
(1966) 11 RAJ CK 0005

In the Rajasthan High Court

Case No : First Appeal No's. 19 and 20 of 1959

State of Rajasthan and Others

APPELLANT

Vs

Raghuraj Singh

RESPONDENT

Date of Decision : 02-11-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 3, Order 22 Rule 4, Order 22 Rule 9
Contract Act, 1872 — Section 213
Limitation Act, 1908 — Article 120, 89
Limitation Act, 1963 — Article 113, 3

Citation : AIR 1968 Raj 14

Hon'ble Judges : Kan Singh, J; I.N. Modi, J

Bench : Division Bench

Advocate : S.M. Mehta, for the Appellant; R.A. Gupta, for the Respondent

Final Decision : Partly Allowed

Judgement

Modi, J.—These two civil appeals arise out of a single judgment and decree of the Civil Judge, Bun'di, dated 14th October. 1958, in a suit for refund of money and we propose to dispose of them together by present judgment.

2. The material facts may shortly be stated as follows :--

3. The plaintiff was the ex-Jagirdar of Thikana Koila in the former State of Kola. It is admitted that his jagir was resumed by the State on the 1st August, 1954, under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952. The State of Kota, as it then was, was merged in what may conveniently be called the first United State of Rajasthan in April, 1948, and became part of the second United State of Rajasthan which was formed in the middle of 1949. The last mentioned State was then formed into the Part B State of Rajasthan with the coming into force of the Constitution on 26th January, 1950, and is now represented by the present State of Rajasthan as it was constituted under the States Reorganisation Act, 1956 (Act No XXXI of 1956). It is further common

ground between the parties that the first United State of Raias-than issued Ordinances No 27 of 1948 and Nos. 10 and 15 of 1949, by which the management of all jagirs existing in that State including the jagir of the present appellant was taken over by the then State by virtue of the provisions of those Ordinances.

The position, therefore was that when the second United State of Rajasthan was formed in May, 1949. these Ordinances were in force in a part of the State and the jagirs in that area were managed by the State, while similar jagirs in other States continued to be managed by the Jagirdars themselves. It was in these circumstances that Rao Manohar Singh filed a writ application in this Court being D. B. Civil Miscellaneous (Writ) Case No. 1 of 1951, in which the constitutional validity of the aforesaid Ordinances was impugned. By the judgment dated 11th December, 1951, it was held by a Bench of this Court that Section 8-A which was introduced in Ordinance No. 27 of 1948 by Section 4 of Ordinance No 10 of 1949 and the amendment to Section 8A. by Section 3 of Ordinance No. 15 of 1949 were unconstitutional and void under Article 13(1) of the Constitution read with Article 14 thereof

In the result the State was prohibited from collecting rents from the tenants of land comprising the Jagir of Bedla. It may also be pointed out here that the State went up in appeal from that judgment to the Supreme Court where also the decision of this Court was upheld (see The State of Rajasthan Vs. Rao Manohar Singhji, Even so it is admitted between the parties that the defendant State continued to retain the management of the plaintiff's jagir right from 1st April, 1951 upto 1st August, 1954 Out of the income which the State thus realised from the plaintiff's jagir. according to the plaintiff, it retained certain sums by way of collection charges namely. Rs 10,361/4/ for the year 1951-52. another sum of Rs 10,995/13/6 for the year 1952-53. and further, sum of Rs. 27,487/6/6 for the year 1953-54. out of the total income of the jagir in respect of the land rent for the aforementioned years upto 1st August, 1954. at the rate of 35 per cent of the entire income of the jagir.

