are not reserved trees mentioned in the Timber Transit Rules and they are not royal trees on which seigniorage was payable. But the Government insisted upon payment of such seigniorage for cutting and removing

the silver oak trees. Consequently the suit was filed with the following prayers:

"(a) a declaration that the silver oak timber cut and removed from the plaintiff's property scheduled hereunder are Talliar Coffee Estates Ltd.'s absolute and exclusive property and that Talliar Coffee Estates Ltd. is not liable for any seigniorage for silver oak trees thus cut and removed and that orders and demands to the contrary for seigniorage by the first defendant State and its Officers be cancelled.

(b) a permanent injunction restraining the defendants from realising any seigniorage as per demand made by the second defendant's letter to the Talliar Coffee Estates Ltd. dated 15-12-1955.

(c) the amount of deposit and seigniorage collected by the defendants be directed to be refunded to the Talliar Coffee Estates Ltd. or a decree be given to Talliar Coffee Estates Ltd. for recovery of the same from the first defendant with interest at 6% per annum."

The suit was dismissed by the Sub Court, Kottayam. An appeal was taken by the plaintiff to the High Court. By judgment dated 25th November, 1970 the High Court allowed the appeal and decreed the suit in terms of the plaint. Ext. A1 is the judgment of the High Court in the said appeal. The decision of the Sub Court dismissing the suit was on 30-6-1967 and the decision of the High Court was on 25-11-1970 In O. S. 70 of 1966 the complaint concerned the seigniorage that had been collected from the plaintiff till then. During the pendency of the suit also it was being so collected. When the Sub-Judge dismissed the suit seigniorage continued to be collected until the High Court allowed the appeal on 25-11-1970. The claim in the present suit was for recovery of a sum of Rs. 2,43,168,48 of which a sum of Rs. 2,04,740,17 represents the seigniorage so collected. Evidently that was the amount of seigniorage collected from the plaintiff till the date of the High Court judgment, Ext. A1.

3. The question that arose in the court below concerned the article of the Limitation Act applicable to the suit. Whether Article 24 of the Limitation Act, 1963 or 113 of that Act would be applicable to the suit was the main controversy in the suit. The residuary article 113 would apply only if Article 24 or any other article did not apply. The present suit was filed on 6-4-1973 within 3 years of the judgment of the High Court. According to the plaintiff cause of action arose on the date of such judgment and the suit within 3 years of that date was in time. But if the period of 3 years for filing the suit arose from the respective dates of payment by the plaintiff of seigniorage the claims falling beyond a period of 3 years prior to the institution of the suit would be barred by limitation. According to the State the suit was one for money had and received and was governed by Article 24 of the Limitation Act, 1963 corresponding to Article 62 of the earlier Limitation Act. If so the period in respect of each of the payments will commence on the respective dates on which seigniorage amounts were paid to the State. The contention of the plaintiff is that Article 24 will have no application since the

right to sue accrued only when the High Court decided the suit in favour of the plaintiff in the earlier litigation. Though under Article 24 as well as Article 113 the period of limitation is 3 years the time from which time begins to run under the two articles is different.

4. Amounts by way of seigniorage were recovered from the plaintiff against its will. But the plaintiff had to pay it since had it refused to pay it would not have been permitted to remove the silver oak trees from its estate. It was not paid because the plaintiff agreed that there was liability to pay. Even when the payment was made liability to pay was disputed. I have already adverted the prayers in the suit O. S. 70 of 1966. That concerned only amounts paid prior to the institution of that suit. The plaintiff lost in the trial court. In between the date of the decision of the Sub Court and the decision of the High Court which accepted the plaintiffs case the plaintiff had to continue the operation of felling the trees and removing the timber. That the plaintiff could do only on payment of the seigniorage. Evidently such seigniorage was not paid willingly but under protest. When the plaintiff seeks recovery of the amount so paid the action is one for money had and received. If so Article 24 would normally be applicable. If that Article is applicable Article 113 will stand automatically excluded. Does Article 24 apply to every action for money had and received ? Will it apply to a case where the cause of action for recovery does not arise at the time of such payment ? In the case before me did the claim for recovery of money against the State arise at the very moment of payment of money to the State under protest ? That is the question which I am called upon to answer in order to decide the question of limitation in this case.

