

(2002) 01 KL CK 0031
In the High Court Of Kerala
Case No : A.F.A. No. 6 of 1997

State of Kerala

APPELLANT

Vs

Jagadamma

RESPONDENT

Date of Decision : 30-01-2002

Acts Referred:

Limitation Act, 1963 — Article 72, 80, 91

Citation : (2002) 01 KL CK 0031

Hon'ble Judges : S. Sankarasubban, J; R. Bhaskaran, J

Bench : Division Bench

Advocate : P. Jayasankar, Government Pleader, for the Appellant; V. Giri, V.N. Achutha Kurup and B.S. Swathy Kumar, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—This appeal is preferred against the judgment and decree in A.S. No. 192 of 1992 of a learned Single Judge of this Court. First respondent in the appeal filed the suit, O.S. No. 225 of 1989 for recovery of Rs. 59,820/- from the appellants on the following facts:

2. Third defendant in the suit, the Coir Project Officer, Quilon seized 28 `Malis" of coconut husks containing about 2,00,000 in number retted at Munroethuruthu locality and filed a report before the Sub Inspector of Police at Anchalumood alleging that certain persons have retted husks without proper authority and licence and on the basis of the said report, the Anchalumood Police registered Crime No. 46/80 and charge-sheeted the persons who have retted husks without licence, under Sections 2 and 7 of the Essential Commodities Act and Section 5(2) of the Husk Control Order, 1973 and numbered it as C.C. No. 273/82.

3. Immediately after the seizure of the husks, the plaintiff and 7 others filed Crl.M.P. No. 2694/80 before the court for releasing the husk. On 18.6.1980, the Court passed an order disallowing the prayer of the plaintiff and 7 others and further ordering the third defendant to sell the husks seized and deposit the

amount in Court. Against that order, the plaintiff and 7 others filed Crl. Revision No. 62/80 before the Sessions Court, Quilon and the Court ordered the release of the husks to the plaintiff and 7 others. Subsequently, an O.P. was filed before this Court. This Court directed the parties to wait till the disposal of C.C. No. 273/82. C.C. No. 273/82 was finally disposed of by acquitting the accused in that case on 26.6.1984 and ordered that the husks will be returned to the plaintiff and 7 others and the numbers of husks to be released will be in accordance with the number of husks mentioned in their respective licence. According to the plaintiff, the number of husks due to the plaintiff is 65,000.

4. After the case was disposed of, the plaintiff approached the third defendant to get back the husks which were due to her. Even after repeated demands by the plaintiff, the third defendant did not return it. Since the third defendant did not return the husks, the plaintiff filed a petition for getting back the husks before the Additional Judicial First Class Magistrate Court, Quilon and that petition was closed on the basis of the undertaking to release the husks by the third defendant. Even then the third defendant was reluctant to release the husks to the plaintiff. Thereafter, the plaintiff and others filed Crl.M.P. No. 680/86 before the Additional Judicial Magistrate Court, Quilon for taking Contempt of Court proceedings against the Officer and for the husks to be brought over before Court and released to the plaintiff. That petition was disposed of stating that the husks had perished and was impossible for getting back. The court further suggested in the order that if the plaintiff was of opinion that the husks had perished due to the willful negligence of any person, the plaintiff was at liberty to resort to appropriate remedy in a competent civil court. According to the plaintiff, the husks were perished due to the wilful negligence of the third defendant. The plaintiff also impleaded defendants 4 and 5 as they were entrusted with the husks. Thus, the suit was filed for the value of 65,000 husks and interest thereon and also litigation expenses, totalling for an amount of Rs. 59,820/-.

5. A joint written statement was filed by defendants 1 to 3. It was stated that the husks were seized under the Husk Control Order. The acquittal of the plaintiff in C.C. No. 273/82 is admitted. It is also contended that the Magistrate Court ordered to return the husks. It is further contended in the written statement that on the basis of the order of the Magistrate Court, the third defendant issued instructions to defendants 4 and 5 to surrender possession of the husks entrusted to their custody. But the plaintiff never turned up to take possession of the same from defendants 4 and 5. It was the duty of defendants 4 and 5 to produce the husks. There is no finding regarding the negligence by the Court and there was no negligence on the part of the third defendant. Hence, defendants 1 to 3 are not liable to pay any amount to the plaintiff. It was contended that the suit was barred by limitation.