The plaintiff further alleged that the defendant State also made like deductions with respect to the forest income of his jagir being a sum of Rs 1, 073/6/3 for the year 1951-52. Rs. 121/11/6 for the year 1952-53 and Rs 451/11/, for the year 1953-54 upto 1st August, 1954 The plaintiff's case thus was that the defendant had wrongfully retained a sum of Rs 50,491/4/9 by way of collection charges from the income of his jagir It is alleged that the plaintiff asked for the refund of this amount from the defendant many a times, but without any purpose and, therefore, after giving the statutory notice u/s 80 of the CPC he brought this suit out of which the present appeals arise In this suit apart from claiming the amount of Rs 50,491/4/9 as stated above, he also claimed a sum of Rs 4,896/12/9 as being his losses on account of the negligence of the defendant State in not realising the due rents during the period mentioned above, and on the total amount thus arrived at. he claimed interest at the rate of 1 per cent per

month to the tune of Rs. 17,339/3/3 and in this way filed this suit for the recovery of Rupees 72.727/4/9

4. The defendant State resisted the suit. its case was that prior to 15th March, 1954, it managed the jagir of the plaintiff as a statutory agent and even thereafter as a de facto agent thereof. It admitted that collection charges at the rate of 35 per cent from the income of the plaintiff's jagir had been deducted but that such deduction was perfectly in order and, therefore, the plaintiff was not entitled to the refund of any part of this amount. According to the State however, the total amount deducted by it as collection charges amounted to Rs 40.891/2/3 only and not rupees fifty thousand odd as alleged by the plaintiff and it was pleaded that the plaintiff's suit was barred by limitation with respect to that amount which was deducted by the State to 15th February 1953.

It was roundly contended in this connection that the plaintiff's suit was governed by a three year period of limitation although it was not stated specifically which Article of the Limitation Act would govern the case and what would be the precise period from which limitation would start running. Curiously enough, in the second paragraph of its additional pleas the State admitted that it had passed an order for the refund of "half the amount of Malguzari amounting to Rs. 27,362/ 11/8 out of the total deductions of Rs. 55,845/ 14/9 from 1st February, 1949 to the date of resumption of the jagir in 5 annual instalments."

It was expressly contended that in no case the plaintiff was entitled to a refund of more than half of 35 per cent collection charges and that therefore, the defendant was entitled to keep for itself 17 1/2 per cent as administrative charges and that it was ready and willing to refund the remaining 17 1/2 per cent; although a rider was added to this that this admission was being made "without prejudice to defence in the suit." In the end it was again stated that the plaintiff may take a refund of Rs. 27,262/11/3 and get his suit dismissed with costs. It is remarkable it was not disclosed in the written statement as to when this order was actually passed. The written statement also does not disclose as to when the several deductions for the various years during which the plaintiff's jagir was under the management of the State came to be made.

5. On these pleadings the parties went to trial and the trial court decreed the plaintiff's suit for a sum of Rs. 24,717/7/3 together with interest amounting to Rs. 2,900, the total amounting to Rs. 27,617/7/3 with costs. The trial court allowed these sums as pertaining to years 1952-53 and 1953-54, but dismissed the plaintiff's suit with respect to the deductions made by the State for the year 1951-52 as barred by time. According to that court the correct Article applicable to this suit was Article 109 of the Limitation Act of 1908, which admittedly governs the present case. In coming to this conclusion it held that the State was entitled to retain collection charges at the rate of 7 per cent on the total collection of income for each year. The plaintiff was allowed pendente lite interest from 15th February, 1956.

6. Aggrieved by this judgment both the parties have come in appeal to this Court. The plaintiff's appeal is No. 20/59 while the defendant State's appeal is No. 19/59. The plaintiff-appellant Raghuraj Singh having died on 12th January, 1965, during the pendency of his appeal in this Court, his legal representatives being his wife. Smt. Het Kanwar and sons and daughters were substituted in his place. Thereafter Smt Het Kanwar also died and as her legal representatives were already on the record, her name was ordered to be struck off by an order of this Court dated 28th October, 1966

7. We shall take up the plaintiff's appeal first. His contention before us is two-fold. In the first place, it is urged that the trial court fell into serious error when it dismissed the plaintiff's claim for refund of the deductions made by the defendant State both with respect to the income from land rent and forest for the year 1951-52. According to learned counsel, the correct Article applicable to the suit is Article 120 of the Limitation Act and on this footing the claim for the year in question, it is contended, would also be within limitation. In the second place, the contention is that the rate of 7 per cent allowed to the State by the trial court is excessive, though the appellant has been astute enough not to specify what, according to him, a proper rate in this behalf would be.

