

(2012) 12 DEL CK 0351

In the Delhi High Court

Case No : Regular Second Appeal 112 of 2011

Sushil Kumar Goyal

APPELLANT

Vs

Ram Singh Gautam

RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Penal Code, 1860 (IPC) — Section 380, 453

Citation : (2012) 12 DEL CK 0351

Hon'ble Judges : Veena Birbal, J

Bench : Single Bench

Advocate : Wills Mathews with Mr. Jose Abraham and Ms. Amrita Jayan, for the Appellant; Mir Akhtar Hussain, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.

CM No. 12631/2011 (condonation of delay)

There is delay of 30 days in filing this appeal. In view of the reasoning given, delay is condoned.

The application stands disposed of. RSA 112/2011

1. By way of this regular second appeal u/s 100 of Code of Civil Procedure, challenge has been made to the impugned judgment dated 18.01.2011 passed by the Id. lower appellate court in RCA No. 18/2010 whereby the impugned judgment dated 07.05.2005 passed by the Id. Civil Judge in Suit No. 43/2004 has been upheld. The relevant facts for disposal of present appeal are as under:-

The appellant was the plaintiff before the Id. Civil Judge. He had filed a suit for recovery of Rs. 2,16,700/- against the respondent/defendant. His case was that his father Sh. Sri Niwas Goel was a tenant of respondent/defendant in respect of one shop in premises no. 27/81, Gali no. 7, Pandav Road, Vishwas Nagar, Delhi.

His father had died on 26.12.1996. It was alleged that taking advantage of the same, the respondent/defendant broke open the locks of the tenanted shop and committed theft of the goods belonging to the father of the plaintiff/appellant. The plaintiff/appellant had lodged FIR No. 179/1997 u/s 453/380 IPC against the respondent/defendant in police station Vivek Vihar. It was alleged that the goods were worth Rs. 1,40,000/-. The appellant/plaintiff had submitted list of goods before the Police as well as in the trial court. In the criminal case, the respondent/defendant was held guilty vide judgment dated 06.01.2000 and was sentenced to SI for three months for the offence u/s 453 IPC and also SI for three months for the offence u/s 380 IPC. After his conviction, the appellant/plaintiff served a legal notice dated 13.03.2000 calling upon the respondent/defendant to return the goods or in the alternative pay the price of the goods worth Rs. 1,40,000/- along with interest. Despite service of notice respondent/defendant had failed to return the goods. Accordingly, appellant/plaintiff filed the aforesaid recovery suit.

2. The respondent/defendant had contested the suit by filing a detailed written statement wherein he had taken the stand that the possession of the tenanted shop was handed over on 08.10.1995 by the father of the appellant/plaintiff of his own free will and there was no question of breaking open the locks of the shop or theft of goods as is alleged and the suit filed was without any cause of action. Some preliminary objections were also taken in the written statement. Thereafter, replication was filed by the appellant/plaintiff. The Id. trial court framed in all nine issues. The issue no. 5 was framed on the question of limitation. The Id. Civil Judge on the basis of evidence on record held that the theft in question was allegedly committed on 10/11.01.1997 and as per Article 68 of Schedule of the Limitation Act, 1963, the limitation of three years is provided for filing the suit and as the suit was filed on 29.04.2000, there was delay of 3 months and 18 days in filing the suit, as such, dismissed the suit on the ground of limitation. The findings on other issues were also given but before the first appellate court only the issue of limitation was pressed.

3. On the basis of evidence on record, the Id. ADJ also observed that in cross-examination the appellant/plaintiff himself had stated that he came to know of the breaking open of locks on 10.11.1997 as such the limitation would start from the said date. Accordingly, the suit was barred by limitation.

4. The Id. counsel for the appellant has argued that the limitation would start from the date of conviction of the respondent/defendant and not from the date of breaking open of locks of the shop, as is taken by both the courts below as such the finding of courts below on the issue of limitation is wrong.

5. On the other hand, learned counsel for respondent/defendant has argued that no substantial question of law arises in the present case and the appeal is liable to be dismissed.

6. It is the own case of the appellant/plaintiff that he had come to know that the

locks of the tenanted premises had been broken on 10/11.01.1997 when he went to meet the respondents/defendants. It is also his case that he had filed a complaint on the basis of which FIR No. 179/1997 was registered u/s 453/380 IPC against the respondent/defendant in police station Vivek Vihar on 19.02.1997. As per his own case set up, the appellant/plaintiff had the knowledge that the goods were in unauthorized possession of the respondent/defendant since 10/11.01.1997. Both the courts below have also given finding based on evidence on record that theft was committed on 10/11.01.1997. As per appellant/plaintiff, the limitation for filing the present suit is governed by Article 68 of the Limitation Act. The period of limitation as provided under the above provision for filing the suit for specific movable property lost, or acquired by theft or dishonest misappropriation or conversion is three years and the time begins to run when the person having the right to the possession of the property first learns in whose possession it is. Even as per Article 91 of the Limitation Act, suit for compensation for wrongfully taking or detaining any specific property lost or acquired by theft is three years from the date when the person having the right to the possession of the property first learns in whose possession the property is. Looking from any angle result is same. Both the courts have held that from the documents/evidence on record it has been established that the breaking open of the locks of the shop and removal of goods thereof was in the knowledge of the plaintiff on 10/11.01.1997. Even as per case set up by him, he had come to know of breaking open the lock of shop on 10/11.01.1997. In his evidence before the Id. trial court, the appellant/plaintiff had stated that the FIR was registered against respondent/defendant on 19.02.1997 on the basis of his complaint. The suit was filed by appellant/plaintiff. On the factual position emerging above from evidence both the Courts have rightly applied the law and dismissed the suit as barred by limitation.

7. The Id. counsel for appellant/plaintiff has relied upon Chacko Vs. Paily, to substantiate his contention that the period of limitation starts from the date of conviction. However, the facts of the judgment relied upon are totally different. The same are not applicable to the present case. No substantial question of law arises in this second appeal. The appeal stands dismissed.