

(1959) 11 OHC CK 0009
In the Orissa High Court
Case No : Second Appeal No. 324 of 1956

State of Orissa

APPELLANT

Vs

Kishore Chandra Sahu and Another

RESPONDENT

Date of Decision : 12-11-1959

Acts Referred:

Limitation Act, 1908 — Section 5

Citation : AIR 1960 Ori 177 : (1960) 26 CLT 169

Hon'ble Judges : S. Barman, J;G.C. Das, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; S.C. Ghose and Ranjit Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Das, J.—This is an appeal by the State of Orissa against the judgment of the subordinate Judge, Dhenkanal, dated 31-8-56 dismissing their appeal on the ground of limitation. The plaintiff filed a suit for a declaration that certain Government Notification was illegal, ultra vires and that he is entitled to the disputed land which was granted to him by the Ex-Ruler of Athamallik under a patta, Ext. 1. According to him, it was in pursuance of an order of the Ruler dated 10-8-1947, to sell out certain Katcha houses which had become uneconomical to the State and by virtue of the proceeding dated 5-11-1947, a patta, Ext. 1 was executed and was handed over to the plaintiff on 3-1-1948.

In the meantime the Athmallik State had been integrated into the Province of Orissa on 1-1-1948. In the meantime after the Patta was executed in favour of the plaintiff he remained in possession of the house and the land which was Order 11 acre in extent and made certain improvements. The Sub-Divisional officer of Athmallik served a notice on the plaintiff on 18-7-1949 to surrender the site along with the house. The plaintiff eventually surrendered possession of the land and the house on 7-8-1949, and filed a suit on 13-5-1953.

2. Defendant No. 1 was the State of Orissa to the suit and the pro forma defendant was one Dasarathi Sahu. The 1st defendant that is the State of Orissa, did not file any written statement although time had been granted by the trial Court. Consequently the suit was heard ex parte and an ex parte order was passed on 1-4-1954 and the decree was drawn up on 9-4-1954. The trial Court by this order decreed the plaintiffs suit and directed the defendant 1, the State of Orissa, to deliver possession of the suit properties within three months. Against this decision of the trial judge an appeal was filed by the State of Orissa which was numbered as Title Appeal No. 11 of 1954. In appeal two contentions were raised by the State: (1) That the trial Judge had no jurisdiction to take cognizance of the suit in view of the Government Notification No. 12989-States dated 29-6-1949 and (2) that the action of the State Government in issuing the said notification and annulling the commitments made by the Ruler of Athmallik was an act of State and as such is not justiciable in a Municipal Court.

It was however, contended on behalf of the plaintiff that the grant of land made by the Ruler of Athmallik which was an independent State under the paramountcy of the British Crown before the integration of the said state with the Province of Orissa cannot be revoked as an act of State by the Government of Orissa and that the Notification of the Government of Orissa annulling the grant was invalid.

3. The appellate Court on a careful analysis of the position in law came to the conclusion that the, Civil Court had no jurisdiction and as such the decree passed by the trial Judge ought to have been set aside. He, however, was confronted with another difficulty and that was in regard to the question of limitation in filing the appeal itself before the appellate Court. The lower appellate Court held that the appeal was barred by limitation and accordingly dismissed it though on merits" he found in favour of the appellant. It is against this decision that the present second appeal has been filed by the State.

4. The only question that falls to be considered is whether the appeal before the lower appellate Court was barred by limitation. Standing counsel on behalf of the State contended that in view of the circumstances, the limitation should have been condoned and his petition u/s 5 of the Limitation Act should have been allowed. In order to appreciate the point raised by the Standing Counsel it would be necessary to give certain dates in detail. Admittedly the appeal was tiled with a delay of one month and 12 days. It is undisputed that the decree was passed in 9-4-1954, and hence the appeal should have been filed before 9-5-1954, that is, within thirty days from the date of decree. Instead, the appeal was filed on 21-6-1954. Even if the appeal were filed on June 21, the limitation would probably have been excused provided an application for the certified copy of the judgment and decree had been filed within the period of limitation. This long delay it was contended was due to the annual vacation which intervened between the receipt of the certified copy of the judgment and the tiling of the appeal. Admittedly an application was made for a certified copy of the judgment and

decree on 10-5-1954, that is just after the period of limitation had expired.

Thus, prima facie there does not appear to be any sufficient reason to excuse the delay. Section 5 of the Limitation Act requires that where the appellant satisfies the Court that he had sufficient cause for not preferring an appeal or making application within the period allowed by law, the appellant or the applicant can have a condonation of the delay. But in this case there does not appear to be any sufficient cause for condoning the delay. The suit was, as stated earlier, filed on 13-5-1953 after serving a notice u/s 80 of the CPC on the State. Although the Government Pleader appeared on behalf of the State and took time to file the written statement, no written statement was filed and eventually the suit was taken up for hearing on 27-3-1954. During these ten months the defendant could not file the written statement nor could contest the suit though he took time for the same. This shows gross negligence on the part of the State and their representatives. Again coming to the filing of the appeal although the judgment was delivered on 1-4-1954 and the decree was drawn up on April 6, and was eventually signed on 9-4-1954, no step also had been taken by the defendant under Order 9, Rule 13, C. P. C. Nothing has been done until the period of limitation had actually expired.

We are satisfied that the defendant was grossly negligent throughout in this case and no sufficient cause had been shown for condoning the delay. Further when the time for preferring the appeal expires a very valuable right is accrued to the successful litigant and the Court ought not to lightly set aside the judgment unless it is satisfied that sufficient cause was there for the delay in filing the appeal (Vide *Karsondas Dhurmsay v. Bai Gangabai* ILR 30 Bom 329). In the case of " *Narair Chouthmal Marwadi vs. Rama Jago and others* the Nagpur High Court took the view that the period for preferring an appeal cannot be extended simply because the appellant's case is a hard one and calls for sympathy, nor will the Court extend the period of limitation merely out of benevolence to the party seeking relief. The Court granting the indulgence must be satisfied that there was diligence on the part of the appellant and that he was not guilty of any negligence whatsoever.

5. The appellant in this case being grossly negligent, we would confirm the judgment of the Court of appeal below and dismiss this appeal; but in the circumstances there would be no order for costs.

Barman, J.

6. I agree.