8. We shall take the question of limitation first. As already stated, the trial court has held that the plaintiff's suit in so far as, it related to the amount actually received and retained by the State as collection charges was governed (and this is the only surviving bone of contention at this date) by Article 109 of the Limitation Act, while the learned counsel for the appellant strenuously contended before us, as he did in the court below, that the correct Article applicable to the suit is Article 120 of the Limitation Act. As we look at the matter the present case seems to us to be directly governed by a decision of this Court in *Chandra Kant Rao v. The State*, First Appeal No. 33 of 1957 and First Appeal No. 69 of 1958 (between the same parties), which were decided on 30th April, 1965 (Raj.).

In that case, as in the case before us, the plaintiff-appellant filed a suit for refund of certain deductions which had been made by the State as collection charges from the income realised by it with respect to his jagir while it was under the management of the State in accordance with Ordinance No. 27 of 1948 as amended of the first United State of Rajasthan. Among other pleas the defendant State raised the plea of limitation, and it was specifically contended that the suit was governed by Article 62 or 89 of the Limitation Act. This plea was repelled and it was held that Article 120 of the Limitation Act was correctly applicable to that case. In coming to this conclusion reliance was placed on the judgment of one of us in *The State of Rajasthan Vs. Rao Manohar Singh of Bedla*,

Now, even if we were to hold, although we do not want to make any definite pronouncement on this point that Article 89 of the Limitation Act is applicable to this case on the footing that the State was a de facto agent of the plaintiff, though not a de jure one, limitation would start against the plaintiff where he has demanded an account of his money from the defendant during the continuance

of the agency and the same has been refused from the date of such refusal or where no such demand has been made, when the agency terminates. Now the defendant has not brought any material on the record to show when a demand was made from it by the plaintiff and refused and, therefore, the point of commencement as mentioned in the first part of the third column of this Article cannot be pressed into use. The alternative point of commencement which is mentioned in this column is further "when the agency terminates". The agency in this case which, as already stated, was of a de facto character could not have, properly speaking, terminated until the jagir was resumed on 1st August, 1954. Therefore, the three years period of limitation prescribed under this Article would commence from 1st August, 1954. The present suit was brought in 1956 and, therefore, is clearly within time.

9. As for the applicability of Article 109 which has been held to be applicable to this case by the trial court, we are unable to agree. This Article relates to a suit for the profits of immovable property belonging to plaintiff which may have been wrongly received by the defendant and the period prescribed for it is three years from the time when profits are received. We consider it sufficient to point out in this connection that as we look at the substance of this suit, this was not one for the recovery of the profits of any immovable property as such but it was a suit for refund of certain collection charges which, according to the plaintiff, had been unlawfully retained by the State.

Article 109, therefore, does not apply to this case and we are further of the opinion that if the present suit is not governed by Article 89 of the Limitation Act, which we have discussed above, the only other Article that could properly apply is Article 120 which prescribes a period of 6 years of limitation, and on that footing plaintiff's suit would certainly be within limitation. Thus, from whichever point we look at the case, we are clearly of the opinion that it is within limitation, and that the trial court was clearly wrong in throwing out the claim of the plaintiff for refund which related to the year 1951-52. We hold accordingly.

10. Our attention was invited by learned counsel for the defendant State to the State of Rajasthan v R. R. Kalyansingh First Appeal No. 1 of 1959. D/- 19-8-1966 (Raj) and to Mubarak Hussain Vs. State of Rajasthan, in support of his submission that the present suit, if it is not governed by Article 109 of the Limitation Act, would be governed by Article 62 of the Limitation Act. With this submission we have not felt persuaded to agree. The facts and circumstances of the present case are altogether different from these cases and, therefore, they do not furnish any guidance in dealing with the present case.