6. On the basis of the above pleadings, the trial court raised as many as seven issues. It found that no husks were available on 4.3.1986. Under issue No. 3, the court found that the husks had perished due to the negligence of the third

defendant. The Court further found that the plaintiff had sustained a loss of Rs. 16,450.20. Issue No. 6 was whether the suit is barred by limitation. The court found that the suit was barred by limitation and dismissed the suit. As per the trial court, it was Article 72 of the Limitation Act that will apply. It is against that an appeal was filed before a learned Single Judge of this Court. The learned Single Judge held that Article 72 of the Limitation Act does not apply. The learned Single Judge found that the cause of action arose from the date of Ext. A2 order dated 31.10.1986 and the suit has been filed within three years from that date. The court also found that the suit was not barred by limitation and a decree was given to the plaintiff for Rs. 16,450.20. It is against the above judgment and decree that the present appeal is filed u/s 5(ii) of the Kerala High Court Act.

7. Learned Government Pleader appearing for the appellants submitted that Article 91(b) of the Limitation Act does not apply. According to the learned Government Pleader, Article 72 and Article 80 of the above Act will apply. In any event, learned Government Pleader submitted that the learned Single Judge was not correct in holding that the limitation starts from the date of Ext. A2 order. According to the learned Government Pleader the date of Ext. A2 order is not the starting point of limitation. The starting point of limitation is when the third defendant was unable to give back the husks, on 4.3.1986, which can be seen from Ext. B2 report. On the other hand, learned counsel for the first respondent submitted that by Ext. A1 judgment, the Magistrate Court found that the offence against the plaintiff was not proved and hence, found that the seizure of the husks was illegal. In the same judgment, the learned Magistrate gave an order for the return of the husks. Ext. A1 judgment is dated 26.6.1984. But the third defendant did not return the husks. The plaintiff approached the Magistrate Court again by filing CrI.M.P. No. 680/86. It was only thereafter found that the husks could not be returned and hence, learned counsel submitted that the limitation starts from the date of Ext. A2 order. Further it was submitted that Section 80 notice was issued to the defendants on 11.4.1989

8. The learned single Judge applied Article 91(b) of the Limitation Act states as follows:

"for wrongfully taking or injuring Three When the property is wrong- or wrong fully detaining any fully taken or injured, or when other specific movable property. the detainer's procession becomes unlawfull."

The third defendant's possession of the husks became unlawful by Ext. A1 judgment dated 26.6.1984. The suit was filed on 11.7.1989. Admittedly, this is beyond 3 years from the date of Ext. A1 judgment. It was next argued that the Article further says that the parties are wrongfully injured. According to the learned counsel for the appellants, as per the direction in Ext. A1 judgment, the husks ought to have been returned to the plaintiff. But it could not be returned, because they had become decayed. According to the learned counsel, this position became final only when Ext. A2 order was passed. That was on

31.10.1986 and the suit was filed on 11.7.1989, which is within three years. But there is difficulty in accepting that the time began to run only from Ext. A2 order. This is because in paragraph 4 in Ext. A2 it is stated thus: "Now the petitioner has filed another petition wherein she would state that the Coir Project Officer pointed out a place on the back-water and asked her to take out the husks from there. According to her, there was no husk there and so she wants to take contempt of court proceedings against the Coir Project Officer."

9. Ext. B2 is the report filed by Coir Project Officer. It refers to the order dated 24.2.1986 by the Additional Judicial Magistrate in C.M.P. No. 3008 of 1985. It says that as per the order, the plaintiff and her husband Gopalan came to the Project Office and they went to the place where husks were stored. The plaintiff's husband came to the spot as authorised by the plaintiff and the husband inspected the husks. The Project Officer directed his subordinates to count the husk and entrusted the same to the husband of the plaintiff. But the husband of the plaintiff refused to take the husks on the basis that the husks became decayed and hence it cannot be taken. This shows that on 4.3.1986 itself, the plaintiff became aware that the husks had perished. In spite of this, she filed the petition before the Magistrate Court to produce the husks and to take contempt action against the Project Officer.

10. According to us, the filing of the petition and obtaining of an order from the Magistrate Court to pursue the remedy for compensation will not save the period of limitation. As a matter of fact, the cause of action arose on 4.3.1986 itself. The starting point of limitation is with the plaintiff's knowledge. It cannot be denied that on 4.3.1986 itself, the plaintiff had knowledge that the husks became decayed. Hence, the cause of action for compensation arose on that date itself. Learned counsel for the appellants then submitted that a notice u/s 80 was issued and even if the notice period is taken into account two months time is here. That means the suit could have been filed upto 3.5.1989. But in this case, the suit was filed on 11.7.1989. Further, as rightly stated by the trial court, no details are stated in the plaint as required under Order VII Rule 6 entitling the plaintiff for exemption from the law of limitation. Thus, the period mentioned in Article 91(b) has not complied with. Articles 72 and 80 give a shorter period. Thus even if Article 91(b) applies, the suit is not filed in time.

11. In the above view of the matter, we hold that the suit is barred by limitation. The judgment and decree of the learned Single Judge is set aside and the judgment and decree of the trial court is restored. Appeal is allowed. No costs.