

(2014) 03 CHH CK 0052
In the Chhattisgarh High Court
Case No : Second Appeal No. 1224 of 1998

State of M.P. (Now C.G.)

APPELLANT

Vs

Dinesh Kumar Khare

RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Chhattisgarh Land Revenue Code, 1959 — Section 257, 257(f), 57(2), 57(3)
Civil Procedure Code, 1908 (CPC) — Section 100, 57, 57(2), 57(3), 80
Limitation Act, 1963 — Section 15, 15(2)

Citation : (2015) 1 CGLJ 83

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Vinay Harit, Dy. Advocate General, Advocates for the Appellant; P.R. Patankar and N. Ravi Kumar, Advocates for the Respondent

Judgement

Sanjay K. Agrawal, J.—The substantial questions of law formulated and to be answered in this second appeal are as under:--

"(i) Whether both the Courts below were justified in excluding the notice period under Section 80 of "the Code of Civil Procedure, 1908 while computing the period of limitation for institution of suit under Section 57(3) of the Chhattisgarh Land Revenue Code, 1959?

(ii) Whether in the light of the provision of Clause (F) of Section 257 of the Chhattisgarh Land Revenue Code, 1959, two Courts below were justified in proceeding with the suit put forth by the plaintiff and granting relief?"

[For sake of convenience, the parties would be referred hereinafter as per their status shown in the plaint before the trial Court.]

In order to answer the, afore-stated substantial questions of law, required facts in nutshell, are as under:--

"2.1 Plaintiff- Dinesh Kumar Khare commenced an action seeking declaration of title stating inter alia that the Naib Tahsildar, Durg initiated encroachment

proceeding against him, in which, question of title was raised and ultimately, by order dated 25/04/1982 the matter was referred to the Sub-Divisional-Officer, Durg for decision under Section 57(2) of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as "the Code").

2.2 It is further case of the plaintiff that by order dated 12/03/1985, proceeding was closed and the application was dismissed holding that applicant-Dinesh Kumar Khare has failed to establish his title. The certified copy of the order dated 12/03/1985 was delivered to the plaintiff on 17/04/1985 and suit came to be filed on 11/06/1986, after serving notice to the defendant/State under Section 80 of the Code of Civil Procedure, 1908 stating inter alia that the order of Sub-Divisional Officer is bad in law and prayed for appropriate relief.

2.3 The Defendant/State submitted his written statement and took a principal defence that the suit ought to have brought within one year from the date of order of Sub-Divisional Officer dated 12/03/1985 and suit filed on 11/06/1986 is barred by Section 57(3) of the Code and prayed that suit be dismissed as barred by limitation.

2.4 The Trial Court by its judgment and decree dated 09/05/1992 decreed the suit holding inter alia that the plaintiff is titleholder of the suit land bearing old Khasra No. 402 and new Khasra No. 276 area 2.91 Acres and granted decree in favour of the plaintiff.

2.5 The defendant/State filed the First Appeal before the First Appellate Court challenging the judgment and decree passed by trial Court. The First Appellate Court held that land was duly settled vide Exhibit P-5 in favour of the plaintiff, but land could not be recorded in the name of the plaintiff and further held that the notice period of two months spent under Section 80(1) of the Code of Civil Procedure, 1908 has to be excluded under Section 15(2) of the Limitation Act while computing the period of limitation for institution of suit under Section 57(3) of the Code.

2.6 Questioning the legal acceptability and sustainability of the judgment and decree passed by First Appellate Court, Second Appeal under Section 100 of the Code of Civil Procedure, 1908 has been filed by the defendant, in which, substantial questions of law formulated is mentioned in opening paragraph of this judgment."

2. I have heard learned counsel appearing for the parties and perused the judgment and decree of both the Courts below with utmost circumspection.

Answer to substantial question No. 1:--

3. In order to answer the first substantial question of law, Section 57(3) of the Code is required to be noticed:--

"57(3)- Any person aggrieved by any order passed under sub-section (2) may institute a civil suit to contest the validity of the order within a period of one year

from the date of such order."

4. A close reading of sub-section 3 of Section 57 of the Code would show that any person aggrieved by any order passed under sub-section (2) of the Code may institute a civil suit to contest the validity of the order within a period of one year from the date of such order.

5. In the instant case, the Sub-Divisional Officer passed an order under Section 57(2) of the Code on 12/03/1985. The certified copy of the order was delivered to the plaintiff on 17/04/1985, thereafter, notice under Section 80(1) of the Code of Civil Procedure, 1908 was issued to the defendant/State on 10/02/1986 and suit came to be filed on 11/06/1986. Thus, additional period of three months and three days has been excluded while computing the period of limitation of one year for institution of suit as provided under Section 57(3) of the Code.