11. That being so the question is to what further amount if any the plaintiff would be entitled. As disclosed in the written statement the State had deducted a total sum of Rs 9,746/14/- with respect to the income from land rents and further sum of Rupees 247/7/6 with respect to the forest income for the year 1951-52 at the rate of 35 per cent on the total income recovered by the State from the plaintiff's jagir. At the rate of 7 per cent allowed by the trial court for

collection charges the appellant would seem to be entitled to a sum of Rs 7,797/8/ with respect to the income from land revenue and a sum of Rs. 198/- with respect to the income from forest for the year in question. Learned counsel for the appellant has not challenged the correctness of these figures as such, apart from the percentage of collection charges and, therefore, we accept the same as a correct basis in this behalf. On this footing the appellant would be entitled to a further decree for Rs. 7,797/8/ plus Rs 198/ equal to Rupees 7,995/8/- subject to our decision on the point that follows.

12. This brings us to the question whether the finding of the court below that the State was entitled to deduct 7 per cent of the total income as collection charges calls for any interference as urged by learned counsel for the appellant. We are clearly of the opinion that it does not. And learned counsel has not been able to satisfy us that this rate is excessive on any principles applicable to a matter of this nature. The rate allowed by the court below, on the other hand, seems to us to err on the side of leniency if at all. This point, therefore, fails and is hereby repelled. In view of the conclusion to which we have come on this issue we hold that the plaintiff shall be entitled to receive back the two amounts of collection charges, that we have calculated in the preceding paragraph, from the State relevant to the income of the year 1951-52.

13. We next come to the defendant's appeal. In this appeal the principal prayer is that the trial court has erred in allowing collection charges at the rate of 7 per cent only and this should have been allowed at the rate of 35 per cent, as originally claimed by the State. It has also been prayed that the court below should not have allowed any interest to the plaintiff on the collection charges retained by it. A preliminary objection has, however, been raised in this appeal that it has abated and, therefore, it should be dismissed on that ground alone without the merits being gone into. That objection is this: It is admitted between the parties that the original plaintiff Raghuraj Singh, who was the sole defendant in this appeal, died on 12th January, 1965.

No application was made for bringing his legal representatives on the record by the appellant State until 21st February, 1966. This was obviously and admittedly far beyond the prescribed time and, therefore, it is urged that the present appeal abated and must be dismissed on that ground alone. In order to surmount this difficulty it is urged by the defendant that this appeal and appeal No. 20 of 1959, which was filed by the plaintiff had been ordered to be linked up together by an order of this Court dated 30th January, 1959, and further only one paper-book had been ordered to be prepared for both the cases. It is further urged in this connection that an application for bringing the legal representatives of deceased Raghuraj Singh had been made in the other appeal by his legal representatives on 8th April, 1965, within time and that application had been allowed on 27th August, 1965, and that being so, it was not necessary to make any separate application for bringing the deceased's legal representatives on the record of the present appeal.

It is urged in the alternative that the Collector, Kota, came to know about the death of the deceased respondent for the first time on 7th August, 1965, from a letter received by him from the Tehsildar. Baran, dated 4th August, 1965. and thereafter the Collector wrote a Idler on the 25th August, 1965 to the Government Advocate at Jodhpur, Shri Murli Manohar Vyas, and that he remained under the impression that the necessary steps in connection with the bringing of the legal representatives of the deceased on the record must have been taken by him. It is further urged in this connection that when Shri Ram Avtar Gupta, counsel for the State in this case, sent a letter to the Collector, Kota, on 7th February. 1966, the Collector informed him about the correspondence which took place between him and the Government Advocate Shri Murli Manohar Vyas.

It was then discovered that the letter of the Collector dated 25th August, 1965, which he had written to the Government Advocate had not been received in his office, nor was Shri Murli Manohar Vyas, it is said, aware of the pendency of this appeal before the High Court.