5. Action for money had and received has its origin in the English form of action of that name. Article 24 of the Limitation Act concerns a suit for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use. The words "received by the defendant for the plaintiff's use" have a technical meaning and has necessarily to be understood in the light of the meaning of the term as employed in English forms of action As early as in the decision in Mahomed Wahib v. Mahomed Ameer. ILR (1905) Cal. 527 Mookerjee J. had explained Article 62 corresponding to Article 24 of the present Act in these terms :

"The Article, when it speaks of a suit for money received by the defendant for the plaintiff's use, points to the well-known English action in that form; consequently the article ought to apply wherever the defendant has received money which in justice and equity be-longs to the plaintiff under circumstances which in law render the receipt of it, a receipt by the defendant to the use of the plaintiff."

The Supreme Court of India in A. Venkata Subba Rao Vs. State of Andhra Pradesh,) approved the dictum of Mukerjee, J. in that case and explain-ed it thus (at p. 1792) :

"In other words, the learned Judge held that it was not necessary in order to

attract Article 62 that at the moment of the receipt the defendant should have actually intended to receive it for the use of the plaintiff and that it was sufficient if the receipt was 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".

In view of the clear exposition of the law by Ayyangar, J. in the above decision I do not think it is necessary to go into this question in detail. Moreover it is agreed by both sides that this is an action for money had and received. The only controversy is whether, even so, Article 24 would apply.

6. According to the learned Advocate General every action for money had and received will be governed by Article 24 and there can be no exception. Of course, he also contended that if there can be exception this is not a case of an exception, but a case to which the rule itself would apply.

7. I may once again advert to the decision in *A. Venkata Subba Rao Vs. State of Andhra Pradesh*,). At para 62 of the judgment the court refers to certain cases where in action for money had and received the Article would not be applicable. The court did not attempt to make any exhaustive list. The court said:

"Where the defendant occupies a fiduciary relationship towards the plaintiff it is clear that Article 62 is inapplicable. Next even if the claim could have been comprehended under the omnibus caption of the English "action for money had and received", still if there are other more specific articles in the Limitation Act--vide, e. g. Article 96 (mistake), Article 97 (consideration which fails) Article 62 would be applicable. Lastly, 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." IE the right to refund does not arise immediately on the receipt by defendant that is a case to which the exception to the rule applies. If the case is one of exception Article 24 does not apply, but Article 113 applies. In paragraph 63 of the same decision the Supreme Court has illustrated a case where the plaintiff does not have a cause of action for instituting the suit at the very moment of the receipt. Reference is made to the decision in *Govind Singh Gurudatta Singh Vs. State of Madhya Pradesh*, There the assessee deposited alone with his return certain sums. He had overpaid and so was entitled to obtain a refund when the assessment was completed. A suit for the amount of that excess was held to be governed by Article 120. That was because the right accrued to the plaintiff in that case only after the completion of the assessment. In *Jain Brothers and Company, Bundi Vs. The State of Rajasthan*,) a claim for refund of sales tax was held to be governed by Article 62 of the Limitation Act since the "money which was exacted by the defendant from the plaintiff was immediately returnable to him, that is, at the very time of receipt, there being no sanction of law behind it, and, therefore, the defendant should be held to have received it in law for the plaintiffs use."

That if there was a general bar in the way of the plaintiff in making claim to the money on the date when it was paid to the defendant then Article 82 will not arise for application was held by the High Court of Patna in Smt. Ambika Bhawani Devi Vs. Chandrika Singh,). Where the defendant was to keep the money in deposit with him until the entire goods were sold off and he had to hand over the money to the plaintiff thereafter on demand, Article 62 would not apply. This was what was said by the Allahabad High Court in Khairul Bashir Vs. Thannu Lal and Others,). I need not illustrate this rule further, for in the passage to which I have adverted the Supreme Court has categorically laid down the rule that when the right to refund does not arise immediately on receipt by the defendant Article 62 can have no application. This leads me to the enquiry whether the plaintiff in the case could have at the very moment of payment to the defendant of the seigniorage assessed claimed refund of the said sum. If the plaintiff could have made such a claim he had a cause of action to sue and the suit for the amounts paid more than 3 years before the date of suit would be barred by limitation.