6. The question to be considered is whether the notice period of two months as spent in issuing the notice under Section 80(1) of the Code of Civil Procedure, 1908 has to be excluded while computing the period of one year provided for institution of the suit under Section 57(3) of the Code.

7. Section 80 of the Code of Civil Procedure, 1908 reads as under:--

"80. Notice--(1) Save as otherwise provided in sub-section (2), no suits shall be instituted against the Government (including the Government of the State of Jammu & Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of--

(a) in the case of a suit against the Central Government, [except where it relates to a railway], a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway;

[***]

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised by that Government in that behalf;

(c) in the case of a suit against [any other State Government], a Secretary to that Government or the Collector of the district;

[***]

[***]

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left."

8. In order to appreciate the point raised, it would be necessary to notice sub-Section (2) of Section 15 of the Limitation Act, 1963 (for short "the Act") provides as under.--

"15. Exclusion of time in certain other cases.--(1) xx xxx xx (2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be; the time required for obtaining such consent or sanction shall be excluded.

Explanation.--In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted."

9. A close reading of sub-section (2) of Section 15 of the Act would show that it has been inserted so as to allow the period of notice to be excluded in case of all suits in respect of which notice is required to be given by any enactment for the time being in force and such notice is required to be served as condition precedent for institution of suit under particular enactment and that enactment requiring such notice also prescribes the period of notice before expiry of which, suit cannot be instituted. In other words, Section 15(2) of the Act authorizes deduction of period of notice where such notice is required to be given.

10. In the instant case, the order dated 12/03/1985 was passed by the Sub-Divisional Officer under Section 57(2) of the Code and in order to institute the suit against the Sub-Divisional Officer/State, a notice under Section 80(1) of the Code of Civil Procedure, 1908 has necessarily to be served as Section 80(1) of the Code of Civil Procedure, 1908, service of notice to the State of Public Officer is mandatory and suit cannot be instituted before the expiry of two months unless service of notice is dispensed with under Section 80(2) of the Code of Civil Procedure, 1908 on the grounds enumerated therein. Thus, the notice period spent under Section 80(1) of the Code of Civil Procedure, 1908 for institution of the suit against State/Public Officer has to be excluded while computing the period of limitation under Section 15(2) of the Limitation Act.

11. The Supreme Court, in case of Union of India (UOI) and Others Vs. West Coast Paper Mills Ltd. and Another, has excluded the notice period of two months required by Section 80 of the Code of Civil Procedure, 1908, under Section 15(2) of the Limitation Act while computing period of limitation for filing suit holding that service of notice under Section 80 of the Code is mandatory for instituting suit and held as under.

"12. Firstly, the period of two months required by Section 80 of the Code whereunder notice is mandatorily required to be given before filing the civil suit has to be excluded from computing the period of limitation under Sub-section (2) of Section 15 of the Limitation Act, 1963."

12. Thus, it is held that the notice period under Section 80 of the Code of Civil Procedure, 1908 has to be excluded while computing the period of limitation for institution of such suit against State/Public Officer and both the Courts below are perfectly and absolutely justified in holding so and excluding the notice period while computing the period of one year for institution of suit under Section 57(3) of the Code. Thus, this question is answered accordingly against the State/defendant.

Answer to substantial question No. 2:--

13. In order to decide the second substantial question of law, Section 257(f) of the Land Revenue Code is required to be noticed:--

"257. Exclusive jurisdiction of revenue authorities.--Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters:--

(a) XXX

(b) XXX

(c) XXX

(d) XXX

(e) XXX

(f) any claim against the State Government to have any entry made in any land records or to have any such entry omitted or amended."

14. Admittedly, in the present case, jurisdictional Sub-Divisional Officer passed an order under Section 57(2) of the Code deciding the dispute between plaintiff and State and the order of the Sub-Divisional Officer was challenged by filing a Civil Suit by plaintiff under Section 57(3) of the Code within time prescribed in the said provision. The suit was filed seeking declaration of title and stating that the order of the Sub-Divisional Officer passed under Section 57(2) of the Code is illegal and bad in law. Thus, the instant suit is not a suit or claim against the State Government to have any entry made in the any land records, or to have any such entry omitted or amend within the meaning of Section 257(f) of the Code, rather such a suit was a suit within the meaning of Section 57(3) of the Code, and as such, both the Courts below are absolutely justified in decreeing the suit of plaintiff. Thus, this question is answered accordingly against the defendant/State.

15. Consequently, second appeal deserves to be and is accordingly dismissed. No order as to costs. A decree be drawn up accordingly.