In these circumstances it was only after the Collector had verified the fact of the death of the deceased respondent and a final communication had been received from him as regards that fact and the particulars of the legal representatives of the deceased that the application for setting aside the abatement was made on 21st February, 1966. It is, therefore, prayed that as the delay was not intentional. It may be condoned and the legal representatives of the deceased Raghura.j Singh be allowed to be brought on the record. As we have already pointed out above, one of the legal representatives of the deceased namely, his widow Smt. Het Kunwar also happened to die later on 3rd January, 1966, but as the application for substitution dated 21st February, 1966, was obviously within time from the date of her death, no further trouble would arise as to her legal representatives being brought on the record, the legal representatives of both being the same except in so far as the deceased lady herself was concerned. Nothing further need be said so far as this subsidiary aspect of the case is concerned.

14. We purpose first to dispose of the question whether the State's prayer for condonation of the delay in making the application for setting aside the abatement with respect to the death of Raghura.j Singh and substitution of his legal representatives is well founded which is the second question we have set out above. Now, even if we were to ignore the entire time between 12th January, 1966, when Raghuraj Singh died and 7th August 1965, when the Collector, Kota, on the defendant's own showing, first came to know of his death, the defendant State must satisfactorily explain the delay in this connection from 7th August, 1965 to 21st February, 1966, as to how and why it was not possible for it to have made the application for setting aside the abatement until the 21st February, 1966, when the application for that purpose actually came to be made. All that is said in this connection is that the Collector sent a letter to the Government

Advocate at Jodhpur on 25th August, 1965. and then it is further said that the letter did not reach the office of the Government Advocate at all.

It is significant however, that no affidavit has been produced from the office of the Government Advocate that this letter, as a matter of fact, did not reach the intended destination. Remarkably enough, we further find from the perusal of the record that the Government Advocate had been personally served in this connection on 26th July, 1965. That being so, it hardly stands to reason that the Government Advocate did not have any knowledge in the matter simply because the letter of the Collector dated 25th August, 1965, referred to above, did not reach him. We are also far from satisfied that the Collector, Kota, on having received the information of the respondent's death was reasonably diligent as he should have been. Fully accepting that the Collector wrote to the Government Advocate on the 25th August, it is not explained, in the first place, why the Collector having received the information of the deceased's death on 7th August, 1965, took full 18 days to write to the Government Advocate in the matter.

Secondly, having written that letter, he did not follow it up at all and never cared to find out whether the Government Advocate had taken any steps in connection with the bringing of the legal representatives of the deceased on the record. If he had done so, we have no doubt that the delay which took place between the receipt of the letter of the 25th August, 1965 and 7th February, 1966. when it is said that Shri Ram Avtar Gupta wrote to the Collector, Kota, would not have occurred at all. The unassailable position, therefore, is that there is no explanation whatsoever for the delay between the period the Collector's letter should have been received in the office of the Government Advocate, that is, about the beginning of September, 1965 and 7th February, 1966.

The law is indeed well established by several decisions of this Court that before a petitioner, who seeks to set aside an order of abatement, could be allowed the relief, such as he claims, he must satisfactorily explain every day's delay which has occurred in the making of that application for the purpose beyond the prescribed period. In this state of law, we have no hesitation in coming to the conclusion that the defendant State has signally failed in discharging the onus which lay heavily on it.

15. This brings us to the first contention raised by learned counsel for the State to the effect that as the legal representatives of the deceased had been brought within limitation on the record of the other appeal namely, No. 20 of 1959, it was not at all necessary for the State to have taken any further steps for that very purpose so far as State's appeal was concerned. Considerable reliance has been placed before us in support of this submission on the ground that the two appeals had been ordered to be linked up together and further a single paper-book had also been ordered to be made for both the cases. We have carefully considered this contention and have come to the conclusion that it is without substance. It is true, that the two appeals had been ordered by this Court to be linked up together by its order dated 30th January, 1959. This was obviously

because both the appeals arose out of a single judgment and conveniently enough, they could be disposed of together.