8. According to learned Advocate General the decree dismissing the suit filed by the plaintiff did not in any way debar the plaintiff from suing for recovery of any amount wrongfully collected from the plaintiff. It was only the High Court which gave a decree declaring the non-liability of the plaintiff for the claim by the State for payment of seigniorage. That too, as pointed out, was only in respect of seigniorage for a period prior to the commencement of the suit O. S. 70 of 1966 and not for any period thereafter.

9. There are two perspectives from which the question that arises here will have to be considered. Had the plaintiff right to contend that he was not liable to pay seigniorage despite the fact that the declaration sought by him stood negatived in the suit though the matter was pending in appeal before the High Court. The other is whether the plaintiff was precluded from agitating his claim in a suit because the judgment of the trial court would have in that case operated as *res judicata*.

10. The second aspect could easily be answered. When once an appeal had been filed to this court the matter became *sub judice* and there was no scope for any plea of *res judicata* then. The trial of any issue would not be barred as the judgment of the Sub Court had not become final then. In this view it is only the first of the two aspects I have mentioned above that arises for serious consideration.

11. The plea of the State is that this is not a case where the trial court granted a declaratory decree but denied it to the plaintiff. It is said that such denial would not operate as a declaration of the absence of the right of the plaintiff though it may operate as a bar for the trial of the question over again if the judgment had become final. It is further said that in the earlier litigation O. S. No. 70 of 1966 the adjudication concerned only the seigniorage concerned the trees which had already been cut. The seigniorage payable in respect of trees to be cut thereafter was not governed by the terms of the decree. There was into bar operating so as

to prevent the plaintiff from suing for refund of seigniorage wrongly collected from him. In other words, despite the fact that the plaintiff disputed the claim to payment of seigniorage for an earlier period there was nothing which prevented the plaintiff from disputing similar claims for a subsequent period provided there was no bar of res judicata. If so an seigniorage being collected from the plaintiff illegally it was entitled to claim refund at the very instant of such collection. That means causes of action arose as and when wrong or illegal collections were enforced against the plaintiff.

12. Going through the prayers in the plaint in O. S. No. 70 of 1966 which is seen extracted in the plaint in this case it is evident that the prayer in that suit was confined to the seigniorage which had been demanded by the Divisional Forest Officer, Munnar and which had been collected from the plaintiff in that suit. The declaration that the plaintiff was not liable for any seigniorage for silver oak trees concerned such trees as had been cut and removed. The declaration sought for did not concern the trees to be cut and removed in future. There fore the cause of action for any wrongful collection made after the institution of the suit was independent of the adjudication in the suit O. S. No. 70 of 1966. That cause of action would survive despite the decision in O. S. No. 70 of 1966. Of course, if the decision in O. S. No. 70 of 1966 had become final even if the cause of action arose in respect of subsequent collections the trial of the issue might have been barred by reason of res judicata. That being not the case here for reasons already indicated the cause of action could be worked out. That such cause of action did arise as and when the seigniorage was collected cannot be disputed. It is not as if it was postponed to a later date. It is not as if by the decision in O. S. No. 70 of 1966 the plaintiff was precluded from suing for a subsequent period. Of course it is another matter whether, as a prudent person, the plaintiff would have sued. But the right to sue was not in any way affected.

13. In this case there is the further fact that there was no declaration granted at all by the trial court. It was not as if the trial court granted a declaration even in respect of seigniorage for an earlier period. The declaration sought was denied. No doubt there was a finding that seigniorage was payable. But I am concerned with the relief granted by the decree. That was one denying the plaintiff the decree sought for. In these circumstances I do not see any reason to hold that the right to sue was postponed or that the judgment Ext. A1 gave rise to a cause of action for the first time. If the right of suit was available to the plaintiff all along, the suit filed beyond the period of 3 years from the date of payment would be barred. Only such of the claims as fall within the 3 years of the date of suit would survive. Article 24 would apply to the case. The case is not one which will fall within the exceptions illustrated by the Supreme Court in *A. Venkata Subba Rao Vs. State of Andhra Pradesh*, .

