
(1979) 11 OHC CK 0008
In the Orissa High Court
Case No : Civil Revision No. 88 of 1979

Sukadeolal Banka and Another	Vs	APPELLANT
Jogeswar Prasad Sharma and Another		RESPONDENT

Date of Decision : 06-11-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 5
Limitation Act, 1963 — Article 70

Citation : AIR 1980 Ori 144 : (1980) 49 CLT 39

Hon'ble Judges : P.K. Mohanti, J

Bench : Single Bench

Advocate : B.K. Misra, for the Appellant; B. Nayak and M.R. Panda, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanti, J.—This Civil Revision is directed against an order refusing leave to sue as an indigent person. Opp. Party No. 1 filed a suit for recovery of Rupees 11,200/-, as the price of gold ornaments said to have been pledged with the petitioner No. 1 and applied for leave to sue as an indigent person. The opposite parties filed counter contending, inter alia, that the petitioner No. 1 is not an indigent person and that the suit is barred by limitation. The learned Subordinate Judge came to the findings that the petitioner was not possessed of sufficient means so as to pay the required court-fee. Relying on a decision reported in Gobardhan Das Babaji Vs. Raghunandan Das Babaji and Others, he held that it would be appropriate to consider the question of limitation during the trial of the suit and not at the stage of enquiry into the application under Order 33, Rule 1, C. P. C.

2. Order 33, Rule 5, C. P. C. enumerates the events in which an application for leave to sue as an indigent person shall be rejected. Clause (f) which has been newly inserted by the Amendment Act of 1976, provides that where the allegations made by the applicant in the application show that the suit would be

barred by any law for the time being in force, the application would be rejected, Prior to the Amendment Act of 1976, Rule 5 of Order 33 as amended by this High Court provided for rejection of the application where the suit appeared to be barred by any law. In the decision relied upon by the court below, the claim did not appear to be time-barred on the allegations made by the applicant in his application. But the plea regarding bar of limitation was taken in the counter filed by the opposite parties. The court observed that the question was not so simple that it could be prima facie said that the suit was barred by limitation. It was of opinion that the complicated question relating to limitation and jurisdiction should be appropriately taken up at the stage of trial. Since the allegations made by the applicant in his application did not show that the suit would be barred by the law of limitation, this Court upheld the finding of the lower court that the question of limitation could be appropriately taken up at the stage of trial. In the present case, the position is quite different. Upon the face of the plaint, the claim appears to be time-barred.

3. The suit is one for recovery of pawned articles from the pawnee and it is admittedly governed by Article 70, of the Indian Limitation Act which provides a period of limitation of three years to be computed from the date of refusal after demand. In paragraph 4 of the plaint it was specifically alleged that the plaintiff demanded the pledged articles mentioned in Schedules "A" and "B" of the plaint in April, 1966, on repayment of the loan, but the defendant No. 1 refused to return the same on various pleas. Thus, the cause of action for the suit arose in April, 1966, but the suit was filed on 21-11-77, that is long after expiry of the period of limitation. It is obvious that on the allegations made by the applicant himself, the suit would be barred by limitation. The application for leave to sue as an indigent person could not, therefore, be granted in view of the prohibition under Order 33, Rule 5 (f) of the Code of Civil Procedure, as amended by the Amendment Act, 1976.

4. In the result, the Civil Revision is allowed with costs and the order of the learned Subordinate Judge is set aside. The application for leave to sue as an indigent person be rejected. The plaintiff be allowed time till 17th December, 1979, to pay the required court-fee as requested by his Advocate Mr. M.R. Panda.