For the same reason a single paper-book was considered sufficient for the two cases, but this was obviously for the purpose of saving unnecessary expense to both the parties inasmuch as if two separate paper-books were allowed to be constructed, then some of the papers were bound to be common to both of them and there would have been a duplication of labour and expenditure which was clearly avoidable. The crucial question is whether on account of the circumstances that we have discussed above, the two appeals ceased to have a separate individuality. Our answer to this question is in the negative. They were separately numbered in the institution register of this Court and separate proceedings were also drawn up in both the appeals if and as necessity arose. Again, the subject matter of the two appeals was different and the success or failure of the one would not automatically lead to the success or failure of the other.

In these circumstances we are not at all satisfied that the substitution of the legal representatives of the deceased Raghuraj Singh who was the plaintiff-appellant in appeal No. 20 of 1959, should be treated as amounting to the substitution of his legal representatives also in appeal No 19 of 1959, which was brought by the State against him. The only case to which our attention has been invited by learned counsel for the appellant Hukam Chand and Others Vs. Laxmi Narain and Others, This was a case in which an appeal had been filed by the defendant, while a cross-objection by the plaintiff One of the respondents in the cross-objection died and his legal representatives were allowed to be brought on the record and the application made in that behalf was within time. No application for bringing his legal representatives on the record of the appeal was, however, made by the appellants

In these circumstances the question arose whether the legal representatives of the deceased who had been brought on the record in the cross objection should be deemed to be so brought on the record for the purposes of the appeal also. This question was answered in the affirmative. The principal reason for this conclusion seems to us to be that the appeal and the cross-objection formed part of one and the same record. They are not numbered separately in the registers of the Court and the parties in both the proceedings occupy the same role, that is to say, the appellant in the appeal continues to be shown as appellant in the cross-objection also and the respondent in the appeal files the cross-objection as respondent. That, however, cannot be said in the case of two separate appeals filed by the opposing parties, though they arise out of the same judgment. Therefore, the analogy of this case is not applicable to the case before us.

16. On the other hand our attention has been invited to Shankarnaraina Saralaya Vs. Laxmi Hengsu and Others, and the Punjab State v. Sardar Atma Singh, AIR 1963 Punj 113, which support the view which we have taken above. In the first case it is laid down that when there are two independent appeals arising out of

the same suit and one of these is filed by the plaintiff and the other by the defendant, and where the appeal by the defendant-appellant has abated on his not having added the legal representative of the deceased respondent on the record in time, the defendant appellant cannot claim the benefit of the fact that the legal representatives of the deceased appellant in the appeal filed by the plaintiff-appellant had been added within time and consequently it should be taken that those legal representatives had also been added in place of the deceased respondent in his appeal. It was further specifically laid down that the analogy of an appeal and memorandum of cross-objections in the same appeal does not hold good in the case of two cross appeals.

17. The same view was taken in Punjab State Vs. Sardar Atma Singh, In this case the State had filed an appeal against the award on a reference u/s 18 of the Land Acquisition Act and the claimant had also filed a cross-appeal. The latter died during the pendency of the appeal and his legal representative had been brought on the record of his appeal within the prescribed time, but he had not been so brought in the appeal filed by the State. It was held that the State cannot claim the benefit of the fact that the legal representative of the deceased had been brought on the record in the cross-appeal filed by him and, it not having made a proper application for bringing his legal representative on the record in its appeal, the latter must abate.

18. In this state of law. we are constrained to come to the conclusion that the appeal of the State must be held to have abated as the legal representatives of the respondent were not brought on the record in that appeal, and as the deceased was the sole respondent, the appeal must abate as a whole and be dismissed as such.

19. The result is that we partly allow the appeal of the plaintiff-appellants and enhance the decree passed by the trial court being for a sum of Rs. 27,617/7/3 by a further amount of Rs. 7,995/8/-, the total decree would thus amount to Rs. 35,612/15/3. The trial court has allowed pendente lite and future interest on the decretal amount at rate of 6 per cent per annum simple from the date of the decree up-to realisation and as we have dismissed the appeal of the State, this part of the decree must stand intact. The plaintiff-appellants will have their costs of this appeal in proportion of their success. The defendant State's appeal stands dismissed as having abated. There will be no order as to costs of that appeal.