14. Now I will advert to another argument of learned counsel for the respondent Sri. T. S. Venkiteswara Iyer. Referring to Ext. A1 judgment against O. S. No. 70 of 1966 learned counsel points out that while allowing the appeal and decreeing the

suit as prayed for this court further made the direction that "The seigniorage already collected by the first respondent will also be refunded to the appellants." This could very well refer to the seigniorage collected prior to the suit which was referred to in the plaint. But according to learned counsel this refers to the seigniorage collected till the date of the judgment of the High Court and therefore the High Court judgment must be found to contain a further declaration concerning the seigniorage collected even after the date of the trial court decree even though this was not prayed for in the suit. This suit must, according to counsel, therefore, be treated as a suit on judgment and if so having been filed within 3 years of the judgment of the trial court must be found to be in time, I must point out that this is a new approach. Assuming without deciding that the judgment Ext. A1 directs refund of seigniorage collected by the State even after the date of the trial court decree there can be no suit on such judgment, for it will then be an executable decree and that cannot form the basis for a suit on judgment. An early case Ramaswami Nathan and Others Vs. M.P.M. Muthiah Chetti, , Ramesam J. exhaustively deals with the history of a suit on "judgment in India. It has been pointed out by Ramesam J. in that case that there is nothing in Indian authorities against the maintainability of a suit on judgment though such cases can occur only very rarely. The learned Judge said in that case thus:

"Ordinarily the Indian Courts pass judgments which are to be enforced in execution and even when they create new relation involving fresh rights and obligations they provide for working out the rights in execution. Rarely do they create a new obligation without providing for its execution and indicating a suit as the only method of enforcing it. But when they do, as in the case, the suit is maintainable."

The Madras High Court again adverted to this question in Rathan Chand Kumaji Vs. Amichand and Others, The court held that the right to sue for enforcement of rights declared in a former judgment or decree was not restricted to cases where the former judgment or decree fixed a definite amount as payable by one party to another and that the rights of parties may be declared in various ways. A Division Bench of the High Court of Nagpur referring to the decision in Yeshwantrao v. Bhaskarrao, AIR 1956 Nag 250, referring to the decision in Ramaswami Nathan and Others Vs. M.P.M. Muthiah Chetti, , accepted the rule in that decision and understood it to mean that if the court passes a decree which is not executable then the remedy is to file a suit to work out the rights created by the decree. These decisions may have no application to the facts of the case before us. It is not possible to construe the judgment of the High Court, Ext A1, as adjudicating not only the issues which the court was called upon to adjudicate in the suit and granting the decree prayed for in the suit, but further passing a decree which was declaratory in nature but not executable, if it is found to be executable, then of course there is no question of a suit on judgment. Even assuming that this court granted a decree outside the scope of the reliefs prayed for in the suit, to consider such decree as a non-executable declaration would not

be justified on a construction of Ext. A1. If so this suit cannot be viewed as one on judgment.

15. Now that I have answered the question of limitation against the plaintiff in the suit, namely, that Article 24 would apply to the suit, it is for the Division Bench to dispose of the appeal in the light of the decision on this point of law. Accordingly this is directed to be placed before a Division Bench which dealt with the appeal earlier along with my decision on the question of limitation referred to me, for disposal of the appeal in accordance with law.

JUDGMENT OF THE COURT (9-12- 81)

16. In accordance with the opinion of the majority that the suit is barred by limitation the appeal is allowed; the judgment and decree passed by the lower court are set aside and the suit is dismissed. In the circumstances we make no order as to costs.

17. The respondent asks for leave to appeal to the Supreme Court. We are not satisfied that any substantial question of law of general importance which in our opinion requires a decision by the Supreme Court arises in this case. Leave is refused.